

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1994
First Extraordinary Session, 1994
Second Extraordinary Session, 1993

Volume II
Chapters 70-189
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(Com. Sub. for H. B. 4493—By Delegates McKinley, L. White,
Higgins, Lindsey, Tribett and Varner)

[Passed March 12, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen; to amend and reenact section three, article one, chapter twenty-five; and to amend and reenact section five, article twenty, chapter thirty-one of said code, all relating to creating a pilot program for delivery of leftover prepared foods from schools and penal institutions to the homeless and needy; creation of the commission for distribution of surplus foods; powers and duties; definitions; program maintenance; authorizing the executive director of the regional jail and prison authority and the commissioner of the division of corrections to serve on the commission and implement the pilot program.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 18. Education.
- 25. Department of Corrections.
- 31. Corporations.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-17. Pilot program for delivery of leftover prepared foods from schools and penal institutions to the homeless and needy; commission for distribution of surplus foods; powers and duties; definitions; program continuance.

1 (a) The purpose of the Legislature in enacting this
2 section is to establish a framework for the distribution
3 of excess and leftover foods in West Virginia public
4 school cafeterias and in correctional facilities to
5 community agencies that serve homeless and needy
6 people in this state and to address findings that:

7 (1) Many homeless, destitute and needy people are
8 without sufficient food to meet minimum requirements
9 for daily living;

10 (2) Many school cafeterias and prison cafeterias
11 prepare a large number of meals each day;

12 (3) Despite state and federal policies and guidelines
13 and proper efforts of personnel at such institutions
14 which attempt to eliminate or minimize the waste of
15 unserved prepared food at such public institutions, that
16 some surplusage of leftover food does in fact occur; and

17 (4) Various community agencies are trying to feed the
18 homeless and needy people and that leftover foods from
19 the aforesaid public institutions is an obvious resource
20 to help provide food for the homeless and needy people
21 of the state.

22 (b) For purposes of this section the following terms
23 shall have the following meanings:

24 (1) "Leftover food" means food prepared for imme-
25 diate human consumption but not served, that cannot be
26 refrigerated or preserved to be served at a later time,
27 nor used in the preparation of other foods, or unopened
28 packaged foods, unopened cartons of milk and parcels
29 of whole fruit which are taken by consumers at the
30 institution, but not eaten, or is not subject to being
31 reserved according to policies or rules governing the
32 service of food at the institution;

33 (2) "Agency" means any nonprofit, religious or
34 charitable organization which is exempt from taxation
35 pursuant to 26 U.S.C. §501(c) (3) or (4) whose purposes
36 include the feeding of homeless and needy persons.

37 (3) "Commission" means the commission distribution
38 of surplus food established in subsection (c) of this
39 section.

40 (c) There is hereby established a commission for the
41 distribution of surplus prepared foods. The superintend-
42 ent of the state board of education, or his or her
43 designee, shall serve as chair of the commission. The
44 executive director of the regional jail and prison
45 authority, or his or her designee, and the commissioner
46 of the division of corrections, of the department of public
47 safety, or his or her designee, shall serve as members
48 of the commission.

49 (d) The commission shall develop and establish a pilot
50 program in Ohio County for the distribution of leftover
51 foods from secondary school cafeterias, the county jail
52 in Ohio County and the regional jail located in Marshall
53 County to community agencies in Ohio County to be
54 distributed to homeless and needy persons in Ohio
55 County, consistent with the goals and purposes estab-
56 lished in this section. The pilot program shall provide
57 that an agency pay any cost of transporting the leftover
58 food. In no event may the pilot program provide that the
59 state bear any of the cost of transporting the leftover
60 food.

61 (e) The commission shall have the following powers
62 and duties in carrying out the provisions of this section:

63 (1) Propose for promulgation legislative rules in
64 accordance with article three, chapter twenty-nine-a of
65 this code which are necessary to carry out the purposes
66 of this section;

67 (2) Suggest modification of policies and propose
68 amendments to current rules of the state board of
69 education, the division of corrections and the regional
70 jail authority which are in conflict with the purpose and
71 goals of this section, only as such are applicable to the
72 public institutions included in this pilot program;

73 (3) Coordinate and cooperate with all appropriate
74 federal agencies, including, but not limited to, the
75 United States department of agriculture to approve the
76 distribution of leftover foods under controlled
77 conditions;

78 (4) Draft cooperative and mutually beneficial agree-

79 ments between the respective agencies and the local
80 school or district or correctional facilities;

81 (5) Develop a comprehensive plan of food distribution
82 to agencies including consideration of any input or
83 suggestions from agencies interested in participation in
84 the plan; such plan shall address the care of environ-
85 mental resources and human needs. Any plan or
86 program for food distribution shall require that the cost
87 of transporting the food is to be paid by a community
88 agency. The commission has no authority to develop a
89 comprehensive plan of food distribution which would
90 provide that the state pay all or any part of the cost of
91 transporting the food to be distributed.

92 (f) The pilot program shall commence no later than
93 the first day of September, one thousand nine hundred
94 ninety-four, and continue until the first day of July, one
95 thousand nine hundred ninety-seven, unless sooner
96 terminated by the Legislature. On the first Wednesday
97 after the second Monday of each January, the commis-
98 sion shall report to the governor and the Legislature on
99 the progress of the program whether it should be
100 continued or discontinued, any recommended modifica-
101 tions in the program's scope and mission and whether
102 any action is necessary by the Legislature to improve the
103 success of the program. At the end of the pilot program,
104 the commission shall make a final report to the governor
105 and the Legislature as to whether the findings in this
106 section are being addressed and recommend whether or
107 not the program shall be expanded statewide, with
108 specific recommendations for program support and
109 administration, development and other relevant policy
110 issues.

CHAPTER 25. DEPARTMENT OF CORRECTIONS.

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-3. Institutions managed by commissioner of corrections; certain institutions transferred to department of health and human resources and state board of health; establishment of work and study release units; civil service coverage.

1 The commissioner of corrections shall manage, direct,
2 control and govern the following penal or correctional
3 institutions and any others placed under his jurisdiction
4 or control:

5 West Virginia Penitentiary at Moundsville;

6 West Virginia State Prison for Women at Pence
7 Springs;

8 West Virginia Medium Security Prison at
9 Huttonsville;

10 West Virginia Industrial Home for Girls at Salem;

11 West Virginia Industrial Home for Boys at Grafton;

12 Davis Center (formerly the West Virginia Forestry
13 Camp for Boys at Davis);

14 Leckie Center (formerly the West Virginia Forestry
15 Camp for Boys at Leckie); and

16 Anthony Center (formerly the Anthony Correctional
17 Center).

18 Jurisdiction of and title to the West Virginia Child-
19 ren's Home at Elkins are hereby transferred to the
20 department of health and human resources, which shall
21 be the custodian of all deeds and other muniments of
22 title to such property and shall cause such as are
23 susceptible of recordation to be recorded in the proper
24 offices. Notwithstanding any provision of this code to the
25 contrary, the West Virginia Children's Home shall be
26 managed and controlled by a superintendent appointed
27 by the commissioner of health and human resources.

28 The commissioner is hereby authorized to establish
29 work and study release units as extensions and subsid-
30 iaries of those state institutions under his or her control
31 and authority. Such work and study release units may
32 be coeducational and shall be managed, directed and
33 controlled as provided for in this article.

34 The commissioner is hereby authorized to serve as a
35 member of the commission for distribution of surplus
36 foods and exercise all powers and authority otherwise
37 granted to him or her in this article to implement the

38 pilot program for delivery of leftover prepared foods at
39 any institution under his or her control and supervision,
40 pursuant to section seventeen, article two, chapter
41 eighteen of this code.

42 Any person employed by the office of public institu-
43 tions who on the effective date of this article is a
44 classified civil service employee shall, within the limits
45 contained in section two, article six, chapter twenty-nine
46 of this code, remain in the civil service system as a
47 covered employee.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND PRISON AUTHORITY.

§31-20-5. Powers and duties of the authority; bidding procedures.

1 The regional jail and correctional facility authority
2 shall complete a comprehensive study of all correctional
3 facilities and jail facilities in the state of West Virginia
4 no later than the first day of July, one thousand nine
5 hundred eighty-six. This study shall include an assess-
6 ment of the physical conditions of confinement within
7 the institutions and the relative need for the institutions
8 when considering other available institutions of confine-
9 ment located within the state.

10 After completing this study, the authority shall
11 submit a plan to the governor on the establishment of
12 regional jails in this state and the acquisition, construc-
13 tion or renovation of facilities for correctional facilities.
14 The authority shall specify groups of counties within the
15 state to be formed into regions for the establishment of
16 such regional jails. Within each region a local jail
17 commission shall be established and have the powers
18 and duties as set forth in section six of this article.

19 The authority shall consider, but not be limited to, the
20 following when creating the plan establishing regions:

21 (1) The relative physical condition of the correctional
22 facilities and jail facilities located within the state;

23 (2) The transportation costs associated with the

24 establishment of centralized jail services, including, but
25 not limited to, the costs of transporting persons incar-
26 cerated in regional jails to court appearances, to
27 interviews with their attorneys, and to have visitation
28 with their families and friends, all in any county seat
29 of a county served by the regional facility: *Provided,*
30 That consideration of such costs in the creation of the
31 plan shall not be construed to require the transportation
32 of inmates to interviews with their attorneys or to have
33 visitation with their families and friends when visitation
34 facilities and schedules are established in regional jails;

35 (3) The availability of medical services and educa-
36 tional and recreational opportunities;

37 (4) Information received from public hearings;

38 (5) The relative efficiency in the cost of jail services
39 caused by establishment of regional jail facilities;

40 (6) Available facilities which may be used as regional
41 jails or correctional facilities including, but not limited
42 to, existing county and state owned properties: *Provided,*
43 That if the authority determines that an existing facility
44 meets the standards or could reasonably be made to
45 meet the standards for a regional jail or other correc-
46 tional facility, the authority may proceed to acquire such
47 existing facility and compensate the owner thereof in an
48 amount not less than any local share expended by the
49 owner as matching moneys for the receipt of federal
50 funds: *Provided, however,* That if the authority deter-
51 mines that an existing facility does not meet the
52 standards or could not reasonably be made to meet the
53 standards for a regional jail or other correctional
54 facility, the authority shall provide the owner with a
55 written statement setting forth the reasons supporting
56 such determination;

57 (7) The cost of acquiring, constructing, renovating,
58 operating and maintaining local jail facilities for use as
59 local holding facilities in each county and regional jail
60 facilities for each county and the financing provided by
61 this article;

62 (8) The leasing of any available portion of any regional

63 jail space and the leasing of available facilities of any
64 regional jail to the West Virginia department of
65 corrections for the keeping and detaining of prisoners
66 sentenced to serve terms of incarceration under the
67 custody of the West Virginia department of corrections
68 for nonviolent crimes and to contract with the depart-
69 ment of corrections for the providing of food, clothing,
70 shelter and any and all incidental costs in the care,
71 control and maintenance of such prisoners: *Provided,*
72 That such leasing does not restrict space or facilities
73 needed for the detention of county prisoners;

74 (9) The advisability and cost effectiveness of acquir-
75 ing, constructing, renovating, operating and maintain-
76 ing work farms serving one or more counties or regions;
77 and

78 (10) The proximity of possible sites for the regional
79 jail facilities to residential areas, schools, churches and
80 other public buildings and facilities.

81 Public hearings pursuant to this section shall be held
82 by the authority in convenient locations throughout the
83 state. No less than ten public hearings shall be held for
84 public comment on the establishment of regional jails.
85 The authority shall cause to be published at least two
86 weeks in advance of a hearing a Class II-0 legal
87 advertisement, as provided in section two, article three,
88 chapter fifty-nine of this code, setting forth the reason
89 for the hearing and the time, place and date thereof. The
90 publication area shall be each county which may be
91 included in a region for the purposes of a regional jail
92 with the county in which the public hearing is held.

93 In addition to the hearing requirements above, before
94 beginning construction of a new facility for use as a
95 regional jail or correctional facility or before beginning
96 renovation or acquisition of an existing facility for use
97 as a regional jail facility, which existing facility is not
98 already a jail, correctional facility or secure facility for
99 the detention of juveniles or persons otherwise involun-
100 tarily committed or confined, the authority shall hold a
101 hearing for comment by all members of the public on
102 all aspects relating to the advisability of the use of the

103 site for that regional jail facility. The authority shall
104 promulgate legislative rules pursuant to chapter twenty-
105 nine-a of this code for the requirements for notice and
106 other procedures of said public hearings, which require-
107 ments shall be as similar as practicable to those
108 hearings conducted regarding the construction of
109 bridges by the West Virginia department of highways.

110 The authority, as a public corporation and govern-
111 mental instrumentality exercising public powers of the
112 state, may exercise all powers necessary or appropriate
113 to carry out the purposes of this article, including, but
114 not limited to, the power:

115 (a) To acquire, own, hold and dispose of property, real
116 and personal, tangible and intangible.

117 (b) To lease property, whether as lessee or lessor.

118 (c) To mortgage or otherwise grant security interests
119 in its property.

120 (d) To conduct examinations and investigations and to
121 hear testimony and take proof, under oath or affirma-
122 tion at public or private hearings, on any matter
123 relevant to this article and necessary for information on
124 the construction or renovation of any correctional
125 facility or the establishment of any correctional facility
126 industries project.

127 (e) To issue subpoenas requiring the attendance of
128 witnesses and the production of books and papers
129 relevant to any hearing before such authority or one or
130 more members appointed by it to conduct any hearing.

131 (f) To apply to the circuit court having venue of such
132 offense to have punished for contempt any witness who
133 refuses to obey a subpoena, refuses to be sworn or
134 affirmed, or refuses to testify, or who commits any
135 contempt after being summoned to appear.

136 (g) To sue and be sued, implead and be impleaded,
137 and complain and defend in any court.

138 (h) To adopt, use and alter at will a corporate seal.

139 (i) To make bylaws for the management and regula-

140 tion of its affairs pursuant to article three, chapter
141 twenty-nine-a of this code.

142 (j) To appoint officers, agents and employees.

143 (k) To make contracts of every kind and nature and
144 to execute all instruments necessary or convenient for
145 carrying on its business, including contracts with any
146 other governmental agency of this state or of the federal
147 government or with any person, individual, partnership
148 or corporation to effect any or all of the purposes of this
149 article.

150 (l) Without in any way limiting any other subdivision
151 of this section, to accept grants from and enter into
152 contracts and other transactions with any federal
153 agency.

154 (m) To borrow money and to issue its negotiable
155 bonds, security interests or notes and to provide for and
156 secure the payment thereof, and to provide for the rights
157 of the holders thereof, and to purchase, hold and dispose
158 of any of its bonds, security interests or notes: *Provided*,
159 That no bond or other obligation may be issued or
160 incurred unless and until the Legislature by concurrent
161 resolution has approved the purpose and amount of each
162 project for which proceeds from the issuance of such
163 bond or other obligation will be used.

164 (n) To sell, at public or private sale, any bond or other
165 negotiable instrument, security interest or obligation of
166 the authority in such manner and upon such terms as
167 the authority considers would best serve the purposes of
168 this article.

169 (o) To issue its bonds, security interests and notes
170 payable solely from the revenues or other funds
171 available to the authority therefor; and the authority
172 may issue its bonds, security interests or notes in such
173 principal amounts as it considers necessary to provide
174 funds for any purposes under this article, including:

175 (1) The payment, funding or refunding of the princi-
176 pal of, interest on or redemption premiums on, any
177 bonds, security interests or notes issued by it whether
178 the bonds, security interests, notes or interest to be

179 funded or refunded have or have not become due.

180 (2) The establishment or increase of reserves to secure
181 or to pay bonds, security interests, notes or the interest
182 thereon and all other costs or expenses of the authority
183 incident to and necessary or convenient to carry out its
184 corporate purposes and powers. Any bonds, security
185 interests or notes may be additionally secured by a
186 pledge of any revenues, funds, assets or moneys of the
187 authority from any source whatsoever.

188 (p) To issue renewal notes or security interests, to
189 issue bonds to pay notes or security interests and,
190 whenever it considers refunding expedient, to refund
191 any bonds by the issuance of new bonds, whether the
192 bonds to be refunded have or have not matured except
193 that no such renewal notes shall be issued to mature
194 more than ten years from date of issuance of the notes
195 renewed and no such refunding bonds may be issued to
196 mature more than twenty-five years from the date of
197 issuance.

198 (q) To apply the proceeds from the sale of renewal
199 notes, security interests or refunding bonds to the
200 purchase, redemption or payment of the notes, security
201 interests or bonds to be refunded.

202 (r) To accept gifts or grants of property, funds,
203 security interests, money, materials, labor, supplies or
204 services from the United States of America or from any
205 governmental unit or any person, firm or corporation,
206 and to carry out the terms or provisions of, or make
207 agreements with respect to, or pledge, any gifts or
208 grants, and to do any and all things necessary, useful,
209 desirable or convenient in connection with the procur-
210 ing, acceptance or disposition of gifts or grants.

211 (s) To the extent permitted under its contracts with
212 the holders of bonds, security interests or notes of the
213 authority, to consent to any modification of the rate of
214 interest, time of payment of any installment of principal
215 or interest, security or any other term of any bond,
216 security interest, note or contract or agreement of any
217 kind to which the authority is a party.

218 (t) To sell security interests in the loan portfolio of the
219 authority. Such security interests shall be evidenced by
220 instruments issued by the authority. Proceeds from the
221 sale of security interests may be issued in the same
222 manner and for the same purposes as bond and note
223 revenues.

224 (u) To promulgate rules, in accordance with the
225 provisions of chapter twenty-nine-a of this code, to
226 implement and make effective the powers, duties and
227 responsibilities invested in the authority by the provi-
228 sions of this article and otherwise by law.

229 (v) To assume the responsibility for operation and
230 management of regional jail facilities under the juris-
231 diction of the state regional jail and correctional facility
232 authority. The authority shall provide for the transpor-
233 tation of inmates between the regional jails and local
234 holding facilities for court appearances.

235 (w) To exercise all power and authority provided in
236 this article necessary and convenient to plan, finance,
237 construct, renovate, maintain and operate or oversee the
238 operation of regional jails and correctional facilities.

239 (x) To cooperate with the commission for distribution
240 of surplus foods and to authorize the executive director
241 to exercise all power and authority provided in this
242 section necessary to implement the pilot program for
243 delivery of leftover prepared foods at the regional jail
244 located in Marshall County, pursuant to section seven-
245 teen, article two, chapter eighteen of this code.

246 Notwithstanding any other provision of this section,
247 the regional jail and correctional facility authority shall
248 no later than the first day of November, one thousand
249 nine hundred eighty-nine, submit a plan to the joint
250 committee on government and finance of the Legislature
251 detailing the means by which the authority will comply
252 with the mandates of the supreme court of appeals as
253 to the structural and internal conditions and programs
254 of the correctional facilities in this state. In preparing
255 such plan, the authority is to allow for and consider any
256 input from the public.

CHAPTER 71

(S. B. 117—By Senators Ross, Anderson, Plymale and Dalton)

[Passed March 9, 1994: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to limiting those rights, remedies and requirements relating to discrimination by proprietors and others of penitentiaries, correctional facilities, regional jails and county jails to employees of such facilities, employees of law-enforcement agencies and visitors to such facilities or employees; and including domestic employees within the definition of employee generally.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-3. Definitions.

- 1 When used in this article:
- 2 (a) The term “person” means one or more individuals,
- 3 partnerships, associations, organizations, corporations,
- 4 labor organizations, cooperatives, legal representatives,
- 5 trustees, trustees in bankruptcy, receivers and other
- 6 organized groups of persons;
- 7 (b) The term “commission” means the West Virginia
- 8 human rights commission;
- 9 (c) The term “director” means the executive director
- 10 of the commission;
- 11 (d) The term “employer” means the state, or any
- 12 political subdivision thereof, and any person employing
- 13 twelve or more persons within the state: *Provided*, That
- 14 such terms shall not be taken, understood or construed
- 15 to include a private club;
- 16 (e) The term “employee” shall not include any

17 individual employed by his parents, spouse or child;

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

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

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

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

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

- 56 (k) The term "age" means the age of forty or above;
- 57 (l) For the purpose of this article, a person shall be
58 considered to be blind only if his central visual acuity
59 does not exceed twenty/two hundred in the better eye
60 with correcting lenses, or if his visual acuity is greater
61 than twenty/two hundred but is occasioned by a
62 limitation in the fields of vision such that the widest
63 diameter of the visual field subtends an angle no greater
64 than twenty degrees; and
- 65 (m) The term "handicap" means a person who:
- 66 (1) Has a mental or physical impairment which
67 substantially limits one or more of such person's major
68 life activities. The term "major life activities" includes
69 functions such as caring for one's self, performing
70 manual tasks, walking, seeing, hearing, speaking,
71 breathing, learning and working;
- 72 (2) Has a record of such impairment; or
- 73 (3) Is regarded as having such an impairment.
- 74 For the purposes of this article, this term does not
75 include persons whose current use of or addiction to
76 alcohol or drugs prevents such individual from perform-
77 ing the duties of the job in question or whose employ-
78 ment, by reason of such current alcohol or drug abuse,
79 would constitute a direct threat to property or the safety
80 of others.

CHAPTER 72

(H. B. 4425—By Delegates Compton, Douglas, Brown,
Gallagher, Leach, Huntwork and P. White)

[Passed March 12, 1994; in effect ninety days from passage. Became law without Governor's signature.]

AN ACT to amend and reenact section ten, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to enlarging the time period in which to file a human rights complaint from one hundred eighty days to three hundred days.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-10. Discriminatory practices; investigations, hearings, procedures and orders.

1 Any individual claiming to be aggrieved by an alleged
2 unlawful discriminatory practice shall make, sign and
3 file with the commission a verified complaint, which
4 shall state the name and address of the person, em-
5 ployer, labor organization, employment agency, owner,
6 real estate broker, real estate salesman or financial
7 institution alleged to have committed the unlawful
8 discriminatory practice complained of, and which shall
9 set forth the particulars thereof and contain such other
10 information as may be required by the commission's
11 rules and regulations. The commission upon its own
12 initiative, or the attorney general, shall, in like manner,
13 make, sign and file such complaint. Any employer,
14 whose employees, or some of them, hinder or threaten
15 to hinder compliance with the provisions of this article,
16 shall file with the commission a verified complaint,
17 asking for assistance by conciliation or other remedial
18 action and, during such period of conciliation or other
19 remedial action, no hearings, orders or other actions
20 shall be held, made or taken by the commission against
21 such employer. Any complaint filed pursuant to this
22 article must be filed within three hundred sixty-five
23 days after the alleged act of discrimination.

24 After the filing of any complaint, or whenever there
25 is reason to believe that an unlawful discriminatory
26 practice has been committed, the commission shall make
27 a prompt investigation in connection therewith.

28 If it shall be determined after such investigation that
29 no probable cause exists for substantiating the allega-
30 tions of the complaint, the commission shall, within ten
31 days from such determination, cause to be issued and
32 served upon the complainant written notice of such
33 determination, and the said complainant or his attorney

34 may, within ten days after such service, file with the
35 commission a written request for a meeting with the
36 commission to show probable cause for substantiating
37 the allegations of the complaint. If it shall be deter-
38 mined after such investigation or meeting that probable
39 cause exists for substantiating the allegations of the
40 complaint, the commission shall immediately endeavor
41 to eliminate the unlawful discriminatory practices
42 complained of by conference, conciliation and persua-
43 sion. The members of the commission and its staff shall
44 not disclose what has transpired in the course of such
45 endeavors: *Provided*, That the commission may publish
46 the facts in the case of any complaint which has been
47 dismissed, and the terms of conciliation when the
48 complaint has been adjusted, without disclosing the
49 identity of the parties involved.

50 In case of failure so to eliminate such practice or in
51 advance thereof, if in the judgment of the commission
52 circumstances so warrant, the commission shall cause to
53 be issued and served a written notice, together with a
54 copy of such complaint as the same may have been
55 amended, in the manner provided by law for the service
56 of summons in civil actions, requiring the person,
57 employer, labor organization, employment agency,
58 owner, real estate broker, real estate salesman or
59 financial institution named in such complaint, hereinaf-
60 ter referred to as respondent, to answer the charges of
61 such complaint at a hearing before the commission in
62 the county where the respondent resides or transacts
63 business at a time and place to be specified in such
64 notice: *Provided*, That said written notice be served at
65 least thirty days prior to the time set for the hearing.

66 The case in support of the complaint shall be pres-
67 ented before the commission by one of its attorneys or
68 agents. The respondent may file a written, verified
69 answer to the complaint and appear at such hearing in
70 person or otherwise, with or without counsel, and submit
71 testimony and evidence. Except as provided in this
72 article, all of the pertinent provisions of article five,
73 chapter twenty-nine-a of this code shall apply to and
74 govern the hearing and the administrative procedures
75 in connection with and following such hearing, with like

76 effect as if the provisions of said article five were set
77 forth in extenso in this section.

78 If, after such hearing and consideration of all of the
79 testimony, evidence and record in the case, the commis-
80 sion shall find that a respondent has engaged in or is
81 engaging in any unlawful discriminatory practice as
82 defined in this article, the commission shall issue and
83 cause to be served on such respondent an order to cease
84 and desist from such unlawful discriminatory practice
85 and to take such affirmative action, including, but not
86 limited to, hiring, reinstatement or upgrading of
87 employees, with or without back pay, admission or
88 restoration to membership in any respondent labor
89 organization, or the admission to full and equal enjoy-
90 ment of the services, goods, facilities, or accommoda-
91 tions offered by any respondent place of public accom-
92 modation, and the sale, purchase, lease, rental or
93 financial assistance to any complainant otherwise
94 qualified for the housing accommodation or real
95 property, denied in violation of this article, as in the
96 judgment of the commission, will effectuate the pur-
97 poses of this article, and including a requirement for
98 report of the manner of compliance. Such order shall be
99 accompanied by findings of fact and conclusions of law
100 as specified in section three, article five, chapter twenty-
101 nine-a of this code.

102 If, after such hearing and consideration of all of the
103 testimony, evidence and record in the case, the commis-
104 sion shall find that a respondent has not engaged in such
105 unlawful discriminatory practice, the commission shall
106 state its findings of fact and conclusions of law as
107 aforesaid and shall issue and cause to be served on the
108 complainant an order dismissing the said complaint as
109 to such respondent.

110 A copy of its order shall be delivered in all cases by
111 the commission to the complainant, the respondent, the
112 attorney general and to such other public officers as the
113 commission may deem proper. Any such order shall not
114 be enforceable except as provided in section eleven of
115 this article.

CHAPTER 73

(H. B. 4126—By Delegates Phillips, L. White, Michael and Gallagher)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen-a, article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to accredited reinsurers; licensing and filing requirements; credit requirements; designating the secretary of state for service of process; annual reports; expanding trusteed accounts to include corporations as well as unincorporated underwriters; required forms and reports; security requirements and definitions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. GENERAL PROVISIONS.

§33-4-15a. Credit for reinsurance; definitions; requirements; trust accounts; reductions from liability; security; effective date.

1 (a) For purposes of this section, an “accredited
2 reinsurer” is one which:

3 (1) Has filed an application for accreditation and
4 received a letter of accreditation from the commissioner;

5 (2) Is licensed to transact insurance or reinsurance in
6 at least one of the fifty states of the United States or
7 the District of Columbia or, in the case of a United
8 States branch of an alien assuming insurer, is entered
9 through and licensed to transact insurance or reinsu-
10 rance in at least one of the fifty states of the United
11 States or the District of Columbia;

12 (3) Has filed with the application a certified statement
13 that the company submits to this state’s jurisdiction and
14 that the company will comply with the laws, rules and
15 regulations of the state of West Virginia;

16 (4) Has filed with the application a certified statement
17 that the company submits to the examination authority
18 granted the commissioner by section nine, article two of
19 this chapter and will pay all examination costs and fees
20 as required by that section;

21 (5) Has filed with the application a copy of its most
22 recent annual statement in a form consistent with the
23 requirements of subdivision (8) of this subsection and a
24 copy of its last audited financial statement;

25 (6) Has filed any other information the commissioner
26 requests to determine that the company qualifies for
27 accreditation under this section;

28 (7) Has remitted the applicable processing fee with its
29 application for accreditation;

30 (8) Files with the commissioner after initial accred-
31 itation on or before the first day of March of each year
32 a true statement of its financial condition, transactions
33 and affairs as of the preceding thirty-first day of
34 December. The statement shall be on the appropriate
35 national association of insurance commissioners annual
36 statement blank; shall be prepared in accordance with
37 the national association of insurance commissioners
38 annual statement instructions; and shall follow the
39 accounting practices and procedures prescribed by the
40 national association of insurance commissioners account-
41 ing practices and procedures manual as amended. The
42 statement shall be accompanied by the applicable
43 annual statement filing fee. The commissioner may
44 grant extensions of time for filing of this annual
45 statement upon application by the accredited reinsurer;
46 and

47 (9) Files with the commissioner after initial accred-
48 itation by the first day of June of each year a copy of
49 its audited financial statement for the period ending the
50 preceding thirty-first day of December.

51 (b) If the commissioner determines that the assuming
52 insurer has failed to continue to meet any of these
53 qualifications, he or she may upon written notice and
54 hearing, as prescribed by section thirteen, article two of

55 this chapter, revoke an assuming insurer's accreditation.
56 Credit shall not be allowed to a ceding insurer if the
57 assuming insurers' accreditation has been revoked by
58 the commissioner after notice and hearing.

59 (c) Credit for reinsurance shall be allowed a domestic
60 ceding insurer or any foreign or alien insurer transact-
61 ing insurance in West Virginia that is domiciled in a
62 jurisdiction that employs standards regarding credit for
63 reinsurance that are not substantially similar to those
64 applicable under this article as either an asset or a
65 deduction from liability on account of reinsurance ceded
66 only when the reinsurer meets one of the following
67 requirements:

68 (1) Credit shall be allowed when the reinsurance is
69 ceded to an assuming insurer which is licensed to
70 transact insurance or reinsurance in this state.

71 (2) Credit shall be allowed when the reinsurance is
72 ceded to an assuming insurer which is accredited as a
73 reinsurer in this state prior to the effective date of the
74 reinsurance contract.

75 (3) Credit shall be allowed when the reinsurance is
76 ceded to an assuming insurer which is domiciled and
77 licensed in, or in the case of a United States branch of
78 an alien assuming insurer, is entered through one of the
79 fifty states of the United States or the District of
80 Columbia and which employs standards regarding
81 credit for reinsurance substantially similar to those
82 applicable under this statute, and the ceding insurer
83 provides evidence suitable to the commissioner that the
84 assuming insurer:

85 (A) Maintains a surplus as regards policyholders in
86 an amount not less than twenty million dollars: *Pro-*
87 *vided*, That the requirements of this paragraph do not
88 apply to reinsurance ceded and assumed pursuant to
89 pooling arrangements among insurers in the same
90 holding company system;

91 (B) The ceding insurer provides the commissioner
92 with a certified statement from the assuming insurer
93 that the assuming insurer submits to the authority of

94 this state to examine its books and records granted the
95 commissioner by section nine, article two of this chapter
96 and will pay all examination costs and fees as required
97 by that section; and

98 (C) The reinsurer complies with the provisions of
99 subdivision (6), subsection (c) herein.

100 (4) Credit shall be allowed when the reinsurance is
101 ceded to an assuming insurer which maintains a trust
102 fund as required by subsection (d) herein in a qualified
103 United States financial institution, as defined by this
104 section, for the payment of the valid claims of its United
105 States policyholders and ceding insurers, their assigns
106 and successors in interest, and complies with the
107 provisions of subdivision (6) herein.

108 (5) Credit shall be allowed when the reinsurance is
109 ceded to an assuming insurer not meeting the require-
110 ments of subdivisions (1) through (4), subsection (c) of
111 this section, but only with respect to the insurance of
112 risks located in jurisdictions where such reinsurance is
113 required by applicable law or regulation of that
114 jurisdiction.

115 (6) If the assuming insurer is not licensed or accre-
116 dited to transact insurance or reinsurance in this state,
117 the credit permitted by subdivisions (3) and (4) of this
118 subsection shall not be allowed unless the assuming
119 insurer agrees in the reinsurance agreements:

120 (A) That in the event of the failure of the assuming
121 insurer to perform its obligations under the terms of the
122 reinsurance agreement, the assuming insurer, at the
123 request of the ceding insurer, shall submit to the
124 jurisdiction of any court of competent jurisdiction in any
125 state of the United States, shall comply with all
126 requirements necessary to give such court jurisdiction,
127 and shall abide by the final decision of such court or of
128 any appellate court in the event of an appeal; and

129 (B) To designate the secretary of state as its true and
130 lawful attorney upon whom may be served any lawful
131 process in any action, suit or proceeding instituted by
132 or on behalf of the ceding company. Process shall be

133 served upon the secretary of state, or accepted by him
134 or her, in the same manner as provided for service of
135 process upon unlicensed insurers under section thirteen
136 of this article: *Provided*, That this provision is not
137 intended to conflict with or override the obligation of the
138 parties to a reinsurance agreement to arbitrate their
139 disputes, if such an obligation is created in the
140 agreement.

141 (d) Whenever an assuming insurer establishes a trust
142 fund for the payment of claims pursuant to the provi-
143 sions of this section, the following requirements shall
144 apply:

145 (1) The assuming insurer shall report annually to the
146 commissioner information substantially the same as that
147 required to be reported on the national association of
148 insurance commissioners annual statement form by
149 licensed insurers to enable the commissioner to deter-
150 mine the sufficiency of the trust fund. In the case of a
151 single assuming insurer, the trust shall consist of a
152 trustee account representing the assuming insurer's
153 liabilities attributable to business written in the United
154 States and, in addition, the assuming insurer shall
155 maintain a trustee surplus of not less than twenty
156 million dollars. In the case of a group, including
157 incorporated and individual unincorporated underwri-
158 ters, the trust shall consist of a trustee account
159 representing the group's liabilities attributable to
160 business written in the United States and, in addition,
161 the group shall maintain a trustee surplus of which one
162 hundred million dollars shall be held jointly for the
163 benefit of United States ceding insurers of any member
164 of the group. The incorporated members of the group
165 shall not be engaged in any business other than
166 underwriting as a member of the group and shall be
167 subject to the same level of solvency regulation and
168 control by the group's domiciliary regulator as are the
169 unincorporated members. The group shall make avail-
170 able to the commissioner an annual certification of the
171 solvency of each underwriter by the group's domiciliary
172 regulator and its independent public accountants.

173 (2) In the case of a group of incorporated insurers

174 under common administration which complies with the
175 filing requirements contained in the previous para-
176 graph; which has continuously transacted an insurance
177 business outside the United States for at least three
178 years immediately prior to making application for
179 accreditation; which submits to this state's authority to
180 examine its books and records and bears the expense of
181 the examination; and which has aggregate policy-
182 holders' surplus of ten billion dollars, the trust shall be
183 in an amount equal to the group's several liabilities
184 attributable to business ceded by United States ceding
185 insurers to any member of the group pursuant to
186 reinsurance contracts issued in the name of the group.
187 The group shall also maintain a joint trustee surplus
188 of which one hundred million dollars shall be held
189 jointly for the benefit of United States ceding insurers
190 of any member of the group as additional security for
191 any such liabilities. Each member of the group shall
192 make available to the commissioner an annual certifi-
193 cation of the member's solvency by the member's
194 domiciliary regulator and its independent public
195 accountants.

196 (3) Any trust that is subject to the provisions of this
197 section shall be established in a form approved by the
198 commissioner. The trust instrument shall provide that
199 contested claims shall be valid and enforceable upon the
200 final order of any court of competent jurisdiction in the
201 United States. The trust shall vest legal title to its assets
202 in the trustees of the trust for its United States
203 policyholders and ceding insurers, their assigns and
204 successors in interest. The trust and the assuming
205 insurer shall be subject to examination as determined
206 by the commissioner. The trust described herein shall
207 remain in effect for as long as the assuming insurer
208 shall have outstanding obligations due under the
209 reinsurance agreements subject to the trust.

210 (4) No later than the twenty-eighth day of February
211 of each year the trustees of the trust shall report to the
212 commissioner in writing setting forth the balance of the
213 trust and listing the trust's investments at the preceding
214 year's end. The trustees shall certify the date of

215 termination of the trust, if so planned, or certify that
216 the trust shall not expire prior to the next following
217 December thirty-first.

218 (e) A reduction from liability for the reinsurance
219 ceded by a ceding insurer subject to the requirements
220 of this article to an assuming insurer not meeting the
221 requirements of subsection (c) of this section shall be
222 allowed in an amount not exceeding the liabilities
223 carried by the ceding insurer. The reduction shall be in
224 the amount of funds held by or on behalf of the ceding
225 insurer, including funds held in trust for the ceding
226 insurer, under a reinsurance contract with the assuming
227 insurer as security for the payment of obligations
228 thereunder: *Provided*, That the security is held in the
229 United States subject to withdrawal solely by, and
230 under the exclusive control of, the ceding insurer; or, in
231 the case of a trust, held in a qualified United States
232 financial institution, as defined by this section. The
233 security may be in the form of:

234 (1) Cash;

235 (2) Securities listed by the securities valuation office
236 of the national association of insurance commissioners
237 and qualifying as admitted assets; or

238 (3) Clean, irrevocable, unconditional letters of credit,
239 issued or confirmed by a qualified United States
240 financial institution, as defined by this section, no later
241 than the thirty-first day of December of the year for
242 which filing is being made, and in the possession of the
243 ceding company on or before the filing date of its annual
244 statement: *Provided*, That letters of credit meeting
245 applicable standards of issuer acceptability as of the
246 dates of their issuance or confirmation shall, notwith-
247 standing the issuing or confirming institution's subse-
248 quent failure to meet applicable standards of issuer
249 acceptability, continue to be acceptable as security until
250 their expiration, extension, renewal, modification or
251 amendment, whichever first occurs.

252 (f) For purposes of this section, a "qualified United
253 States financial institution" means an institution that:

254 (1) Is organized or licensed under the laws of the
255 United States or any state thereof;

256 (2) Is regulated, supervised and examined by United
257 States federal or state authorities having regulatory
258 authority over banks and trust companies; and

259 (3) Has been determined by either the commissioner,
260 or the securities valuation office of the national associ-
261 ation of insurance commissioners, to meet the standards
262 of financial condition and standing as are considered
263 necessary and appropriate to regulate the quality of
264 financial institutions whose letters of credit will be
265 acceptable to the commissioner.

266 (g) A "qualified United States financial institution"
267 means, for purposes of those provisions of this law
268 specifying those institutions that are eligible to act as
269 a fiduciary of a trust, an institution that:

270 (1) Is organized or, in the case of a United States
271 branch or agency office of a foreign banking organiza-
272 tion, licensed under the laws of the United States or any
273 state thereof and has been granted authority to operate
274 with fiduciary powers; and

275 (2) Is regulated, supervised and examined by federal
276 or state authorities having regulatory authority over
277 banks and trust companies.

278 (h) The provisions of this section shall apply to all
279 cessions on or after the first day of January, one
280 thousand nine hundred ninety-three.

CHAPTER 74

(S. B. 390—By Senator Minard)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the approval of insurance policy forms; creating exceptions for certain associations; and providing for

exemptions upon written application and for good cause shown.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. THE INSURANCE POLICY.

§33-6-8. Approval of forms.

1 (a) Except as provided in section eight, article
2 seventeen of this chapter (fire and marine forms), no
3 insurance policy form, no group certificate form, no
4 insurance application form where written application is
5 required and is to be made a part of the policy, and no
6 rider, endorsement or other form to be attached to any
7 policy, shall be delivered or issued for delivery in this
8 state by an insurer unless it has been filed with and
9 approved by the commissioner, except that as to group
10 insurance policies delivered outside this state, only the
11 group certificates to be delivered or issued for delivery
12 in this state shall be filed for approval with the
13 commissioner. This section shall not apply to policies,
14 riders, endorsements or forms of unique character
15 designed for and used with relation to insurance upon
16 a particular subject, or which relate to the manner of
17 distribution of benefits or to the reservation of rights
18 and benefits under life or accident and sickness
19 insurance policies, and are used at the request of the
20 individual policyholder, contract holder or certificate
21 holder, nor to the surety bond forms.

22 (b) Every such filing shall be made not less than sixty
23 days in advance of any such delivery. At the expiration
24 of such sixty days, the form so filed shall be deemed
25 approved unless prior thereto it has been affirmatively
26 approved or disapproved by the commissioner. Approval
27 of any such form by the commissioner shall constitute
28 a waiver of any unexpired portion of such waiting
29 period. The commissioner may at any time, after notice
30 and for cause shown, withdraw any such approval.

31 (c) Any order of the commissioner disapproving any
32 such form or withdrawing a previous approval shall

33 state the grounds therefor.

34 (d) The commissioner may, by order, exempt from the
35 requirements of this section for so long as he deems
36 proper any insurance document or form or type thereof
37 as specified in such order, to which, in his opinion, this
38 section may not practicably be applied, or the filing and
39 approval of which are, in his opinion, not desirable or
40 necessary for the protection of the public.

41 (e) Notwithstanding any other provisions of this
42 section, any mass marketed life and/or health insurance
43 policy offered to members of any association by the
44 association shall be exempt from the provision requiring
45 prior approval under this section: *Provided*, That for
46 purposes of this section, the association shall have a
47 minimum of sixty-one members at the outset of the
48 issuance of the mass marketed life and/or health
49 insurance policy and shall have been organized and
50 maintained in good faith for purposes other than that
51 of obtaining or providing insurance: *Provided, however*,
52 That the association shall also have been in active
53 existence for at least two years and shall have a
54 constitution and bylaws which provide that: (1) The
55 association holds annual meetings to further purposes of
56 its members; (2) except in the case of credit unions, the
57 association collects dues or solicits contributions from
58 members; and (3) the members have voting privileges
59 and representation on the governing board and commit-
60 tees that exist under the authority of the association:
61 *Provided further*, That upon written application by an
62 association and for good cause shown, the commissioner
63 may grant an exemption to the association from the
64 minimum member requirements of this section.

65 (f) This section shall apply also to any form used by
66 domestic insurers for delivery in a jurisdiction outside
67 West Virginia, if the insurance supervisory official of
68 such jurisdiction informs the commissioner that such
69 form is not subject to approval or disapproval by such
70 official, and upon the commissioner's order requiring
71 the form to be submitted to him for the purpose. The
72 applicable same standards shall apply to such forms as
73 apply to forms for domestic use.

CHAPTER 75

(Com. Sub. for S. B. 434—By Senator Minard)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections ten, eleven and twelve, article seven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article twenty-two of said chapter; to amend and reenact section two, article twenty-three of said chapter; to amend and reenact section four, article twenty-four of said chapter; to amend and reenact section six, article twenty-five of said chapter; to amend and reenact section twenty-four, article twenty-five-a of said chapter; to amend and reenact sections four and five, article twenty-seven of said chapter; to amend and reenact sections one and six, article thirty-one of said chapter; to amend and reenact section three, article thirty-two of said chapter; and to further amend said chapter by adding thereto two new articles, designated articles thirty-nine and forty, all relating to insurance; assets and liabilities; valuation of bonds; valuation of other securities; valuation of real property; farmers' mutual fire insurance companies; applicability of other provisions; fraternal benefit societies; applicability of other provisions; hospital service corporations, medical service corporations, dental service corporations and health service corporations; exemptions; applicability of insurance laws; health care corporations; supervision and regulation by insurance commissioner; exemption from insurance laws; health maintenance organization act; issuance of certificate of authority; insurance holding company systems; registration of insurers; standards; captive insurance; definitions; corporate organization; risk retention act; charter and license requirements for domestic groups; disclosure of material transactions; report; acquisitions and dispositions of assets; nonrenewals, cancellations or revisions of ceded reinsurance programs; effective date; risk based capital for life and/or health insurers; definitions; risk based capital reports; company action level event; regulatory action level event; authorized control level event;

mandatory control level event; hearings; confidentiality and prohibition on announcements; supplemental provisions; foreign insurers; severability clause; notices; and effective date.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 33. INSURANCE.

Article

- 7. Assets and Liabilities.
- 22. Farmers' Mutual Fire Insurance Companies.
- 23. Fraternal Benefit Societies.
- 24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.
- 25. Health Care Corporations.
- 25A. Health Maintenance Organization Act.
- 27. Insurance Holding Company Systems.
- 31. Captive Insurance.
- 32. Risk Retention Act.
- 39. Disclosure of Material Transactions.
- 40. Risk Based Capital for Life and/or Health Insurers.

ARTICLE 7. ASSETS AND LIABILITIES.

- §33-7-10. Valuation of bonds.
- §33-7-11. Valuation of other securities.
- §33-7-12. Valuation of real property.

§33-7-10. Valuation of bonds.

- 1 (a) All bonds or other evidences of debt having a fixed
- 2 term and rate of interest held by any insurer may, if

3 amply secured and not in default as to principal or
4 interest, be valued as follows:

5 (1) If purchased at par, at the par value.

6 (2) If purchased above or below par, on the basis of
7 the purchase price adjusted so as to bring the value to
8 par at maturity and so as to yield in the meantime the
9 effective rate of interest at which the purchase was
10 made, or in lieu of such method, according to such
11 accepted method of valuation as is approved by the
12 commissioner.

13 (3) Purchase price shall in no case be taken at a
14 higher figure than the actual market value at the time
15 of purchase, plus actual brokerage, transfer, postage or
16 express charges paid in the acquisition of such
17 securities.

18 (4) Unless otherwise provided by valuation established
19 or approved by the commissioner, no such security shall
20 be carried at above the call price for the entire issue
21 during any period within which the security may be so
22 called.

23 (b) The commissioner shall have full discretion in
24 determining the method of calculating values according
25 to the rules set forth in this section: *Provided*, That no
26 such method or valuation shall be inconsistent with any
27 applicable valuation or method used by insurers in
28 general or any such method then currently formulated
29 or approved by the committee on valuation of securities
30 of the national association of insurance commissioners or
31 its successor organization.

§33-7-11. Valuation of other securities.

1 (a) Securities, other than those referred to in section
2 ten of this article, held by an insurer shall be valued,
3 in the discretion of the commissioner, at their market
4 value, or at their appraised value, or at prices deter-
5 mined by him as representing their fair market value,
6 all consistent with any current method for the valuation
7 of any such security formulated or approved by the
8 commissioner.

9 (b) Preferred or guaranteed stocks or shares while
10 paying full dividends may be carried at a fixed value
11 in lieu of market value, at the discretion of the
12 commissioner and in accordance with such method of
13 computation as he may approve.

14 (c) Stock of a subsidiary corporation of an insurer
15 shall not be valued in excess of the net value thereof as
16 based upon those assets only of the subsidiary which
17 would be eligible pursuant to the provisions of this
18 article, and article eight of this chapter, for investment
19 of funds of the insurer directly.

20 (d) No valuations under this section shall be inconsis-
21 tent with any applicable valuation or method then
22 currently formulated or approved by the committee on
23 valuation of securities of the national association of
24 insurance commissioners or its successor organization.

§33-7-12. Valuation of real property.

1 (a) In the event of a default real property acquired
2 pursuant to a mortgage loan or contract for sale shall
3 not be valued at an amount greater than the unpaid
4 principal of the defaulted loan or contract at the date
5 of such acquisition, together with any taxes and
6 expenses paid or incurred in connection with such
7 acquisition, and the cost of improvements thereafter
8 made by the insurer and any amounts thereafter paid
9 by the insurer on assessments levied for improvements
10 in connection with the property.

11 (b) The value of other real property acquired or held
12 by an insurer shall in no event be valued at more than
13 the purchase price. Purchase price includes capitalized
14 permanent improvements, less depreciation as allowed
15 by the current accounting practices and procedures
16 manuals of the national association of insurance commis-
17 sioners. Real property that has been affected by
18 permanent declines in value shall be valued at not more
19 than market value.

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COM- PANIES.

§33-22-2. Applicability of other provisions.

1 Each company to the same extent such provisions are
2 applicable to domestic mutual insurers shall be gov-
3 erned by and be subject to the following articles of this
4 chapter: Article one (definitions); article two (insurance
5 commissioner); article four (general provisions) except
6 that section sixteen of article four shall not be applicable
7 thereto; article seven (assets and liabilities); article ten
8 (rehabilitation and liquidation) except that under the
9 provisions of section thirty-two of said article ten
10 assessments shall not be levied against any former
11 member of a farmers' mutual fire insurance company
12 who is no longer a member of the company at the time
13 the order to show cause was issued; article eleven (unfair
14 trade practices); article twelve (agents, brokers and
15 solicitors) except that the agent's license fee shall be five
16 dollars; article twenty-six (West Virginia Insurance
17 Guaranty Association Act); article twenty-seven (insu-
18 rance holding company systems); article thirty (mine
19 subsidence insurance) except that under the provisions
20 of section six, article thirty, a farmers' mutual insurance
21 company shall have the option of offering mine subsi-
22 dence coverage to all of its policyholders but shall not
23 be required to do so; article thirty-three (annual audited
24 financial report); article thirty-four (administrative
25 supervision); article thirty-four-a (standards and com-
26 missioner's authority for companies deemed to be in
27 hazardous financial condition); article thirty-five
28 (criminal sanctions for failure to report impairment);
29 article thirty-six (business transacted with producer-
30 controlled property/casualty insurer); article thirty-
31 seven (managing general agents); and article thirty-nine
32 (disclosure of material transactions); but only to the
33 extent these provisions are not inconsistent with the
34 provisions of this article.

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

§33-23-2. Applicability of other provisions.

1 Every fraternal benefit society shall be governed and
2 be subject to the same extent as other insurers transact-
3 ing like kinds of insurance, to the following articles of
4 this chapter: Article one (definitions); article two
5 (insurance commissioner); article four (general provi-

6 sions); section thirty, article six (fee for form and rate
7 filing); article seven (assets and liabilities); article ten
8 (rehabilitation and liquidation); article eleven (unfair
9 trade practices); article twelve (agents, brokers, solici-
10 tors and excess lines); article thirteen (life insurance);
11 article fifteen-a (long-term care insurance); article
12 twenty-seven (insurance holding company systems);
13 article thirty-three (annual audited financial report);
14 article thirty-four (administrative supervision); article
15 thirty-four-a (standards and commissioner's authority
16 for companies deemed to be in hazardous financial
17 condition); article thirty-five (criminal sanctions for
18 failure to report impairment); article thirty-seven
19 (managing general agents); and article thirty-nine
20 (disclosure of material transactions).

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL
SERVICE CORPORATIONS, DENTAL SERVICE
CORPORATIONS AND HEALTH SERVICE
CORPORATIONS.**

***§33-24-4. Exemptions; applicability of insurance laws.**

1 Every corporation defined in section two of this
2 article is hereby declared to be a scientific, nonprofit
3 institution and exempt from the payment of all property
4 and other taxes. Every corporation, to the same extent
5 the provisions are applicable to insurers transacting
6 similar kinds of insurance and not inconsistent with the
7 provisions of this article, shall be governed by and be
8 subject to the provisions as hereinbelow indicated, of the
9 following articles of this chapter: Article two (insurance
10 commissioner), except that, under section nine of said
11 article, examinations shall be conducted at least once
12 every four years; article four (general provisions), except
13 that section sixteen of said article shall not be applicable
14 thereto; section thirty-four, article six (fee for form and
15 rate filing); article six-c (guaranteed loss ratio); article
16 seven (assets and liabilities); article eleven (unfair trade
17 practices); article twelve (agents, brokers and solicitors),
18 except that the agent's license fee shall be five dollars;
19 section fourteen, article fifteen (individual accident

* Clerk's Note: This section was also amended by S. B. 522 (Chapter 78), which passed subsequent to this act.

20 and sickness insurance); article fifteen-a (long-term care
21 insurance); section three, article sixteen (required policy
22 provisions); section three-a, article sixteen (mental
23 illness); section three-c, article sixteen (group accident
24 and sickness insurance); section three-d, article sixteen
25 (medicare supplement insurance); section three-f, article
26 sixteen (treatment of temporomandibular joint disorder
27 and craniomandibular disorder); article sixteen-a (group
28 health insurance conversion); article sixteen-c (small
29 employer group policies); article sixteen-d (marketing
30 and rate practices for small employers); article twenty-
31 six-a (West Virginia life and health insurance guaranty
32 association act), after the first day of October, one
33 thousand nine hundred ninety-one; article twenty-seven
34 (insurance holding company systems); article twenty-
35 eight (individual accident and sickness insurance
36 minimum standards); article thirty-three (annual
37 audited financial report); article thirty-four (administra-
38 tive supervision); article thirty-four-a (standards and
39 commissioner's authority for companies deemed to be in
40 hazardous financial condition); article thirty-five
41 (criminal sanctions for failure to report impairment);
42 article thirty-seven (managing general agents); and
43 article thirty-nine (disclosure of material transactions);
44 and no other provision of this chapter may apply to these
45 corporations unless specifically made applicable by the
46 provisions of this article. If, however, any such corpo-
47 ration is converted into a corporation organized for a
48 pecuniary profit, or if it transacts business without
49 having obtained a license as required by section five of
50 this article, it shall thereupon forfeit its right to these
51 exemptions.

ARTICLE 25. HEALTH CARE CORPORATIONS.

***§33-25-6. Supervision and regulation by insurance commissioner; exemption from insurance laws.**

1 Corporations organized under this article are subject
2 to supervision and regulation of the insurance commis-
3 sioner. The corporations organized under this article, to

* Clerk's Note: This section was also amended by S. B. 522 (Chapter 78), which passed subsequent to this act.

4 the same extent these provisions are applicable to
5 insurers transacting similar kinds of insurance and not
6 inconsistent with the provisions of this article, shall be
7 governed by and be subject to the provisions as
8 hereinbelow indicated, of the following articles of this
9 chapter: Article four (general provisions), except that
10 section sixteen of said article shall not be applicable
11 thereto; article six-c (guaranteed loss ratio); article
12 seven (assets and liabilities); article eight (investments);
13 article ten (rehabilitation and liquidation); section
14 fourteen, article fifteen (individual accident and sick-
15 ness insurance); section three, article sixteen (required
16 policy provisions); article sixteen-a (group health
17 insurance conversion); article sixteen-c (small employer
18 group policies); article sixteen-d (marketing and rate
19 practices for small employers); article twenty-six-a
20 (West Virginia life and health insurance guaranty
21 association act); article twenty-seven (insurance holding
22 company systems); article thirty-three (annual audited
23 financial report); article thirty-four-a (standards and
24 commissioner's authority for companies deemed to be in
25 hazardous financial condition); article thirty-five
26 (criminal sanctions for failure to report impairment);
27 article thirty-seven (managing general agents); and
28 article thirty-nine (disclosure of material transactions);
29 and no other provision of this chapter may apply to these
30 corporations unless specifically made applicable by the
31 provisions of this article.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

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

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

* Clerk's Note: This section was also amended by S. B. 522 (Chapter 78), which passed subsequent to this act.

9 medical service corporation laws of this state except
10 with respect to its health maintenance corporation
11 activities authorized and regulated pursuant to this
12 article.

13 (b) Factually accurate advertising or solicitation
14 regarding the range of services provided, the premiums
15 and copayments charged, the sites of services and hours
16 of operation, and any other quantifiable, nonprofessional
17 aspects of its operation by a health maintenance
18 organization granted a certificate of authority, or its
19 representative shall not be construed to violate any
20 provision of law relating to solicitation or advertising by
21 health professions: *Provided*, That nothing contained
22 herein shall be construed as authorizing any solicitation
23 or advertising which identifies or refers to any individ-
24 ual provider, or makes any qualitative judgment
25 concerning any provider.

26 (c) Any health maintenance organization authorized
27 under this article shall not be deemed to be practicing
28 medicine and shall be exempt from the provision of
29 chapter thirty of this code, relating to the practice of
30 medicine.

31 (d) The provisions of section fifteen, article four
32 (general provisions); article six-c (guaranteed loss ratio);
33 article seven (assets and liabilities); article eight
34 (investments); section fourteen, article fifteen (individ-
35 ual accident and sickness insurance); article fifteen-b
36 (uniform health care administration act); section three,
37 article sixteen (required policy provisions); section
38 three-f, article sixteen (treatment of temporomandibular
39 disorder and craniomandibular disorder); article six-
40 teen-a (group health insurance conversion); article
41 sixteen-c (small employer group policies); article
42 sixteen-d (marketing and rate practices for small
43 employers); article twenty-seven (insurance holding
44 company systems); article thirty-four-a (standards and
45 commissioner's authority for companies deemed to be in
46 hazardous financial condition); article thirty-five
47 (criminal sanctions for failure to report impairment);
48 article thirty-seven (managing general agents); and
49 article thirty-nine (disclosure of material transactions)

50 shall be applicable to any health maintenance organiza-
51 tion granted a certificate of authority under this article.

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

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.

§33-27-4. Registration of insurers.

§33-27-5. Standards.

§33-27-4. Registration of insurers.

1 (a) Every insurer which is authorized to do business
2 in this state and which is a member of an insurance
3 holding company system shall register with the commis-
4 sioner, except a foreign insurer subject to disclosure
5 requirements and standards adopted by statute or
6 regulation in the jurisdiction of its domicile which are
7 substantially similar to those contained in this section.
8 Any insurer which is subject to registration under this
9 section shall register within sixty days after the
10 effective date of this article or fifteen days after it
11 becomes subject to registration, whichever is later, and
12 annually thereafter by the first day of June of each year
13 for the previous calendar year, unless the commissioner
14 for good cause shown extends the time for registration,
15 and then within such extended time. The commissioner
16 may require any authorized insurer which is a member
17 of a holding company system which is not subject to
18 registration under this section to furnish a copy of the
19 registration statement, the summary described in
20 subsection (c) of this section, or other information filed
21 by such insurance company with the insurance regula-
22 tory authority of domiciliary jurisdiction.

23 (b) Every insurer subject to registration shall file a
24 registration statement on a form prescribed by the
25 national association of insurance commissioners, which
26 shall contain current information about:

27 (1) The capital structure, general financial condition,
28 ownership and management of the insurer and any
29 person controlling the insurer.

30 (2) The identity and relationship of every member of
31 the insurance holding company system.

32 (3) The following agreements in force, relationships
33 subsisting, and transactions currently outstanding or
34 which have occurred during the last calendar year
35 between such insurer and its affiliates:

36 (A) Loans, other investments, or purchases, sales or
37 exchanges of securities of the affiliates by the insurer
38 or of the insurer by its affiliates;

39 (B) Purchases, sales or exchanges of assets;

40 (C) Transactions not in the ordinary course of
41 business;

42 (D) Guarantees or undertakings for the benefit of an
43 affiliate which result in an actual contingent exposure
44 of the insurer's assets to liability, other than insurance
45 contracts entered into in the ordinary course of the
46 insurer's business;

47 (E) All management and service contracts and all
48 cost-sharing arrangements;

49 (F) All reinsurance agreements;

50 (G) Dividends and other distributions to shareholders;
51 and

52 (H) Any pledge of the insurer's stock, including stock
53 of any subsidiary or controlling affiliate, for a loan made
54 to any member of the insurance holding company
55 system.

56 (4) Other matters concerning transactions between
57 registered insurers and any affiliates as may be
58 included from time to time in any registration forms
59 adopted or approved by the commissioner.

60 (c) All registration statements shall contain a sum-
61 mary outlining all items in the current registration
62 statement representing changes from the prior registra-
63 tion statement.

64 (d) Information need not be disclosed on the registra-
65 tion statement filed pursuant to subsection (b) of this

66 section if such information is not material for the
67 purpose of this section. Unless the commissioner by rule
68 or order provides otherwise, sales, purchases, ex-
69 changes, loans or extensions of credit, or investments,
70 involving one half of one percent or less of an insurer's
71 admitted assets as of the thirty-first day of December
72 next preceding shall not be deemed material for
73 purposes of this section.

74 (e) Each registered insurer shall keep current the
75 information required to be disclosed in its registration
76 statement by reporting all material changes or additions
77 on amendment forms provided by the commissioner
78 within fifteen days after the end of the month in which
79 it learns of each such change or addition.

80 (f) Subject to subsection (c), section five of this article,
81 each registered insurer shall report to the commissioner
82 all dividends and other distributions to shareholders
83 within fifteen business days following the declaration
84 thereof.

85 (g) Any person within an insurance holding company
86 system subject to registration shall be required to
87 provide complete and accurate information to an
88 insurer, when such information is reasonably necessary
89 to enable the insurer to comply with the provisions of
90 this article.

91 (h) The commissioner shall terminate the registration
92 of any insurer which demonstrates that it no longer is
93 a member of an insurance holding company system.

94 (i) The commissioner may require or allow two or
95 more affiliated insurers subject to registration he-
96 reunder to file a consolidated registration statement or
97 consolidated reports amending their consolidated
98 registration statement or their individual registration
99 statements.

100 (j) The commissioner may allow an insurer which is
101 authorized to do business in this state and which is a
102 part of an insurance holding company system to register
103 on behalf of any affiliated insurer which is required to
104 register under subsection (a) of this section and to file

105 all information and material required to be filed under
106 this section.

107 (k) The provisions of this section shall not apply to any
108 insurer, information or transaction if and to the extent
109 that the commissioner by rule or order shall exempt the
110 same from the provisions of this section.

111 (l) Any person may file with the commissioner a
112 disclaimer of affiliation with any authorized insurer or
113 such a disclaimer may be filed by such insurer or any
114 member of an insurance holding company system. The
115 disclaimer shall fully disclose all material relationships
116 and bases for affiliation between such person and such
117 insurer as well as the basis for disclaiming such
118 affiliation. After a disclaimer has been filed, the insurer
119 shall be relieved of any duty to register or report under
120 this section which may arise out of the insurer's
121 relationship with such person unless and until the
122 commissioner disallows such a disclaimer. The commis-
123 sioner shall disallow such a disclaimer only after
124 furnishing all parties in interest with notice and
125 opportunity to be heard and after making specific
126 findings of fact to support such disallowance.

127 (m) The failure to file a registration statement or any
128 amendment thereto required by this section within the
129 time specified for such filing shall be a violation of this
130 section.

§33-27-5. Standards.

1 (a) Transactions by registered insurers with their
2 affiliates shall be subject to the following standards:

3 (1) The terms shall be fair and reasonable;

4 (2) Charges or fees for services performed shall be
5 reasonable;

6 (3) Expenses incurred and payment received shall be
7 allocated to the insurer in conformity with customary
8 insurance accounting practices consistently applied;

9 (4) The books, accounts and records of each party
10 shall be so maintained as to clearly and accurately
11 disclose the precise nature and details of the transac-

12 tions, including such accounting information as is
13 necessary to support the reasonableness of the charges
14 or fees to the respective parties; and

15 (5) The insurer's surplus as regards policyholders
16 following any dividends or distributions to shareholder
17 affiliates shall be reasonable in relation to the insurer's
18 outstanding liabilities and adequate to its financial
19 needs.

20 (b) For purposes of this article, in determining
21 whether an insurer's surplus as regards policyholders is
22 reasonable in relation to the insurer's outstanding
23 liabilities and adequate to its financial needs, the
24 following factors, among others, shall be considered:

25 (1) The size of the insurer as measured by its assets,
26 capital and surplus, reserves, premium writings,
27 insurance in force and other appropriate criteria;

28 (2) The extent to which the insurer's business is
29 diversified among the several lines of insurance;

30 (3) The number and size of risks insured in each line
31 of business;

32 (4) The extent of the geographical dispersion of the
33 insurer's insured risks;

34 (5) The nature and extent of the insurer's reinsurance
35 program;

36 (6) The quality, diversification and liquidity of the
37 insurer's investment portfolio;

38 (7) The recent past and projected future trend in the
39 size of the insurer's surplus as regards policyholders;

40 (8) The surplus as regards policyholders maintained
41 by other comparable insurers;

42 (9) The adequacy of the insurer's reserves; and

43 (10) The quality and liquidity of investments in
44 affiliates. The commissioner may treat any such
45 investment as a disallowed asset for purposes of
46 determining the adequacy of surplus as regards policy-
47 holders whenever in his or her judgment such invest-

48 ment so warrants.

49 (c) An insurer subject to registration under section
50 four of this article shall not pay any extraordinary
51 dividend or make any other extraordinary distribution
52 to its shareholders until: (1) Thirty days after the
53 commissioner has received notice of the declaration
54 thereof and has not within such period disapproved such
55 payment; or (2) the commissioner shall have approved
56 such payment within such thirty-day period.

57 (d) For purposes of this section, an extraordinary
58 dividend or distribution includes any dividend or
59 distribution of cash or other property, whose fair market
60 value together with that of other dividends or distribu-
61 tions made within the preceding twelve months exceeds
62 the lesser of: (1) Ten percent of such insurer's surplus
63 as regards policyholders as of the thirty-first day of
64 December next preceding; or (2) the net gain from
65 operations of such insurer, if such insurer is a life
66 insurer, or the net income, if such insurer is not a life
67 insurer, not including realized capital gains, for the
68 twelve-month period ending the thirty-first day of
69 December next preceding, but shall not include pro rata
70 distributions of any class of the insurer's own securities.
71 In determining whether a dividend or distribution is
72 extraordinary, an insurer other than a life insurer may
73 carry forward net income from the previous two
74 calendar years that has not already been paid out as
75 dividends. This carry-forward shall be computed by
76 taking the net income from the second and third
77 preceding calendar years, not including realized capital
78 gains, less dividends paid in the second and immediate
79 preceding calendar years.

80 (e) Notwithstanding any other provision of law, an
81 insurer may declare an extraordinary dividend or
82 distribution which is conditional upon the commission-
83 er's approval thereof, and such a declaration shall confer
84 no rights upon shareholders until: (1) The commissioner
85 has approved the payment of such dividend or distribu-
86 tion; or (2) the commissioner has not disapproved such
87 payment within the thirty-day period referred to above.

88 (f) The following transactions involving a domestic
89 insurer and any person in its holding company system
90 may not be entered into unless the insurer has notified
91 the commissioner in writing of its intention to enter into
92 such transaction at least thirty days prior thereto, or
93 such shorter period as the commissioner may permit,
94 and the commissioner has not disapproved it within such
95 period:

96 (1) Sales, purchases, exchanges, loans or extensions of
97 credit, guarantees or investments provided such tran-
98 sactions are equal to or exceed: The lesser of one percent
99 of the insurer's admitted assets or ten percent of surplus
100 as regards policyholders; each as of the thirty-first day
101 of December next preceding;

102 (2) Loans or extensions of credit to any person who
103 is not an affiliate, where the insurer makes such loans
104 or extensions of credit with the agreement or under-
105 standing that the proceeds of such transactions, in whole
106 or in substantial part, are to be used to make loans or
107 extensions of credit to, purchase assets of, or to make
108 investments in, any affiliate of the insurer making such
109 loans or extensions of credit provided such transactions
110 are equal to or exceed: The lesser of one percent of the
111 insurer's admitted assets or ten percent of surplus as
112 regards policyholders; each as of the thirty-first day of
113 December next preceding;

114 (3) Reinsurance agreements or modifications thereto
115 in which the reinsurance premium or a change in the
116 insurer's liabilities equals or exceeds five percent of the
117 insurer's surplus as regards policyholders, as of the
118 thirty-first day of December next preceding, including
119 those agreements which may require as consideration
120 the transfer of assets from an insurer to a nonaffiliate,
121 if an agreement or understanding exists between the
122 insurer and nonaffiliate that any portion of such assets
123 will be transferred to one or more affiliates of the
124 insurer;

125 (4) All management agreements, service contracts
126 and all cost-sharing arrangements; and

127 (5) Any material transactions, specified by rule, which

128 the commissioner determines may adversely affect the
129 interests of the insurer's policyholders.

130 (g) Nothing contained in subsection (h) herein shall be
131 deemed to authorize or permit any transactions which,
132 in the case of an insurer not a member of the same
133 holding company system, would be otherwise contrary
134 to law.

135 (h) A domestic insurer shall not enter into transac-
136 tions which are part of a plan or series of like transac-
137 tions with persons within the holding company system
138 if the purpose of those separate transactions is to avoid
139 the statutory threshold amount and thus avoid the
140 review that would occur otherwise. If the commissioner
141 determines that such separate transactions were entered
142 into over any twelve-month period for such purpose, he
143 or she may exercise his or her authority under section
144 nine.

145 (i) The commissioner, in reviewing transactions
146 pursuant to subsection (f) of this section, shall consider
147 whether the transactions comply with the standards set
148 forth in subsection (a) of this section and whether they
149 may adversely affect the interests of policyholders.

150 (j) The commissioner shall be notified within thirty
151 days of any investment of the domestic insurer in any
152 one corporation if the total investment in such corpora-
153 tion by the insurance holding company system exceeds
154 ten percent of such corporation's voting securities.

155 (k) With regard to domestic insurers, the following
156 requirements apply:

157 (1) Notwithstanding the control of a domestic insurer
158 by any person, the officers and directors of the insurer
159 shall not thereby be relieved of any obligation or
160 liability to which they would otherwise be subject by
161 law, and the insurer shall be managed so as to assure
162 its separate operating identity consistent with the
163 provisions of this chapter.

164 (2) Nothing herein shall preclude a domestic insurer
165 from having or sharing a common management or
166 cooperatively, or jointly using personnel, property or

167 services with one or more other persons under arrange-
168 ments meeting the standards of subsection (a) of this
169 section.

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-1. Definitions.

§33-31-6. Corporate organization.

§33-31-1. Definitions.

1 As used in this chapter, unless the context requires
2 otherwise:

3 (1) "Affiliated company" means any company in the
4 same corporate system as a parent, an industrial
5 insured, or a member organization by virtue of common
6 ownership, control, operation or management.

7 (2) "Association" means any legal association of
8 individuals, corporations, partnerships or associations
9 that has been in continuous existence for at least one
10 year, the member organizations of which collectively:

11 (A) Own, control or hold with power to vote all of the
12 outstanding voting securities of an association captive
13 insurance company incorporated as a stock insurer; or

14 (B) Have complete voting control over an association
15 captive insurance company incorporated as a mutual
16 insurer.

17 (3) "Association captive insurance company" means
18 any company that insures risks of the member organ-
19 izations of the association, and their affiliated
20 companies.

21 (4) "Captive insurance company" means any pure
22 captive insurance company, association captive insu-
23 rance company, or industrial insured captive insurance
24 company formed or licensed under the provisions of this
25 chapter.

26 (5) "Commissioner" means the insurance commis-
27 sioner of West Virginia.

28 (6) "Industrial insured" means an insured:

29 (A) Who procures the insurance of any risk or risks

30 by use of the services of a full-time employee acting as
31 an insurance manager or buyer;

32 (B) Whose aggregate annual premiums for insurance
33 on all risks total at least twenty-five thousand dollars;
34 and

35 (C) Who has at least twenty-five full-time employees.

36 (7) "Industrial insured captive insurance company"
37 means any company that insures risks of the industrial
38 insureds that comprise the industrial insured group and
39 their affiliated companies.

40 (8) "Industrial insured group" means any group that
41 meets the following criteria:

42 Any group of industrial insureds that collectively:

43 (i) Own, control or hold with power to vote all of the
44 outstanding voting securities of an industrial insured
45 captive insurance company incorporated as a stock
46 insurer; or

47 (ii) Have complete voting control over an industrial
48 insured captive insurance company incorporated as a
49 mutual insurer.

50 (9) "Member organization" means any individual,
51 corporation, partnership or association that belongs to
52 an association.

53 (10) "Parent" means a corporation, partnership or
54 individual that directly or indirectly owns, controls or
55 holds with power to vote more than fifty percent of the
56 outstanding voting securities of a pure captive insurance
57 company.

58 (11) "Pure captive insurance company" means any
59 company that insures risks of its parent and affiliated
60 companies.

61 **§33-31-6. Corporate organization.**

62 (a) A pure captive insurance company shall be
63 incorporated as a stock insurer with its capital divided
64 into shares and held by the stockholders.

65 (b) An association captive insurance company or an

66 industrial insured captive insurance company may be
67 incorporated:

68 (1) As a stock insurer with its capital divided into
69 shares and held by the stockholders; or

70 (2) As a mutual insurer without capital stock, the
71 governing body of which is elected by the member
72 organizations of its association.

73 (c) A captive insurance company shall have at least
74 one incorporator who shall be a resident of this state.

75 (d) Before the articles of association are transmitted
76 to the secretary of state, the incorporators shall petition
77 the commissioner to issue a certificate setting forth his
78 or her finding that the establishment and maintenance
79 of the proposed corporation will promote the general
80 good of the state. In arriving at such finding the
81 commissioner shall consider:

82 (1) The character, reputation, financial standing and
83 purpose of the incorporators;

84 (2) The character, reputation, financial responsibility,
85 insurance experience and business qualifications of the
86 officers and directors; and

87 (3) Such other aspects as the commissioner deems
88 advisable.

89 (e) The articles of association, such certificate and the
90 organization fee shall be transmitted to the secretary of
91 state, who shall thereupon record both the articles of
92 incorporation and the certificate.

93 (f) The capital stock of a captive insurance company
94 incorporated as a stock insurer shall be issued at not less
95 than par value.

96 (g) At least one of the members of the board of
97 directors of a captive insurance company incorporated
98 in this state shall be a resident of this state.

99 (h) Captive insurance companies formed under the
100 provisions of this chapter shall have the privileges and
101 be subject to the provisions of the general corporation
102 law as well as the applicable provisions contained in this

103 chapter. Captive insurance companies are subject to the
104 provisions of article thirty-three, article thirty-four,
105 article thirty-seven and article thirty-nine of this
106 chapter. In the event of conflict between the provisions
107 of said general corporation law and the provisions of this
108 chapter, the latter shall control.

ARTICLE 32. RISK RETENTION ACT.

§33-32-3. Charter and license requirements for domestic groups.

1 (a) A risk retention group shall, pursuant to the
2 provisions of article five of this chapter, be chartered
3 and licensed to write only liability insurance pursuant
4 to this article and, except as provided elsewhere in this
5 article, shall comply with all of the laws, rules and
6 requirements applicable to insurers chartered and
7 licensed in this state and with section four of this article,
8 to the extent such requirements are not a limitation on
9 laws, rules or requirements of this state.

10 (b) Notwithstanding any other provision of this
11 chapter to the contrary, all risk retention groups
12 chartered in this state shall file with the commissioner
13 and the national association of insurance commissioners,
14 an annual statement on a form prescribed by the
15 national association of insurance commissioners and in
16 diskette form, if required by the commissioner and
17 completed in accordance with the national association of
18 insurance commissioners' instructions and the national
19 association of insurance commissioners accounting
20 practices and procedures manual.

21 (c) Before it may offer insurance in any state, each
22 risk retention group shall also submit for approval by
23 the insurance commissioner of this state a plan of
24 operation or feasibility study. The risk retention group
25 shall submit an appropriate revision of such plan or
26 study, in the event of any subsequent material change
27 in any item of the plan of operation or feasibility study,
28 within ten days of any such change. The risk retention
29 group shall not offer any additional kinds of liability
30 insurance, in this state or in any other state, until a
31 revision of the plan or study is approved by the

32 commissioner.

33 (d) At the time of filing its application for a charter,
34 the risk retention group shall provide to the commis-
35 sioner in summary form the following information: The
36 identity of the initial members of the group, the identity
37 of those individuals who organized the group or who will
38 provide administrative services or otherwise influence
39 or control the activities of the group, the amount and
40 nature of initial capitalization, the coverages to be
41 afforded, and the states in which the group intends to
42 operate. Upon receipt of this information, the commis-
43 sioner shall forward the information to the national
44 association of insurance commissioners. Providing
45 notification to the national association of insurance
46 commissioners is in addition to and shall not be
47 sufficient to satisfy the requirements of section four or
48 any other sections of this article.

49 (e) Risk retention groups are subject to the provisions
50 of article thirty-three, article thirty-four, article thirty-
51 seven and article thirty-nine of this chapter.

ARTICLE 39. DISCLOSURE OF MATERIAL TRANSACTIONS.

§33-39-1. Report.

§33-39-2. Acquisitions and dispositions of assets.

§33-39-3. Nonrenewals, cancellations or revisions of ceded reinsurance programs.

§33-39-4. Effective date.

§33-39-1. Report.

1 (a) Every insurer domiciled in this state shall file a
2 report with the commissioner disclosing material
3 acquisitions and dispositions of assets or material
4 nonrenewals, cancellations or revisions of ceded reinsu-
5 rance programs unless such acquisitions and disposi-
6 tions of assets or material nonrenewals, cancellations or
7 revisions of ceded reinsurance programs have been
8 submitted to the commissioner for review, approval or
9 information purposes pursuant to other provisions of
10 this chapter.

11 (b) The report required in subsection (a) of this section
12 is due within fifteen days after the end of the calendar
13 month in which any of the foregoing transactions occur.

14 (c) One complete copy of the report, including any
15 exhibits or other attachments filed as part thereof, shall
16 be filed with:

17 (1) The insurance commissioner; and

18 (2) The national association of insurance
19 commissioners.

20 (d) All reports obtained by or disclosed to the
21 commissioner pursuant to this article, shall be given
22 confidential treatment and shall not be subject to
23 subpoena and shall not be made public by the commis-
24 sioner, the national association of insurance commis-
25 sioners, or any other person, except to insurance depart-
26 ments of other states, without the prior written consent
27 of the insurer to which it pertains unless the commis-
28 sioner, after giving the insurer who would be affected
29 thereby, notice and an opportunity to be heard, deter-
30 mines that the interest of policyholders, shareholders or
31 the public will be served by the publication thereof, in
32 which event the commissioner may publish all or any
33 part thereof in such manner as he or she may deem
34 appropriate.

§33-39-2. Acquisitions and dispositions of assets.

1 (a) No acquisitions or dispositions of assets need be
2 reported pursuant to section one of this article if the
3 acquisitions or dispositions are not material. For
4 purposes of this article, a material acquisition, or the
5 aggregate of any series of acquisitions during any
6 thirty-day period, is one that is nonrecurring and not in
7 the ordinary course of business and involves more than
8 five percent of the reporting insurer's total admitted
9 assets as reported in its most recent statutory statement
10 filed with the insurance commissioner. For purposes of
11 this article, a material disposition, or the aggregate of
12 any series of dispositions during any thirty-day period,
13 is one that is nonrecurring and not in the ordinary
14 course of business and involves more than five percent
15 of the reporting insurer's total admitted assets as
16 reported in its most recent statutory statement filed
17 with the insurance commissioner.

18 (b) Asset acquisitions subject to this article include
19 every purchase, lease, exchange, merger, consolidation,
20 succession or other acquisition other than the construc-
21 tion or development of real property by or for the
22 reporting insurer or the acquisition of materials for such
23 purpose.

24 (c) Asset dispositions subject to this article include
25 every sale, lease, exchange, merger, consolidation,
26 mortgage, hypothecation, assignment, whether for the
27 benefit of creditors or otherwise, abandonment, destruc-
28 tion or other disposition.

29 (d) The following information is required to be
30 disclosed in any report of a material acquisition or
31 disposition of assets:

32 (1) Date of the transaction;

33 (2) Manner of acquisition or disposition;

34 (3) Description of the assets involved;

35 (4) Nature and amount of the consideration given or
36 received;

37 (5) Purpose of, or reason for, the transaction;

38 (6) Manner by which the amount of consideration was
39 determined;

40 (7) Gain or loss recognized or realized as a result of
41 the transaction; and

42 (8) Name(s) of the person(s) from whom the assets
43 were acquired or to whom they were disposed.

44 (e) Insurers are required to report material acquisi-
45 tions and dispositions on a nonconsolidated basis unless
46 the insurer is part of a consolidated group of insurers
47 which utilizes a pooling arrangement or a one hundred
48 percent reinsurance agreement that affects the solvency
49 and integrity of the insurer's reserves and such insurer
50 ceded substantially all of its direct and assumed
51 business to a pool. An insurer is deemed to have ceded
52 "substantially all" of its direct and assumed business to
53 a pool if the insurer has less than one million dollars of
54 total direct plus assumed written premiums during a

55 calendar year that are not subject to the pooling
56 arrangement and the net income of the business not
57 subject to the pooling arrangement represents less than
58 five percent of the insurer's capital and surplus. If a
59 group of insurers reports on a consolidated basis as here
60 allowed, the report should identify the individual
61 insurers that are members of the group.

**§33-39-3. Nonrenewals, cancellations or revisions of
ceded reinsurance programs.**

1 (a) No nonrenewals, cancellations or revisions of ceded
2 reinsurance programs need be reported pursuant to
3 section one of this article if the nonrenewals, cancella-
4 tions or revisions are not material. For purposes of this
5 article, a material nonrenewal, cancellation or revision
6 is one that affects for property and casualty business,
7 including accident and health business when written as
8 such, more than fifty percent of an insurer's ceded
9 written premium, or for life, annuity and accident and
10 health business, more than fifty percent of the total
11 reserve credit taken for business ceded, on an annual-
12 ized basis as indicated in the insurer's most recently
13 filed statutory statement: *Provided*, That no filing is
14 required if the insurer's ceded written premium or the
15 total reserve credit taken for business ceded represents,
16 on an annualized basis, less than ten percent of direct
17 plus assumed written premium or ten percent of the
18 statutory reserve requirement prior to any cession,
19 respectively.

20 (b) Subject to the criteria outlined above, a report is
21 to be filed without regard to which party has initiated
22 the nonrenewal, cancellation or revision of ceded
23 reinsurance whenever one or more of the following
24 conditions exist:

25 (1) The entire cession has been canceled, nonrenewed
26 or revised and ceded indemnity and loss adjustment
27 expense reserves after any nonrenewal, cancellation or
28 revision represent less than fifty percent of the compar-
29 able reserves that would have been ceded had the
30 nonrenewal, cancellation or revision not occurred;

31 (2) An authorized or accredited reinsurer has been

32 replaced on an existing cession by an unauthorized
33 reinsurer; or

34 (3) Collateral requirements previously established for
35 unauthorized reinsurers have been reduced. For exam-
36 ple, the requirement to collateralize incurred but not
37 reported claim reserves has been waived with respect
38 to one or more unauthorized reinsurers newly partici-
39 pating in an existing cession.

40 (4) Subject to the materiality criteria, for purposes of
41 subdivisions (2) and (3) above, a report shall be filed if
42 the result of the revision affects more than ten percent
43 of the cession.

44 (c) The following information is required to be
45 disclosed in any report of a material nonrenewal,
46 cancellation or revision of a ceded reinsurance program:

47 (1) Effective date of the nonrenewal, cancellation or
48 revision;

49 (2) The description of the transaction with an identi-
50 fication of the initiator thereof;

51 (3) Purpose of, or reason for, the transaction; and

52 (4) If applicable, the identity of the replacement
53 reinsurers.

54 (d) Insurers are required to report all material
55 nonrenewals, cancellations or revisions of ceded reinsu-
56 rance agreements on a nonconsolidated basis unless the
57 insurer is part of a consolidated group of insurers which
58 utilizes a pooling arrangement or a one hundred percent
59 reinsurance agreement that affects the solvency and
60 integrity of the insurer's reserves and the insurer ceded
61 substantially all of its direct and assumed business to
62 a pool. An insurer is deemed to have ceded "substan-
63 tially all" of its direct and assumed business to a pool
64 if the insurer has less than one million dollars of total
65 direct plus assumed written premiums during a ca-
66 lendar year that are not subject to the pooling arran-
67 gement and the net income of the business not subject
68 to the pooling arrangement represents less than five
69 percent of the insurer's capital and surplus. If a group

70 of insurers reports on a consolidated basis as here
71 allowed, the report shall identify the individual insurers
72 that are members of the group.

§33-39-4. Effective date.

1 This article shall take effect on the first day of
2 January, one thousand nine hundred ninety-six.

**ARTICLE 40. RISK BASED CAPITAL FOR LIFE AND/OR
HEALTH INSURERS.**

- §33-40-1. Definitions.
- §33-40-2. Risk based capital reports.
- §33-40-3. Company action level event.
- §33-40-4. Regulatory action level event.
- §33-40-5. Authorized control level event.
- §33-40-6. Mandatory control level event.
- §33-40-7. Hearings.
- §33-40-8. Confidentiality and prohibition on announcements.
- §33-40-9. Supplemental provisions.
- §33-40-10. Foreign insurers.
- §33-40-11. Severability clause.
- §33-40-12. Notices.
- §33-40-13. Effective date.

§33-40-1. Definitions.

- 1 (a) "Adjusted risk based capital report" means a risk
2 based capital report which has been adjusted by the
3 commissioner in accordance with subsection (c), section
4 two of this article.
- 5 (b) "Corrective order" means an order issued by the
6 commissioner specifying corrective actions which the
7 commissioner has determined are required.
- 8 (c) "Domestic insurer" means any life and/or health
9 insurance company organized in this state pursuant to
10 article five of this chapter.
- 11 (d) "Foreign insurer" means any life and/or health
12 insurance company which is licensed to do business in
13 this state pursuant to article three of this chapter but
14 is not domiciled in this state.
- 15 (e) "Negative trend" means a negative trend over a
16 period of time, as determined in accordance with the
17 trend test calculation included in the risk based capital
18 instructions defined in subsection (f) of this section.

19 (f) "Risk based capital instructions" means the risk
20 based capital report including risk based capital
21 instructions, as amended and adopted by the national
22 association of insurance commissioners.

23 (g) "Risk based capital level" is an insurer's company
24 action level, regulatory action level, authorized control
25 level or mandatory control level where:

26 (1) "Authorized control level" is the amount calculated
27 by applying the risk based capital formula in accor-
28 dance with the risk based capital instructions;

29 (2) "Company action level" is the risk based capital
30 amount equal to the product of multiplying the autho-
31 rized control level by two;

32 (3) "Mandatory control level" is the risk based capital
33 amount equal to the product of multiplying the autho-
34 rized control level by seven tenths;

35 (4) "Regulatory action level" is the risk based capital
36 amount equal to the product of multiplying the autho-
37 rized control level by one and one half.

38 (h) A "risk based capital plan" is a comprehensive
39 financial plan containing the elements specified in
40 subsection (b), section three of this article. If the
41 commissioner rejects the risk based capital plan, and it
42 is revised by the insurer, with or without the commis-
43 sioner's recommendation, the plan shall be called the
44 "revised risk based capital plan".

45 (i) A "risk based capital report" is the report required
46 by section two of this article.

47 (j) "Total adjusted capital" is the sum of:

48 (1) An insurer's statutory capital and surplus; and

49 (2) Such other items, if any, as the risk based capital
50 instructions may provide.

§33-40-2. Risk based capital reports.

1 (a) Every domestic insurer shall annually on or before
2 the first day of March, prepare and file with the
3 commissioner a report of its risk based capital levels for

4 the year ending the thirty-first day of December next
5 preceding. The risk based capital report shall be in a
6 form containing such information as is required by the
7 risk based capital instructions. In addition, every
8 domestic insurer shall file its risk based capital report:

9 (1) With the national association of insurance commis-
10 sioners in accordance with the risk based capital
11 instructions; and

12 (2) With the insurance commissioner of any state in
13 which the insurer is authorized to do business, and that
14 insurance commissioner has notified the insurer of its
15 request in writing. When so requested, the insurer shall
16 file its risk based capital report:

17 (i) Fifteen days from the receipt of notice to file its
18 risk based capital report with that state; or

19 (ii) If the request is received after the thirty-first day
20 of December next preceding but prior to the first day
21 of March, on or before the fifteenth day of March.

22 (b) An insurer's risk based capital shall be determined
23 in accordance with the formula set forth in the risk
24 based capital instructions. The formula shall take into
25 account and may adjust for the covariance between:

26 (1) The risk with respect to the insurer's assets;

27 (2) The risk of adverse insurance experience with
28 respect to the insurer's liabilities and obligations;

29 (3) The interest rate risk with respect to the insurer's
30 business; and

31 (4) All other business risks and such other relevant
32 risks as are set forth in the risk based capital
33 instructions.

34 The above risks shall be determined in each case by
35 applying the factors in the manner set forth in the risk
36 based capital instructions.

37 (c) If a domestic insurer files a risk based capital
38 report which in the judgment of the commissioner is
39 inaccurate, then the commissioner shall adjust the risk
40 based capital report to correct the inaccuracy and shall

41 notify the insurer of the adjustment. The notice shall
42 contain a statement of the reason for the adjustment. A
43 risk based capital report so adjusted is referred to as
44 an "adjusted risk based capital report".

§33-40-3. Company action level event.

1 (a) A "company action level event" is any of the
2 following events:

3 (1) The filing of a risk based capital report by an
4 insurer which indicates that:

5 (A) The insurer's total adjusted capital is greater than
6 or equal to its regulatory action level but less than its
7 company action level; or

8 (B) The insurer has total adjusted capital which is
9 greater than or equal to its company action level but less
10 than the product of multiplying its authorized control
11 level by two and one half and has a negative trend;

12 (2) Notification from the commissioner of an adjusted
13 risk based capital report that indicates the event in
14 paragraph (A) or (B), subdivision (1) of this subsection:
15 *Provided*, That the insurer does not challenge the
16 adjusted risk based capital report pursuant to section
17 seven of this article; or

18 (3) If the insurer challenges an adjusted risk based
19 capital report that indicates the event in paragraph (A)
20 or (B), subdivision (1) of this subsection pursuant to
21 section seven of this article, notification from the
22 commissioner of rejection of the insurer's challenge.

23 (b) In the event of a company action level event, the
24 insurer shall prepare and file with the commissioner a
25 comprehensive financial plan which shall:

26 (1) Identify the internal conditions of the insurer
27 which contribute to the company action level event;

28 (2) Contain proposals of corrective actions which the
29 insurer intends to take that are expected to result in the
30 elimination of the company action level event;

31 (3) Provide separate projections of the insurer's
32 financial results in the current year and at least the four

33 succeeding years, one projection prepared giving effect
34 to the proposed corrective actions and one projection not
35 giving effect to the proposed corrective actions. The
36 projections shall include estimates of statutory operating
37 income, net income, capital and/or surplus. The projec-
38 tions for both new and renewal business may include
39 separate projections for each major line of business and
40 separately identify each significant income, expense and
41 benefit component;

42 (4) Identify the key assumptions impacting the
43 insurer's projections and the sensitivity of the projec-
44 tions to the assumptions; and

45 (5) Identify the quality of, and problems associated
46 with, the insurer's business, including, but not limited
47 to, its assets, anticipated business growth and associated
48 surplus strain, extraordinary exposure to risk, mix of
49 business and use of reinsurance in each case, if any.

50 (c) The risk based capital plan shall be filed:

51 (1) Within forty-five days of the company action level
52 event; or

53 (2) If the insurer challenges an adjusted risk based
54 capital report pursuant to section seven of this article,
55 within forty-five days after notification to the insurer
56 that the commissioner has, after a hearing, rejected the
57 insurer's challenge.

58 (d) Within sixty days after the filing of a risk based
59 capital plan, the commissioner shall notify the insurer
60 whether the risk based capital plan shall be imple-
61 mented or that it is unsatisfactory. If the commissioner
62 determines the risk based capital plan is unsatisfactory,
63 the notification to the insurer shall set forth the reasons
64 for the determination and may set forth proposed
65 revisions which will render the risk based capital plan
66 satisfactory. Upon notification from the commissioner,
67 the insurer shall prepare a revised risk based capital
68 plan, which may incorporate by reference any revisions
69 proposed by the commissioner. The revised risk based
70 capital plan shall be filed with the commissioner:

71 (1) Within forty-five days after the notification from

72 the commissioner; or

73 (2) If the insurer challenges the notification from the
74 commissioner pursuant to section seven of this article,
75 within forty-five days after a notification to the insurer
76 that the commissioner has, after a hearing, rejected the
77 insurer's challenge.

78 (e) In the event of a notification by the commissioner
79 to an insurer that the insurer's risk based capital plan
80 or revised risk based capital plan is unsatisfactory, the
81 commissioner may specify in the notification that the
82 notification constitutes a regulatory action level event.
83 Such notification is subject to the insurer's right to a
84 hearing pursuant to section seven of this article.

85 (f) Every domestic insurer that files a risk based
86 capital plan or revised risk based capital plan with the
87 commissioner shall file a copy of the risk based capital
88 plan or revised risk based capital plan with the
89 insurance commissioner of any state in which the
90 insurer is authorized to do business if:

91 (1) Such state has a risk based capital provision
92 substantially similar to the provision of subsection (a),
93 section eight of this article; and

94 (2) The insurance commissioner of that state has
95 notified the insurer of its request for the filing in
96 writing. The insurer shall file a copy of the risk based
97 capital plan or revised risk based capital plan in that
98 state on or before the later of:

99 (A) Fifteen days after the receipt of notice to file a
100 copy of its risk based capital plan or revised risk based
101 capital plan with that state; or

102 (B) The date of which the risk based capital plan or
103 revised risk based capital plan is filed under subsection
104 (c), section four of this article.

§33-40-4. Regulatory action level event.

1 (a) A "regulatory action level event", with respect to
2 any insurer, is any of the following events:

3 (1) The filing of a risk based capital report by the

4 insurer which indicates that the insurer's total adjusted
5 capital is greater than or equal to its authorized control
6 level but less than its regulatory action level;

7 (2) Notification from the commissioner of an adjusted
8 risk based capital report that indicates the event in
9 subdivision (1) of this subsection: *Provided*, That the
10 insurer does not challenge the adjusted risk based
11 capital report pursuant to section seven of this article;

12 (3) If the insurer challenges an adjusted risk based
13 capital report that indicates the event in subdivision (1)
14 of this subsection pursuant to section seven of this
15 article, notification from the commissioner that the
16 commissioner has, after a hearing, rejected the insurer's
17 challenge;

18 (4) The failure of the insurer to file a risk based
19 capital report by the filing date, unless the insurer has
20 provided an explanation for such failure which is
21 satisfactory to the commissioner and has cured the
22 failure within ten days after the filing date;

23 (5) The failure of the insurer to file a risk based
24 capital plan with the commissioner within the time
25 period set forth in subsection (c), section three of this
26 article;

27 (6) Notification from the commissioner that:

28 (A) The risk based capital plan or revised risk based
29 capital plan filed by the insurer is unsatisfactory; and

30 (B) Such notification constitutes a regulatory action
31 level event with respect to the insurer: *Provided*, That
32 the insurer has not challenged the determination
33 pursuant to section seven of this article;

34 (7) If the insurer challenges a determination by the
35 commissioner under subdivision (6) of this subsection
36 pursuant to section seven of this article, notification
37 from the commissioner that the commissioner has, after
38 a hearing, rejected the insurer's challenge;

39 (8) Notification from the commissioner that the
40 insurer has failed to adhere to its risk based capital plan
41 or revised risk based capital plan. The commissioner

42 must determine that the failure to adhere has a
43 substantial adverse effect or the ability of the insurer
44 to eliminate the regulatory action level event in
45 accordance with its risk based capital plan or revised
46 risk based capital plan and state so in the notification.
47 A determination challenged pursuant to section seven of
48 this article is not a regulatory action level event; or

49 (9) If the insurer challenges a determination by the
50 commissioner under subdivision (8) of this subsection
51 pursuant to section seven of this article, notification
52 from the commissioner that the commissioner has, after
53 a hearing, rejected the insurer's challenge.

54 (b) In the event of a regulatory action level event the
55 commissioner shall:

56 (1) Require the insurer to prepare and file a risk
57 based capital plan or, if applicable, a revised risk based
58 capital plan;

59 (2) Perform such examination or analysis as the
60 commissioner deems necessary of the assets, liabilities
61 and operations of the insurer including a review of its
62 risk based capital plan or revised risk based capital
63 plan; and

64 (3) Subsequent to the examination or analysis, issue
65 an order specifying such corrective actions as the
66 commissioner shall determine are required.

67 (c) In determining corrective actions, the commis-
68 sioner may take into account such factors as are deemed
69 relevant with respect to the insurer based upon the
70 commissioner's examination or analysis of the assets,
71 liabilities and operations of the insurer, including, but
72 not limited to, the results of any sensitivity tests
73 undertaken pursuant to the risk based capital instruc-
74 tions. The risk based capital plan or revised risk based
75 capital plan shall be filed:

76 (1) Within forty-five days after the occurrence of the
77 regulatory action level event;

78 (2) If the insurer challenges an adjusted risk based
79 capital report pursuant to section seven of this article

80 and the challenge is not in the judgment of the
81 commissioner frivolous, within forty-five days after the
82 notification from the commissioner that the challenge
83 the commissioner has, after a hearing, rejected the
84 insurer's challenge; or

85 (3) If the insurer challenges a revised risk based
86 capital plan pursuant to section seven of this article,
87 within forty-five days after notification from the
88 commissioner that the commissioner has, after a
89 hearing, rejected the insurer's challenge.

90 (d) The commissioner may retain actuaries and
91 investment experts and other consultants as may be
92 necessary in the judgment of the commissioner to review
93 the insurer's risk based capital plan or revised risk
94 based capital plan, examine or analyze the assets,
95 liabilities and operations of the insurer and formulate
96 the corrective order with respect to the insurer. The
97 fees, costs and expenses relating to consultants shall be
98 borne by the insurer or such other party as directed by
99 the commissioner.

§33-40-5. Authorized control level event.

1 (a) An "authorized control level event" is any of the
2 following events:

3 (1) The filing of a risk based capital report by the
4 insurer which indicates that the insurer's total adjusted
5 capital is greater than or equal to its mandatory control
6 level but less than its authorized control level;

7 (2) Notification from the commissioner of an adjusted
8 risk based capital report that indicates the event in
9 subdivision (1) of this subsection: *Provided*, That the
10 insurer does not challenge the adjusted risk based
11 capital report pursuant to section seven of this article;

12 (3) If the insurer challenges an adjusted risk based
13 capital report that indicates the event in subdivision (1)
14 of this subsection pursuant to section seven of this
15 article, notification from the commissioner that the
16 commissioner has, after a hearing, rejected the insurer's
17 challenge;

18 (4) The failure of the insurer to respond, in a manner
19 satisfactory to the commissioner, to a corrective order:
20 *Provided*, That the insurer has not challenged the
21 corrective order pursuant to section seven of this article;
22 or

23 (5) If the insurer has challenged a corrective order
24 pursuant to section seven of this article and the
25 commissioner has, after a hearing, rejected the insurer's
26 challenge or modified the corrective order, the failure
27 of the insurer to respond, in a manner satisfactory to the
28 commissioner, to the corrective order subsequent to
29 rejection or modification by the commissioner.

30 (b) In the event of an authorized control level event
31 with respect to an insurer, the commissioner shall:

32 (1) Take such actions as are required by subsection
33 (b), section four of this article when a regulatory action
34 level event has occurred; or

35 (2) If the commissioner deems it to be in the best
36 interests of the policyholders and creditors of the insurer
37 and of the public, take such actions as are necessary to
38 cause the insurer to be placed under regulatory control
39 pursuant to article ten of this chapter. In the event the
40 commissioner takes such actions, the authorized control
41 level event shall be deemed sufficient grounds for the
42 commissioner to take action pursuant to said article, and
43 the commissioner shall have the rights, powers and
44 duties with respect to the insurer as are set forth in said
45 article. In the event the commissioner takes actions
46 under this subdivision pursuant to an adjusted risk
47 based capital report, the insurer shall be entitled to such
48 protections as are afforded to insurers pursuant to the
49 provisions of article ten of this chapter pertaining to
50 summary proceedings.

§33-40-6. Mandatory control level event.

1 (a) A "mandatory control level event" is any of the
2 following events:

3 (1) The filing of a risk based capital report which
4 indicates that the insurer's total adjusted capital is less
5 than its mandatory control level;

6 (2) Notification from the commissioner of an adjusted
7 risk based capital report that indicates the event in
8 subdivision (1) of this subsection: *Provided*, That the
9 insurer does not challenge the adjusted risk based
10 capital report pursuant to section seven of this article;
11 or

12 (3) If the insurer challenges an adjusted risk based
13 capital report that indicates the event in subdivision (1)
14 of this subsection pursuant to section seven of this
15 article, notification from the commissioner that the
16 commissioner has, after a hearing, rejected the insurer's
17 challenge.

18 (b) In the event of a mandatory control level event,
19 the commissioner shall take actions as are necessary to
20 cause the insurer to be placed under regulatory control
21 pursuant to article ten of this chapter. In that event, the
22 mandatory control level event shall be deemed sufficient
23 grounds for the commissioner to take action pursuant to
24 said article, and the commissioner shall have the rights,
25 powers and duties with respect to the insurer as are set
26 forth in said article. In the event the commissioner takes
27 actions pursuant to an adjusted risk based capital
28 report, the insurer shall be entitled to such protections
29 as are afforded to insurers pursuant to the provisions of
30 said article pertaining to summary proceedings. Not-
31 withstanding any of the foregoing, the commissioner
32 may forego action for up to ninety days after the
33 mandatory control level event if he or she finds there
34 is a reasonable expectation that the mandatory control
35 level event may be eliminated within the ninety-day
36 period.

§33-40-7. Hearings.

1 An insurer shall have the right to a departmental
2 hearing, on a record, at which the insurer may challenge
3 any determination or action of the commissioner made
4 pursuant to the provisions of this article. The insurer
5 shall notify the commissioner of its request for a hearing
6 within five days after receiving from the commissioner:

7 (a) Notification of an adjusted risk based capital
8 report; or

9 (b) Notification that:

10 (1) The insurer's risk based capital plan or revised
11 risk based capital plan is unsatisfactory; and

12 (2) Such notification constitutes a regulatory action
13 level event with respect to such insurer; or

14 (c) Notification that the insurer has failed to adhere
15 to its risk based capital plan or revised risk based
16 capital plan and that such failure has a substantial
17 adverse effect on the ability of the insurer to eliminate
18 the company action level event with respect to the
19 insurer in accordance with its risk based capital plan
20 or revised risk based capital plan; or

21 (d) Notification of a corrective order with respect to
22 the insurer.

23 Upon receipt of the insurer's request for a hearing,
24 the commissioner shall set a date for the hearing, no less
25 than fifteen nor more than forty-five days after the date
26 of the insurer's request.

**§33-40-8. Confidentiality and prohibition on announce-
ments.**

1 (a) All risk based capital reports, to the extent the
2 information therein is not required to be set forth in a
3 publicly available annual statement schedule, and risk
4 based capital plans, including the results or report of
5 any examination or analysis of an insurer performed
6 pursuant hereto and any corrective order issued by the
7 commissioner pursuant to examination or analysis, with
8 respect to any domestic insurer or foreign insurer which
9 are filed with the commissioner constitute information
10 that might be damaging to the insurer if made available
11 to its competitors and therefore shall be kept confiden-
12 tial by the commissioner. This information shall not be
13 made public and/or be subject to subpoena, other than
14 by the commissioner and then only for the purpose of
15 enforcement actions taken by the commissioner pursu-
16 ant to this article or any other provision of the insurance
17 laws of this state. The information required by this
18 section is specifically exempt from the requirements of
19 chapter twenty-nine-b of this code.

20 (b) It is the judgment of the Legislature that the
21 comparison of an insurer's total adjusted capital to any
22 of its risk based capital levels is a regulatory tool which
23 may indicate the need for possible corrective action with
24 respect to the insurer and is not intended as a means
25 to rank insurers generally. Therefore, except as other-
26 wise required under the provisions of this article, the
27 making, publishing, disseminating, circulating or
28 placing before the public, or causing, directly or
29 indirectly to be made, published, disseminated, circu-
30 lated or placed before the public, in a newspaper,
31 magazine or other publication, or in the form of a notice,
32 circular, pamphlet, letter or poster, or over any radio
33 or television station, or in any other way, an advertise-
34 ment, announcement or statement containing an assertion,
35 representation or statement with regard to the risk
36 based capital levels of any insurer, or of any component
37 derived in the calculation, by any insurer, agent, broker
38 or other person engaged in any manner in the insurance
39 business would be misleading and is therefore prohi-
40 bited: *Provided*, That if any materially false statement
41 with respect to the comparison regarding an insurer's
42 total adjusted capital to its risk based capital levels, or
43 any of them, or an inappropriate comparison of any
44 other amount to the insurers' risk based capital levels
45 is published in any written publication and the insurer
46 is able to demonstrate to the commissioner with
47 substantial proof the falsity of such statement, or the
48 inappropriateness, as the case may be, then the insurer
49 may publish an announcement in a written publication
50 if the sole purpose of the announcement is to rebut the
51 materially false statement.

§33-40-9. Supplemental provisions.

1 The provisions of this article are supplemental to any
2 other provisions of the laws of this state, and shall not
3 preclude or limit any other powers or duties of the
4 commissioner under such laws, including, but not
5 limited to, article ten of this chapter.

§33-40-10. Foreign insurers.

1 (a) Any licensed foreign insurer shall, upon the

2 written request of the commissioner, file with the
3 commissioner a risk based capital report for the year
4 ending the thirty-first day of December next preceding:

5 (1) Fifteen days from the receipt of notice to file its
6 risk based capital report; or

7 (2) If the request is received after the thirty-first day
8 of December next preceding but prior to the first day
9 of March, on or before the fifteenth day of March.

10 Any licensed foreign insurer shall, at the written
11 request of the commissioner, promptly file with the
12 commissioner a copy of any risk based capital plan that
13 is filed with the insurance commissioner of any other
14 state.

15 (b) The commissioner may require any licensed
16 foreign insurer to file a risk based capital plan in the
17 event of a company action level event or a regulatory
18 action level event or an authorized control level event
19 when:

20 (1) The event is determined pursuant to the risk based
21 capital statute applicable in the insurer's state of
22 domicile or as determined pursuant to the provisions of
23 this article if there is no risk based capital statute in
24 force in that state; and

25 (2) The insurance commissioner of the state of
26 domicile fails to require the insurer to file a risk based
27 capital plan pursuant to the risk based capital statute
28 in force in that state or under the provisions of section
29 three of this article if there is no risk based capital
30 statute in force in that state.

31 In such event, the failure of the licensed foreign
32 insurer to file a risk based capital plan with the
33 commissioner shall be grounds to order the insurer to
34 cease and desist writing new insurance business in this
35 state.

36 (c) In the event of a mandatory control level event
37 with respect to any licensed foreign insurer, if no
38 domiciliary receiver has been appointed with respect to
39 the foreign insurer under the rehabilitation and

40 liquidation statute applicable in the state of domicile of
41 the foreign insurer, the commissioner may make
42 application to the circuit court of Kanawha County
43 permitted pursuant to the provisions of article ten of this
44 chapter with respect to the liquidation of property of
45 foreign insurers found in this state and the occurrence
46 of the mandatory control level event shall be considered
47 adequate grounds for the application.

§33-40-11. Severability clause.

1 If any provision of this article, or the application
2 thereof to any person or circumstances, is held invalid,
3 such determination shall not affect the provisions or
4 applications of this article which can be given effect
5 without the invalid provision or application and to that
6 end the provisions of this article are severable.

§33-40-12. Notices.

1 All notices from the commissioner to an insurer which
2 may result in regulatory action hereunder shall be
3 subject to and deemed effective pursuant to the provi-
4 sion of section twelve, article two of this chapter.

§33-40-13. Effective date.

1 This article shall take effect on the first day of
2 January, one thousand nine hundred ninety-six.

CHAPTER 76

(S. B. 524—By Senators Wagner and Bailey)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reducing continuing education requirements for certain persons selling preneed burial contracts.

Be it enacted by the Legislature of West Virginia:

That section two-a, article twelve, chapter thirty-three of the

code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-2a. Duty to receive continuing education; educational requirements; compliance; penalties.

1 The purpose of this provision is to provide continuing
2 education under guidelines set up under the insurance
3 commissioner's office effective the first day of July, one
4 thousand nine hundred ninety-two, with the guidelines
5 to be set up under the board of insurance agent
6 education. Nothing in this section shall prohibit an
7 individual from receiving commissions which have been
8 vested and earned while that individual maintained an
9 approved insurance agent's license.

10 (a) This section applies to persons licensed to engage
11 in the sale of the following types of insurance:

12 (1) Life insurance, annuity contracts, variable annuity
13 contracts and variable life insurance;

14 (2) Sickness, accident and health insurance;

15 (3) All lines of property and casualty insurance; and

16 (4) All other lines of insurance for which an exami-
17 nation is required for licensing.

18 (b) This section does not apply to:

19 (1) Persons holding resident licenses for any kind or
20 kinds of insurance offered in connection with loans or
21 other credit transactions or insurance for which an
22 examination is not required by the commissioner, nor
23 does it apply to any such limited or restricted license
24 as the commissioner may exempt;

25 (2) Individuals selling credit life or credit accident
26 and health insurance;

27 (3) Individuals selling only preneed burial insurance
28 contracts, under a certificate of authority issued
29 pursuant to article fourteen, chapter forty-seven of this
30 code: *Provided*, That any individual selling preneed
31 burial insurance contracts, under a certificate of

32 authority issued pursuant to said article code shall
33 complete a program of continuing insurance education
34 developed by the board of insurance agent education and
35 approved by the commissioner which requires that the
36 individual complete six hours of continuing insurance
37 education biennially.

38 (c) (1) The board of insurance agent education as
39 established by section two of this article shall develop
40 a program of continuing insurance education and
41 submit the proposal for the approval of the commis-
42 sioner on or before the thirty-first day of December of
43 each year. No program shall be approved by the
44 commissioner that includes a requirement that any
45 agent complete more than thirty hours of continuing
46 insurance education biennially.

47 (2) The commissioner and the board, under standards
48 established by the board, may approve any course or
49 program of instruction developed or sponsored by an
50 authorized insurer, accredited college or university,
51 agents' association, insurance trade association or
52 independent program of instruction that presents the
53 criteria and the number of hours that the board and
54 commissioner determine appropriate for the purpose of
55 this section.

56 (d) Persons licensed to sell insurance and who are not
57 otherwise exempt shall satisfactorily complete the
58 courses or programs of instructions the commissioner
59 may prescribe.

60 (e) Every person, subject to the continuing education
61 requirements, shall furnish, at intervals and on forms
62 as may be prescribed by the commissioner, written
63 certification listing the courses, programs or seminars
64 of instruction successfully completed by the person. The
65 certification shall be executed by, or on behalf of, the
66 organization sponsoring the courses, programs or
67 seminars of instruction.

68 (f) Any person, failing to meet the requirements
69 mandated in this section, and who has not been granted
70 an extension of time, with respect to such requirements,
71 or who has submitted to the commissioner a false or

72 fraudulent certificate of compliance shall, after a
73 hearing thereon, which hearing may be waived by the
74 person, be subjected to suspension of all licenses issued
75 for any kind or kinds of insurance. No further license
76 may be issued to the person for any kind or kinds of
77 insurance until he or she has demonstrated to the
78 satisfaction of the commissioner that he or she has
79 complied with all of the requirements mandated by this
80 section and all other applicable laws or rules.

81 (g) Hearings for the violation of any provision of this
82 section, and the administrative procedure prior to,
83 during and following these hearings, shall be conducted
84 in accordance with the provisions of article two of this
85 chapter.

86 (h) The commissioner is authorized to hire personnel
87 and make reasonable expenditures as deemed necessary
88 for purposes of establishing and maintaining a system
89 of continuing education for insurers.

CHAPTER 77

(Com. Sub. for H. B. 4384—By Delegates S. Williams,
Staton, Beane, Farris and Flanigan)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-two, relating to requiring insurance companies withdrawing from writing private passenger automobile insurance within the state to continue to appoint and pay agents who service surviving policies for a period of two years from the date of termination of the contractual relationship for those renewal policies which the agent continues to service; and limitations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-32. Termination of contractual relationship; continuation of certain commissions; exceptions.

1 (a) In the event of a termination of a contractual
2 relationship between a duly licensed insurance agent
3 and an automobile insurer of private passenger automo-
4 biles who is withdrawing from writing private pas-
5 senger automobile insurance within the state, the
6 insurer shall pay the agent a commission, equal to the
7 commission the agent would have otherwise been
8 entitled to under his or her contract with the insurer,
9 for a period of two years from the date of termination
10 of the contractual relationship for those renewal policies
11 that cannot otherwise be canceled or nonrenewed
12 pursuant to law, which policies the agent continues to
13 service. The insurer must continue the appointment of
14 the agent for the duration of time the agent continues
15 to service the business: *Provided*, That this requirement
16 shall not obligate the withdrawing insurer to accept any
17 new private passenger automobile insurance within the
18 state.

19 (b) Subsection (a) of this section does not apply to an
20 agent who is an employee of the insurer, or an agent as
21 defined by article twelve-a of this chapter, or an agent,
22 who by contractual agreement either represents only
23 one insurer or group of affiliated insurers or who is
24 required by contract to submit risks to a specified
25 insurer or group of affiliated insurers prior to submit-
26 ting them to others.

CHAPTER 78

(S. B. 522—By Senators Woolon, Humphreys, Holliday, Dittmar, Macnaughtan, Miller, Minard, Dalton, Ross, Anderson and Claypole)

[Passed March 11, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article fifteen, chapter thirty-three 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 eighteen and nineteen; to amend and reenact section eleven, article sixteen of said chapter; to further amend said article by adding two new sections, designated sections thirteen and fourteen; to amend and reenact section two, article sixteen-c of said chapter; to further amend said article by adding a new section, designated section five-a; to amend and reenact section four, article twenty-four of said chapter; to amend and reenact section six, article twenty-five of said chapter; to amend and reenact section twenty-four, article twenty-five-a of said chapter; and to amend and reenact section fifteen-a, article two, chapter forty-eight of said code, all relating to health coverage; coverage of children; coverage for adopted children and children of divorced parents; prohibiting denial of insurance coverage under certain conditions; insurer's obligations to children, parents, providers and state agencies; employer's obligations; equal treatment of state agency; coordination of benefits with medicaid; medical support enforcement; applying provisions to certain policies and insurers; modifying domestic relations sections regarding insurance for children of divorced parents; providing remedies for noncompliance with court orders requiring health care coverage; providing for wage attachment by state agencies; and making related technical changes.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended be adding thereto two new sections,

designated sections eighteen and nineteen; that section eleven, article sixteen of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections thirteen and fourteen; that section two, article sixteen-c of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section five-a; that section four, article twenty-four of said chapter be amended and reenacted; that section six, article twenty-five of said chapter be amended and reenacted; that section twenty-four, article twenty-five-a of said chapter be amended and reenacted; and that section fifteen-a, article two, chapter forty-eight of said code be amended and reenacted, all to read as follows:

Chapter

- 33. Insurance.
- 48. Domestic Relations.

CHAPTER 33. INSURANCE.

Article

- 15. Accident and Sickness Insurance.
- 16. Group Accident and Sickness Insurance.
- 16C. Employer Group Accident and Sickness Insurance Policies.
- 24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.
- 25. Health Care Corporations.
- 25A. Health Maintenance Organization Act.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

- §33-15-16. Policies not to exclude insured's children from coverage; required services; coordination with other insurance.
- §33-15-18. Equal treatment of state agency.
- §33-15-19. Coordination of benefits with medicaid.

§33-15-16. Policies not to exclude insured's children from coverage; required services; coordination with other insurance.

- 1 (a) An insurer issuing accident and sickness policies
- 2 in this state shall provide coverage for the child or
- 3 children of the insured without regard to the amount of
- 4 child support ordered to be paid or actually paid by the
- 5 insured, if any, and without regard to the fact that the
- 6 insured may not have legal custody of the child or
- 7 children or that the child or children may not be

8 residing in the home of the insured.

9 (b) An insurer issuing accident and sickness policies
10 in this state shall provide benefits to dependent children
11 placed with participants or beneficiaries for adoption
12 under the same terms and conditions as apply to
13 natural, dependent children of participants and benefi-
14 ciaries, irrespective of whether the adoption has become
15 final.

16 (c) An insurer shall not deny enrollment of a child
17 under the health plan of the child's parent on the
18 grounds that:

19 (1) The child was born out of wedlock;

20 (2) The child is not claimed as a dependent on the
21 parent's federal tax return; or

22 (3) The child does not reside with the parent or in the
23 insurer's service area.

24 (d) Where a child has health coverage through an
25 insurer of a noncustodial parent the insurer shall:

26 (1) Provide such information to the custodial parent
27 as may be necessary for the child to obtain benefits
28 through that coverage;

29 (2) Permit the custodial parent, or the provider, with
30 the custodial parent's approval, to submit claims for
31 covered services without the approval of the noncusto-
32 dial parent; and

33 (3) Make payments on claims submitted in accordance
34 with subdivision (2) of this subsection directly to the
35 custodial parent, the provider or the state medicaid
36 agency: *Provided*, That upon payment to the custodial
37 parent, the provider or the state medicaid agency, the
38 insurer's obligation to the noncustodial parent under the
39 policy with respect to the covered child's claims shall be
40 fully satisfied.

41 (e) Where a parent is required by a court or admi-
42 nistrative order to provide health coverage for a child,
43 and the parent is eligible for family health coverage, the
44 insurer shall:

45 (1) Permit the parent to enroll, under the family
46 coverage, a child who is otherwise eligible for the
47 coverage without regard to any enrollment season
48 restrictions;

49 (2) If the parent is enrolled but fails to make
50 application to obtain coverage for the child, enroll the
51 child under family coverage upon application of the
52 child's other parent, the state agency administering the
53 medicaid program or the state agency administering 42
54 U.S.C. §651 through §669, the child support enforcement
55 program; and

56 (3) Not disenroll or eliminate coverage of the child
57 unless the insurer is provided satisfactory written
58 evidence that:

59 (A) The court or administrative order is no longer in
60 effect; or

61 (B) The child is or will be enrolled in comparable
62 health coverage through another insurer which will take
63 effect not later than the effective date of disenrollment.

§33-15-18. Equal treatment of state agency.

1 An insurer may not impose requirements on a state
2 agency, which has been assigned the rights of an
3 individual eligible for medical assistance under medi-
4 caid and covered for health benefits from the insurer,
5 that are different from requirements applicable to an
6 agent or assignee of any other individual so covered.

§33-15-19. Coordination of benefits with medicaid.

1 Any health insurer, health maintenance organization
2 as defined in article twenty-five-a of this chapter or
3 hospital and medical service corporations as defined in
4 article twenty-four of this chapter is prohibited from
5 considering the availability or eligibility for medical
6 assistance in this or any other state under 42 U.S.C.
7 §1396a, Section 1902 of the Social Security Act, herein
8 referred to as medicaid, when considering eligibility for
9 coverage or making payments under its plan for eligible
10 enrollees, subscribers, policyholders or certificate-
11 holders.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-11. Group policies not to exclude insured's children from coverage; required services; coordination with other insurance.

§33-16-13. Equal treatment of state agency.

§33-16-14. Coordination of benefits with medicaid.

§33-16-11. Group policies not to exclude insured's children from coverage; required services; coordination with other insurance.

1 (a) An insurer issuing group accident and sickness
2 policies in this state shall provide coverage for the child
3 or children of each employee or member of the insured
4 group without regard to the amount of child support
5 ordered to be paid or actually paid by such employee
6 or member, if any, and without regard to the fact that
7 the employee or member may not have legal custody of
8 the child or children or that the child or children may
9 not be residing in the home of the employee or member.

10 (b) An insurer issuing group accident and sickness
11 policies in this state shall provide benefits to dependent
12 children placed with participants or beneficiaries for
13 adoption under the same terms and conditions as apply
14 to natural, dependent children of participants and
15 beneficiaries, irrespective of whether the adoption has
16 become final.

17 (c) An insurer shall not deny enrollment of a child
18 under the health plan of the child's parent on the
19 grounds that:

20 (1) The child was born out of wedlock;

21 (2) The child is not claimed as a dependent on the
22 parent's federal tax return; or

23 (3) The child does not reside with the parent or in the
24 insurer's service area.

25 (d) Where a child has health coverage through an
26 insurer of a noncustodial parent the insurer shall:

27 (1) Provide such information to the custodial parent
28 as may be necessary for the child to obtain benefits
29 through that coverage;

30 (2) Permit the custodial parent, or the provider, with
31 the custodial parent's approval, to submit claims for
32 covered services without the approval of the noncusto-
33 dial parent; and

34 (3) Make payments on claims submitted in accordance
35 with subdivision (2) of this subsection directly to the
36 custodial parent, the provider or the state medicaid
37 agency: *Provided*, That upon payment to the custodial
38 parent, the provider or the state medicaid agency, the
39 insurer's obligation to the noncustodial parent under the
40 policy with respect to the covered child's claims shall be
41 fully satisfied.

42 (e) Where a parent is required by court or adminis-
43 trative order to provide health coverage for a child, and
44 the parent is eligible for family health coverage, the
45 insurer shall:

46 (1) Permit the parent to enroll, under the family
47 coverage, a child who is otherwise eligible for the
48 coverage without regard to any enrollment season
49 restrictions;

50 (2) If the parent is enrolled but fails to make
51 application to obtain coverage for the child, enroll the
52 child under family coverage upon application of the
53 child's other parent, the state agency administering the
54 medicaid program or the state agency administering 42
55 U.S.C. §651 through §669, the child support enforcement
56 program; and

57 (3) Not disenroll or eliminate coverage of the child
58 unless the insurer is provided satisfactory written
59 evidence that:

60 (A) The court or administrative order is no longer in
61 effect; or

62 (B) The child is or will be enrolled in comparable
63 health coverage through another insurer which will take
64 effect not later than the effective date of disenrollment.

§33-16-13. Equal treatment of state agency.

1 An insurer may not impose requirements on a state
2 agency, which has been assigned the rights of an

3 individual eligible for medical assistance under medi-
4 caid and covered for health benefits from the insurer,
5 that are different from requirements applicable to an
6 agent or assignee of any other individual so covered.

§33-16-14. Coordination of benefits with medicaid.

1 Any health insurer, including a group health plan, as
2 defined in 29 U.S.C. §1167, Section 607(1) of the
3 Employee Retirement Income Security Act of 1974,
4 health maintenance organization as defined in article
5 twenty-five-a of this chapter or hospital and medical
6 service corporations as defined in article twenty-four of
7 this chapter is prohibited from considering the availa-
8 bility or eligibility for medical assistance in this or any
9 other state under 42 U.S.C. §1396a, Section 1902 of the
10 Social Security Act, herein referred to as medicaid,
11 when considering eligibility for coverage or making
12 payments under its plan for eligible enrollees, subscrib-
13 ers, policyholders or certificateholders.

**ARTICLE 16C. EMPLOYER GROUP ACCIDENT AND SICKNESS
INSURANCE POLICIES.**

§33-16C-2. Definitions.

§33-16C-5a. Policies not to exclude insured's children from coverage; re-
quired services.

§33-16C-2. Definitions.

1 As used in this article:

2 (a) "Basic policy" means a group accident and sickness
3 insurance contract for medical, surgical or hospital care
4 that is required to contain only those minimum benefits
5 and coverages mandated by this article, but which may
6 contain other benefits and coverages which have been
7 approved by the insurance commissioner.

8 (b) "Commissioner" means the insurance commis-
9 sioner of West Virginia.

10 (c) "Department" means the department of insurance.

11 (d) "Eligible employee" means an employee who is
12 employed by the employer for an average of at least
13 twenty hours per week; includes individuals who are
14 sole proprietors, general partners and limited partners;

15 and includes individuals who either work or reside in
16 this state.

17 (e) "Eligible employer" means a corporation, partner-
18 ship or proprietorship which has done business in this
19 state for at least one year and has not offered health
20 insurance to all of its employees within the twelve
21 months preceding its application for a basic policy as
22 defined by this section.

23 (f) "Family member" means an eligible employee's
24 spouse and any dependent child or stepchild under the
25 age of eighteen or under age twenty-three if a full-time
26 student at an accredited school: *Provided*, That the
27 spouse, child or stepchild is not eligible for medicare.

28 (g) "Insurer" means any of the following entities that
29 holds a valid certificate of authority from the commis-
30 sioner: An insurance company authorized to transact
31 accident and sickness insurance; a hospital service
32 corporation, medical service corporation or health
33 service corporation organized pursuant to article
34 twenty-four of this chapter; a health care corporation
35 organized pursuant to article twenty-five of this chapter;
36 or a health maintenance organization organized pursu-
37 ant to article twenty-five-a of this chapter.

38 (h) "Premium" means the consideration for insurance,
39 by whatever name called.

**§33-16C-5a. Policies not to exclude insured's children
from coverage; required services.**

1 (a) Each basic policy issued pursuant to this article
2 shall provide coverage for the child or children of each
3 employee or member of the insured group without
4 regard to the amount of child support ordered to be paid
5 or actually paid by such employee or member, if any,
6 and without regard to the fact that the employee or
7 member may not have legal custody of the child or
8 children or that the child or children may not be
9 residing in the home of the employee or member.

10 (b) Each basic policy issued pursuant to this article
11 shall provide benefits to dependent children placed with
12 participants or beneficiaries for adoption under the

13 same terms and conditions as apply to natural, depend-
14 ent children of participants and beneficiaries, irrespec-
15 tive of whether the adoption has become final.

16 (c) An insurer shall not deny enrollment of a child
17 under the health plan of the child's parent on the
18 grounds that:

19 (1) The child was born out of wedlock;

20 (2) The child is not claimed as a dependent on the
21 parent's federal tax return; or

22 (3) The child does not reside with the parent or in the
23 insurer's service area.

24 (d) Where a child has health coverage through an
25 insurer of a noncustodial parent the insurer shall:

26 (1) Provide such information to the custodial parent
27 as may be necessary for the child to obtain benefits
28 through that coverage;

29 (2) Permit the custodial parent, or the provider, with
30 the custodial parent's approval, to submit claims for
31 covered services without the approval of the noncusto-
32 dial parent; and

33 (3) Make payments on claims submitted in accordance
34 with subdivision (2) of this subsection directly to the
35 custodial parent, the provider or the state medicaid
36 agency: *Provided*, That upon payment to the custodial
37 parent, the provider or the state medicaid agency, the
38 insurer's obligation to the noncustodial parent under the
39 policy with respect to the covered child's claims shall be
40 fully satisfied.

41 (e) Where a parent is required by court or adminis-
42 trative order to provide health coverage for a child, and
43 the parent is eligible for family health coverage, the
44 insurer shall:

45 (1) Permit the parent to enroll, under the family
46 coverage, a child who is otherwise eligible for the
47 coverage without regard to any enrollment season
48 restrictions;

49 (2) If the parent is enrolled but fails to make

50 application to obtain coverage for the child, enroll the
51 child under family coverage upon application of the
52 child's other parent, the state agency administering the
53 medicaid program or the state agency administering 42
54 U.S.C §651 through §669, the child support enforcement
55 program; and

56 (3) Not disenroll or eliminate coverage of the child
57 unless the insurer is provided satisfactory written
58 evidence that:

59 (A) The court or administrative order is no longer in
60 effect; or

61 (B) The child is or will be enrolled in comparable
62 health coverage through another insurer which will take
63 effect not later than the effective date of disenrollment.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL
SERVICE CORPORATIONS, DENTAL SERVICE
CORPORATIONS AND HEALTH SERVICE
CORPORATIONS.**

***§33-24-4. Exemptions; applicability of insurance laws.**

1 Every corporation defined in section two of this
2 article is hereby declared to be a scientific, nonprofit
3 institution and exempt from the payment of all property
4 and other taxes. Every corporation, to the same extent
5 the provisions are applicable to insurers transacting
6 similar kinds of insurance and not inconsistent with the
7 provisions of this article, shall be governed by and be
8 subject to the provisions as hereinbelow indicated, of the
9 following articles of this chapter: Article two (insurance
10 commissioner), except that, under section nine of said
11 article, examinations shall be conducted at least once
12 every four years; article four (general provisions), except
13 that section sixteen of said article shall not be applicable
14 thereto; section thirty-four, article six (fee for form and
15 rate filing); article six-c (guaranteed loss ratio); article
16 seven (assets and liabilities); article eleven (unfair trade
17 practices); article twelve (agents, brokers and solicitors),
18 except that the agent's license fee shall be five dollars;
19 section fourteen, article fifteen (individual accident and

* Clerk's Note: This section was also amended by S. B. 434 (Chapter 75), which passed prior to this act.

20 sickness insurance); section sixteen, article fifteen
21 (coverage of children); section eighteen, article fifteen
22 (equal treatment of state agency); section nineteen,
23 article fifteen (coordination of benefits with medicaid);
24 article fifteen-a (long-term care insurance); section
25 three, article sixteen (required policy provisions); section
26 three-a, article sixteen (mental illness); section three-c,
27 article sixteen (group accident and sickness insurance);
28 section three-d, article sixteen (medicare supplement
29 insurance); section three-f, article sixteen (treatment of
30 temporomandibular joint disorder and craniomandibu-
31 lar disorder); section eleven, article sixteen (coverage of
32 children); section thirteen, article sixteen (equal treat-
33 ment of state agency); section fourteen, article sixteen
34 (coordination of benefits with medicaid); article sixteen-
35 a (group health insurance conversion); article sixteen-c
36 (small employer group policies); article sixteen-d
37 (marketing and rate practices for small employers);
38 article twenty-six-a (West Virginia life and health
39 insurance guaranty association act), after the first day
40 of October, one thousand nine hundred ninety-one;
41 article twenty-seven (insurance holding company sys-
42 tems); article twenty-eight (individual accident and
43 sickness insurance minimum standards); article thirty-
44 three (annual audited financial report); article thirty-
45 four (administrative supervision); article thirty-four-a
46 (standards and commissioner's authority for companies
47 deemed to be in hazardous financial condition); article
48 thirty-five (criminal sanctions for failure to report
49 impairment); and article thirty-seven (managing
50 general agents); and no other provision of this chapter
51 may apply to these corporations unless specifically made
52 applicable by the provisions of this article. If, however,
53 the corporation is converted into a corporation organized
54 for a pecuniary profit or if it transacts business without
55 having obtained a license as required by section five of
56 this article, it shall thereupon forfeit its right to these
57 exemptions.

ARTICLE 25. HEALTH CARE CORPORATIONS.

***§33-25-6. Supervision and regulation by insurance commissioner; exemption from insurance laws.**

1 Corporations organized under this article are subject
2 to supervision and regulation of the insurance commis-
3 sioner. The corporations organized under this article, to
4 the same extent these provisions are applicable to
5 insurers transacting similar kinds of insurance and not
6 inconsistent with the provisions of this article, shall be
7 governed by and be subject to the provisions as
8 hereinbelow indicated of the following articles of this
9 chapter: Article four (general provisions), except that
10 section sixteen of said article shall not be applicable
11 thereto; article six-c (guaranteed loss ratio); article
12 seven (assets and liabilities); article eight (investments);
13 article ten (rehabilitation and liquidation); section
14 fourteen, article fifteen (individual accident and sick-
15 ness insurance); section sixteen, article fifteen (coverage
16 of children); section eighteen, article fifteen (equal
17 treatment of state agency); section nineteen, article
18 fifteen (coordination of benefits with medicaid); section
19 three, article sixteen (required policy provisions); section
20 eleven, article sixteen (coverage of children); section
21 thirteen, article sixteen (equal treatment of state
22 agency); section fourteen, article sixteen (coordination of
23 benefits with medicaid); article sixteen-a (group health
24 insurance conversion); article sixteen-c (small employer
25 group policies); article sixteen-d (marketing and rate
26 practices for small employers); article twenty-six-a
27 (West Virginia life and health insurance guaranty
28 association act); article twenty-seven (insurance holding
29 company systems); article thirty-three (annual audited
30 financial report); article thirty-four-a (standards and
31 commissioner's authority for companies deemed to be in
32 hazardous financial condition); article thirty-five
33 (criminal sanctions for failure to report impairment);
34 and article thirty-seven (managing general agents); and
35 no other provision of this chapter may apply to these
36 corporations unless specifically made applicable by the

*Clerk's Note: This section was also amended by S. B. 434 (Chapter 75), which passed prior to this act.

37 provisions of this article.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

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

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

13 (b) Factually accurate advertising or solicitation
14 regarding the range of services provided, the premiums
15 and copayments charged, the sites of services and hours
16 of operation, and any other quantifiable, nonprofessional
17 aspects of its operation by a health maintenance
18 organization granted a certificate of authority, or its
19 representative shall not be construed to violate any
20 provision of law relating to solicitation or advertising by
21 health professions: *Provided*, That nothing contained
22 herein shall be construed as authorizing any solicitation
23 or advertising which identifies or refers to any individ-
24 ual provider or makes any qualitative judgment con-
25 cerning any provider.

26 (c) Any health maintenance organization authorized
27 under this article shall not be deemed to be practicing
28 medicine and shall be exempt from the provision of
29 chapter thirty of this code, relating to the practice of
30 medicine.

31 (d) The provisions of section fifteen, article four
32 (general provisions); article six-c (guaranteed loss ratio);
33 article seven (assets and liabilities); article eight

* Clerk's Note: This section was also amended by S. B. 434 (Chapter 75), which passed prior to this act.

34 (investments); section fourteen, article fifteen (individ-
35 ual accident and sickness insurance); section sixteen,
36 article fifteen (coverage of children); section eighteen,
37 article fifteen (equal treatment of state agency); section
38 nineteen, article fifteen (coordination of benefits with
39 medicaid); article fifteen-b (uniform health care admin-
40 istration act); section three, article sixteen (required
41 policy provisions); section three-f, article sixteen
42 (treatment of temporomandibular disorder and cranio-
43 mandibular disorder); section eleven, article sixteen
44 (coverage of children); section thirteen, article sixteen
45 (equal treatment of state agency); section fourteen,
46 article sixteen (coordination of benefits with medicaid);
47 article sixteen-a (group health insurance conversion);
48 article sixteen-c (small employer group policies); article
49 sixteen-d (marketing and rate practices for small
50 employers); article twenty-seven (insurance holding
51 company systems); article thirty-four-a (standards and
52 commissioner's authority for companies deemed to be in
53 hazardous financial condition); article thirty-five
54 (criminal sanctions for failure to report impairment);
55 and article thirty-seven (managing general agents) shall
56 be applicable to any health maintenance organization
57 granted a certificate of authority under this article.

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

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAIN- TENANCE.

§48-2-15a. Medical support enforcement.

1 (a) For the purposes of this section:

2 (1) "Custodian for the children" means a parent, legal
3 guardian, committee or other third party appointed by
4 court order as custodian of child or children for whom
5 child support is ordered.

6 (2) "Obligated parent" means a natural or adoptive
7 parent who is required by agreement or order to pay

8 for insurance coverage and medical care, or some
9 portion thereof, for his or her child.

10 (3) "Insurance coverage" means coverage for medical,
11 dental, including orthodontic, optical, psychological,
12 psychiatric or other health care service.

13 (4) "Child" means a child to whom a duty of child
14 support is owed.

15 (5) "Medical care" means medical, dental, optical,
16 psychological, psychiatric or other health care service
17 for children in need of child support.

18 (6) "Insurer" means any company, health maintenance
19 organization, self-funded group, multiple employer
20 welfare arrangement, hospital or medical services
21 corporation, trust, group health plan, as defined in 29
22 U.S.C. §1167, Section 607(1) of the Employee Retirement
23 Income Security Act of 1974 or other entity which
24 provides insurance coverage or offers a service benefit
25 plan.

26 (b) In every action to establish or modify an order
27 which requires the payment of child support, the court
28 shall ascertain the ability of each parent to provide
29 medical care for the children of the parties. In any
30 temporary or final order establishing an award of child
31 support or any temporary or final order modifying a
32 prior order establishing an award of child support, the
33 court shall order one or more of the following:

34 (1) The court shall order either parent or both parents
35 to provide insurance coverage for a child, if such
36 insurance coverage is available to that parent on a group
37 basis through an employer or through an employee's
38 union. If similar insurance coverage is available to both
39 parents, the court shall order the child to be insured
40 under the insurance coverage which provides more
41 comprehensive benefits. If such insurance coverage is
42 not available at the time of the entry of the order, the
43 order shall require that if such coverage thereafter
44 becomes available to either party, that party shall
45 promptly notify the other party of the availability of
46 insurance coverage for the child.

47 (2) If the court finds that insurance coverage is not
48 available to either parent on a group basis through an
49 employer, multi-employer trust or employees' union, or
50 that the group insurer is not accessible to the parties,
51 the court may order either parent or both parents to
52 obtain insurance coverage which is otherwise available
53 at a reasonable cost.

54 (3) Based upon the respective ability of the parents to
55 pay, the court may order either parent or both parents
56 to be liable for reasonable and necessary medical care
57 for a child. The court shall specify the proportion of the
58 medical care for which each party shall be responsible.

59 (4) If insurance coverage is available, the court shall
60 also determine the amount of the annual deductible on
61 insurance coverage which is attributable to the children
62 and designate the proportion of the deductible which
63 each party shall pay.

64 (5) The order shall require the obligor to continue to
65 provide the child advocate office with information as to
66 his or her employer's name and address and information
67 as to the availability of employer-related insurance
68 programs providing medical care coverage so long as
69 the child continues to be eligible to receive support.

70 (c) The cost of insurance coverage shall be considered
71 by the court in applying the child support guidelines
72 provided for in section eight, article two, chapter forty-
73 eight-a of this code.

74 (d) Within thirty days after the entry of an order
75 requiring the obligated parent to provide insurance
76 coverage for the children, that parent shall submit to the
77 custodian for the child written proof that the insurance
78 has been obtained or that an application for insurance
79 has been made. Such proof of insurance coverage shall
80 consist of, at a minimum:

81 (1) The name of the insurer;

82 (2) The policy number;

83 (3) An insurance card;

84 (4) The address to which all claims should be mailed;

85 (5) A description of any restrictions on usage, such as
86 prior approval for hospital admission, and the manner
87 in which to obtain such approval;

88 (6) A description of all deductibles; and

89 (7) Five copies of claim forms.

90 (e) The custodian for the child shall send the insurer
91 or the obligated parent's employer the children's address
92 and notice that the custodian will be submitting claims
93 on behalf of the children. Upon receipt of such notice,
94 or an order for insurance coverage under this section,
95 the obligated parent's employer, multi-employer trust or
96 union shall, upon the request of the custodian for the
97 child, release information on the coverage for the
98 children, including the name of the insurer.

99 (f) A copy of the court order for insurance coverage
100 shall not be provided to the obligated parent's employer
101 or union or the insurer unless ordered by the court, or
102 unless:

103 (1) The obligated parent, within thirty days of
104 receiving effective notice of the court order, fails to
105 provide to the custodian for the child written proof that
106 the insurance has been obtained or that an application
107 for insurance has been made;

108 (2) The custodian for the child serves written notice
109 by mail at the obligated parent's last known address of
110 intention to enforce the order requiring insurance
111 coverage for the child; and

112 (3) The obligated parent fails within fifteen days after
113 the mailing of the notice to provide written proof to the
114 custodian for the child that the child has insurance
115 coverage.

116 (g) (1) Upon service of the order requiring insurance
117 coverage for the children, the employer, multi-employer
118 trust or union shall enroll the child as a beneficiary in
119 the group insurance plan and withhold any required
120 premium from the obligated parent's income or wages.

121 (2) If more than one plan is offered by the employer,
122 multi-employer trust or union, the child shall be

123 enrolled in the same plan as the obligated parent at a
124 reasonable cost.

125 (3) Insurance coverage for the child which is ordered
126 pursuant to the provisions of this section shall not be
127 terminated except as provided in subsection (j) of this
128 section.

129 (h) Where a parent is required by a court or administrative order to provide health coverage, which is
130 available through an employer doing business in this
131 state, the employer is required:
132

133 (1) To permit the parent to enroll under family
134 coverage any child who is otherwise eligible for
135 coverage without regard to any enrollment season
136 restrictions;

137 (2) If the parent is enrolled but fails to make
138 application to obtain coverage of the child, to enroll the
139 child under family coverage upon application by the
140 child's other parent, by the state agency administering
141 the medicaid program or by the child advocate office;

142 (3) Not to disenroll or eliminate coverage of any such
143 child unless the employer is provided satisfactory
144 written evidence that:

145 (A) The court or administrative order is no longer in
146 effect;

147 (B) The child is or will be enrolled in comparable
148 coverage which will take effect no later than the
149 effective date of disenrollment; or

150 (C) The employer has eliminated family health
151 coverage for all of its employees;

152 (4) To withhold from the employee's compensation the
153 employee's share, if any, of premiums for health
154 coverage and to pay this amount to the insurer:
155 *Provided*, That the amount so withheld may not exceed
156 the maximum amount permitted to be withheld under
157 15 U.S.C. §1673, Section 303(b) of the Consumer Credit
158 Protection Act.

159 (i) (1) The signature of the custodian for the child shall
160 constitute a valid authorization to the insurer for the
161 purposes of processing an insurance payment to the
162 provider of medical care for the child.

163 (2) No insurer, employer or multi-employer trust in
164 this state may refuse to honor a claim for a covered
165 service when the custodian for the child or the obligated
166 parent submits proof of payment for medical bills for
167 the child.

168 (3) The insurer shall reimburse the custodian for the
169 child or the obligated parent who submits copies of
170 medical bills for the child with proof of payment.

171 (4) All insurers in this state shall comply with the
172 provisions of section sixteen, article fifteen, chapter
173 thirty-three of this code and section eleven, article
174 sixteen of said chapter and shall provide insurance
175 coverage for the child of a covered employee notwith-
176 standing the amount of support otherwise ordered by
177 the court and regardless of the fact that the child may
178 not be living in the home of the covered employee.

179 (j) When an order for insurance coverage for a child
180 pursuant to this section is in effect and the obligated
181 parent's employment is terminated, or the insurance
182 coverage for the child is denied, modified or terminated,
183 the insurer shall in addition to complying with the
184 requirements of article sixteen-a, chapter thirty-three of
185 this code, within ten days after the notice of change in
186 coverage is sent to the covered employee, notify the
187 custodian for the child and provide an explanation of
188 any conversion privileges available from the insurer.

189 (k) A child of an obligated parent shall remain
190 eligible for insurance coverage until the child is
191 emancipated or until the insurer under the terms of the
192 applicable insurance policy terminates said child from
193 coverage, whichever is later in time, or until further
194 order of the court.

195 (l) If the obligated parent fails to comply with the
196 order to provide insurance coverage for the child, the

197 court shall:

198 (1) Hold the obligated parent in contempt for failing
199 or refusing to provide the insurance coverage, or for
200 failing or refusing to provide the information required
201 in subsection (d) of this section;

202 (2) Enter an order for a sum certain against the
203 obligated parent for the cost of medical care for the
204 child, and any insurance premiums paid or provided for
205 the child during any period in which the obligated
206 parent failed to provide the required coverage; and

207 (3) In the alternative, other enforcement remedies
208 available under sections two and three, article five,
209 chapter forty-eight-a of this code, or otherwise available
210 under law, may be used to recover from the obligated
211 parent the cost of medical care or insurance coverage
212 for the child.

213 (4) In addition to other remedies available under law,
214 the child advocate office may garnish the wages, salary
215 or other employment income of, and withhold amounts
216 from state tax refunds to any person who:

217 (A) Is required by court or administrative order to
218 provide coverage of the cost of health services to a child
219 eligible for medical assistance under medicaid; and

220 (B) Has received payment from a third party for the
221 costs of such services but has not used the payments to
222 reimburse either the other parent or guardian of the
223 child or the provider of the services, to the extent
224 necessary to reimburse the state medicaid agency for its
225 costs: *Provided*, That claims for current and past due
226 child support shall take priority over these claims.

227 (m) Proof of failure to maintain court ordered
228 insurance coverage for the child constitutes a showing
229 of substantial change in circumstances or increased
230 need pursuant to section fifteen of this article, and
231 provides a basis for modification of the child support
232 order.

CHAPTER 79

(H. B. 4199—By Delegates Phillips, Gallagher, Collins,
Ashley, Riggs, Mezzatesta and Rowe)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to insurance rating organizations; requiring certain applications and filings; establishing fees; required notices; rules of the insurance commissioner; subscribers to the rating organization service; prohibited acts; cooperation among rating organizations and insurers; review and examinations; permitting subscription to actuarial, technical or other services; establishing time frames for commencement and completion of classification inspections; requiring notification of adjustments, written evaluations and publications of classifications; and requiring classification lists, changes in established classifications and guidelines to be submitted to the insurance commissioner within a certain time period.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-6. Rating organizations.

1 (a) A corporation, an unincorporated association, a
2 partnership or an individual, whether located within or
3 outside this state, may make application to the commis-
4 sioner for license as a rating organization for such kinds
5 of casualty insurance or subdivisions thereof, or for such
6 kinds of fire and marine insurance or subdivision or
7 class of risk or a part or combination thereof as are
8 specified in its application and shall file therewith (1)
9 a copy of its constitution, its articles of agreement or
10 association or its certificates of incorporation, and of its
11 bylaws, rules governing the conduct of its business, (2)

12 a list of its members and subscribers, (3) the name and
13 address of a resident of this state as attorney-in-fact
14 upon whom notices or orders of the commissioner or
15 process affecting such rating organization may be
16 served and (4) a statement of its qualifications as a
17 rating organization. If the commissioner finds that the
18 applicant is competent, trustworthy and otherwise
19 qualified to act as a rating organization and that its
20 constitution, articles of agreement or association or
21 certificate of incorporation, and its bylaws, rules
22 governing the conduct of its business conform to the
23 requirements of law, he shall issue a license specifying
24 the kinds of insurance or subdivisions thereof for which
25 the applicant is authorized to act as a rating organiza-
26 tion. Every application shall be granted or denied in
27 whole or in part by the commissioner within sixty days
28 of the date of its filing with him. Licenses issued
29 pursuant to this section shall remain in effect for three
30 years unless sooner suspended or revoked by the
31 commissioner. The fee for the license shall be one
32 hundred dollars, and the fee shall be in lieu of all other
33 fees, licenses or taxes to which a rating organization
34 might otherwise be subject, all fees so collected to be
35 used for the purposes specified in section thirteen,
36 article three of this chapter. Licenses issued pursuant
37 to this section may be suspended or revoked by the
38 commissioner, after notice and hearing, in the event the
39 rating organization ceases to meet the requirements of
40 this article. Every rating organization shall notify the
41 commissioner promptly of every change in (1) its
42 constitution, its articles of agreement or association or
43 its certificate of incorporation, and its bylaws, rules
44 governing the conduct of its business, (2) its list of
45 members and subscribers and (3) the name and address
46 of the resident of this state designated as attorney-in-
47 fact by it upon whom notices or orders of the commis-
48 sioner or process affecting such rating organization may
49 be served.

50 (b) Subject to rules which have been approved by the
51 commissioner as reasonable, each rating organization
52 shall permit any insurer, not a member, to be a
53 subscriber to its rating services for any kind of casualty

54 insurance or subdivision thereof, or for any kind of fire
55 and marine insurance or subdivision or class of risk or
56 a part or combination thereof, or any kind of surety
57 insurance or subdivision thereof, for which it is
58 authorized to act as a rating organization. Notice of
59 proposed changes in such rules shall be given to
60 subscribers. Each rating organization shall furnish its
61 rating services without discrimination to its members
62 and subscribers. The reasonableness of any rule or
63 regulation in its application to subscribers, or the
64 refusal of any rating organization to admit an insurer
65 as a subscriber, shall, at the request of any subscriber
66 or any such insurer, be reviewed by the commissioner.
67 If, after notice and hearing, the commissioner finds that
68 the rule or regulation is unreasonable in its application
69 to subscribers, he shall order that such rule or regula-
70 tion shall not be applicable to subscribers. If the rating
71 organization fails to grant or reject an insurer's
72 application for subscribership within thirty days after
73 it was made, the insurer may request a review by the
74 commissioner as if the application had been rejected. If,
75 after notice and hearing, the commissioner finds that
76 the insurer has been refused admittance to the rating
77 organization as a subscriber without justification, he
78 shall order the rating organization to admit the insurer
79 as a subscriber. If he finds that the action of the rating
80 organization was justified, he shall make an order
81 affirming its action.

82 (c) No rating organization shall adopt any rule the
83 effect of which would be to prohibit or regulate the
84 payment of dividends, savings or unabsorbed premium
85 deposits allowed or returned by insurers to their
86 policyholders, members or subscribers.

87 (d) Cooperation among rating organizations or among
88 rating organizations and insurers in rate making or in
89 other matters within the scope of this article is hereby
90 authorized, provided the filings resulting from such
91 cooperation are subject to all the provisions of this
92 article which are applicable to filings generally. The
93 commissioner may review such cooperative activities
94 and practices, and if after a hearing he finds that any

95 such activity or practice is unfair or unreasonable or
96 otherwise inconsistent with the provisions of this article,
97 he may issue a written order specifying in what respects
98 such activity or practice is unfair or unreasonable or
99 otherwise inconsistent with the provisions of this article,
100 and requiring the discontinuance of such activity or
101 practice.

102 (e) Any rating organization for casualty, marine or
103 surety insurance may provide for the examination of
104 policies, daily reports, binders, renewal certificates,
105 endorsements or other evidences of insurance, or the
106 cancellation thereof, and may make reasonable rules
107 governing their submission. The rules shall contain a
108 provision that in the event any insurer does not within
109 sixty days furnish satisfactory evidence to the rating
110 organization of the correction of any error or omission
111 previously called to its attention by the rating organi-
112 zation, it shall be the duty of the rating organization to
113 notify the commissioner thereof. All information so
114 submitted for examination shall be confidential.

115 (f) Any rating organization may subscribe for or
116 purchase actuarial, technical or other services, and these
117 services shall be available to all members and subscrib-
118 ers without discrimination.

119 (g) Any rating organization responsible for establish-
120 ing fire rate classifications for West Virginia cities,
121 towns, and fire districts shall:

122 (1) Review a request for classification revision within
123 ninety days after receiving said request in writing from
124 an entity for which the rating organization provides a
125 public fire protection classification. Such written
126 requests for classification revision must be made by the
127 chief official of the city, town or fire district and must
128 outline the specific changes in conditions in the entity
129 that would warrant a classification revision.

130 (A) If the changed conditions in the entity do not
131 warrant a revision to the applicable classification, the
132 rating organization must provide the entity with a
133 written response outlining the reasons why such changes
134 in condition will not impact the classification.

135 (B) If the changed conditions in the entity indicate a
136 potential revision to the applicable classification, the
137 rating organization may request reasonable additional
138 information from the entity. Upon receipt of such
139 information, and upon determination that a classifica-
140 tion revision may be indicated, the rating organization
141 must schedule a survey of the entity.

142 (2) Complete any required survey, analysis, and
143 written evaluation of the entity and develop any
144 applicable classification revision within sixty days after
145 all necessary information about changed conditions has
146 been received in writing by the rating organization from
147 the entity.

148 (3) Advise its participating insurers within sixty days
149 after the revised public fire protection classification has
150 been developed reflecting the changed conditions in the
151 entity.

152 (4) Have the option to request a reasonable extension
153 of the above described time frames from the insurance
154 commissioner if unusual conditions exist, including, but
155 not limited to, unusual weather conditions or difficulty
156 in scheduling a mutually convenient survey time.

157 (5) File the following with the insurance
158 commissioner:

159 (A) Within thirty days of its publication:

160 (i) A copy of a current list of all classifications
161 established in West Virginia. Such list shall be pub-
162 lished on at least a quarterly basis and;

163 (ii) All changes in established classifications during
164 the previous month. Such list shall be published on a
165 monthly basis.

166 (B) Within thirty days after being requested by the
167 insurance commissioner pursuant to this paragraph, a
168 copy of guidelines used to establish classifications,
169 stating the minimum qualifications, standards and
170 requirements for each classification (classes one through
171 ten).

CHAPTER 80

(S. B. 306—By Senator Burdette, Mr. President)

[Passed March 9, 1994; in effect from passage. Became law without Governor's signature.]

AN ACT to amend and reenact section twenty-two-a, article thirteen, chapter eight 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 twenty-two-c; to amend and reenact section eleven, article twenty-two of said chapter; and to further amend said article by adding thereto a new section, designated section eleven-a, all relating to the approved means of investing municipal funds; permitting investments in federally-issued, backed or guaranteed instruments, including mortgages on real property situate in the state or in highly rated pooled trusts; opening investment options in certain mutual funds and in the securities and commercial paper of private organizations, banks, trusts and savings organizations; imposing portfolio limitations on specified investments; establishing approved investment instruments for the retirement system assets of Class I, II and III municipalities; permitting investments in federally guaranteed, backed or issued instruments, including mortgages on real property situate in the state or in highly rated pooled trusts; opening investment options in certain mutual funds and in the securities and commercial paper of private corporations, banks, trusts and savings organizations; and imposing portfolio limitations on specified investments.

Be it enacted by the Legislature of West Virginia:

That section twenty-two-a, article thirteen, chapter eight 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 twenty-two-c; that section eleven, article twenty-two of said chapter be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section eleven-a, all to read as follows:

Article**13. Taxation and Finance.**

- 22. Retirement Benefits Generally; Policemen's Pension and Relief Fund; Firemen's Pension and Relief Fund; Pension Plans for Employees of Waterworks System, Sewerage System or Combined Waterworks and Sewerage System.**

ARTICLE 13. TAXATION AND FINANCE.**PART VI. ACCOUNTING PRINCIPLES; FUNDS; DISBURSEMENTS.**

§8-13-22a. Investment of municipal funds.

§8-13-22c. Restrictions on investment.

§8-13-22a. Investment of municipal funds.

1 All municipal funds, the investment of which is not
2 governed by other provisions of this code and not
3 required for the payment of current obligations and not
4 otherwise prohibited, may be invested and reinvested in:

5 (1) Any direct obligation of, or obligation guaranteed
6 as to the payment of both principal and interest by, the
7 United States of America;

8 (2) Any evidence of indebtedness issued by any United
9 States government agency guaranteed as to the payment
10 of both principal and interest, directly or indirectly, by
11 the United States of America including, but not limited
12 to, the following: Government national mortgage
13 association, federal land banks, federal home loan
14 banks, federal intermediate credit banks, banks for
15 cooperatives, Tennessee valley authority, United States
16 postal service, farmers home administration, export-
17 import bank, federal financing bank, federal home loan
18 mortgage corporation, student loan marketing associa-
19 tion and federal farm credit banks;

20 (3) Any evidence of indebtedness issued by the federal
21 national mortgage association to the extent such
22 indebtedness is guaranteed by the government national
23 mortgage association;

24 (4) Any evidence of indebtedness that is secured by
25 a first lien deed of trust or mortgage upon real property
26 situate within this state, if the payment thereof is
27 substantially insured or guaranteed by the United
28 States of America or any agency thereof;

- 29 (5) Direct and general obligations of this state;
- 30 (6) Any undivided interest in a trust, the corpus of
31 which is restricted to mortgages on real property and,
32 unless all of such property is situate within the state and
33 insured, such trust at the time of the acquisition of such
34 undivided interest, is rated in one of the three highest
35 rating grades by an agency which is nationally known
36 in the field of rating pooled mortgage trusts;
- 37 (7) Any bond, note, debenture, commercial paper or
38 other evidence of indebtedness of any private corpora-
39 tion or association: *Provided*, That any such security is,
40 at the time of its acquisition, rated in one of the three
41 highest rating grades by an agency which is nationally
42 known in the field of rating corporate securities:
43 *Provided, however*, That if any commercial paper or any
44 such security will mature within one year from the date
45 of its issuance, it shall, at the time of its acquisition, be
46 rated in one of the two highest rating grades by any
47 such nationally known agency and commercial paper or
48 other evidence of indebtedness of any private corpora-
49 tion or association shall be purchased only upon the
50 written recommendation from an investment advisor
51 that has over three hundred million dollars in other
52 funds under its management;
- 53 (8) Negotiable certificates of deposit issued by any
54 bank, trust company, national banking association or
55 savings institution which mature in less than one year
56 and are fully collateralized;
- 57 (9) Interest earning deposits including certificates of
58 deposit, with any duly designated state depository,
59 which deposits are fully secured by a collaterally
60 secured bond as provided in section four, article one,
61 chapter twelve of this code; and
- 62 (10) Mutual funds registered with the securities and
63 exchange commission which have assets in excess of
64 three hundred million dollars.

§8-13-22c. Restrictions on investment.

- 1 Moneys invested as permitted by section eleven of this
2 article are subject to the restrictions and conditions

3 contained in this section:

4 (1) At no time may more than seventy-five percent of
5 the portfolio of either fund be invested in securities
6 described in subdivision (7), section eleven of this article;

7 (2) At no time may more than twenty percent of the
8 portfolio of either fund be invested in securities
9 described in subdivision (7), section eleven of this article
10 which mature within one year from the date of issuance
11 thereof;

12 (3) At no time may more than nine percent of the
13 portfolio be invested in securities issued by a single
14 private corporation or association; and

15 (4) At no time may more than sixty percent of the
16 portfolio be invested in equity mutual funds under
17 subdivision (10), section eleven of this article.

**ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICE-
MEN'S PENSION AND RELIEF FUND; FIRE-
MEN'S PENSION AND RELIEF FUND; PENSION
PLANS FOR EMPLOYEES OF WATERWORKS
SYSTEM, SEWERAGE SYSTEM OR COMBINED
WATERWORKS AND SEWERAGE SYSTEM.**

**PART II. GENERAL RETIREMENT SYSTEMS FOR
CLASS I, II AND III CITIES.**

§8-22-11. Investment of funds.

§8-22-11a. Restrictions on investment.

§8-22-11. Investment of funds.

1 The board shall keep as an available sum for the
2 purpose of making retirement, disability and death
3 payments and administration expense an amount
4 estimated to meet such payments for a period not to
5 exceed ninety days. The board in acquiring, investing,
6 reinvesting, exchanging, retaining, selling and manag-
7 ing property for the benefit of the fund shall exercise
8 judgment and care which persons of experience,
9 prudence, discretion and intelligence exercise in the
10 management of financial affairs, considering the
11 probable income as well as the probable security of the
12 investment and with regard to the permanent disposi-
13 tion of the fund. Within the limitations of the foregoing

14 standard, the board is authorized in its sole discretion
15 to invest and reinvest any funds received by it in the
16 following:

17 (1) Any direct obligation of, or obligation guaranteed
18 as to the payment of both principal and interest by, the
19 United States of America;

20 (2) Any evidence of indebtedness issued by any United
21 States government agency guaranteed as to the payment
22 of both principal and interest, directly or indirectly, by
23 the United States of America including, but not limited
24 to, the following: Government national mortgage
25 association, federal land banks, federal home loan
26 banks, federal intermediate credit banks, banks for
27 cooperatives, Tennessee valley authority, United States
28 postal service, farmers home administration, export-
29 import bank, federal financing bank, federal home loan
30 mortgage corporation, student loan marketing associa-
31 tion and federal farm credit banks;

32 (3) Any evidence of indebtedness issued by the federal
33 national mortgage association to the extent such
34 indebtedness is guaranteed by the government national
35 mortgage association;

36 (4) Any evidence of indebtedness that is secured by
37 a first lien deed of trust or mortgage upon real property
38 situate within this state, if the payment thereof is
39 substantially insured or guaranteed by the United
40 States of America or any agency thereof;

41 (5) Direct and general obligations of this state;

42 (6) Any undivided interest in a trust, the corpus of
43 which is restricted to mortgages on real property and,
44 unless all of such property is situate within the state and
45 insured, such trust at the time of the acquisition of such
46 undivided interest, is rated in one of the three highest
47 rating grades by an agency which is nationally known
48 in the field of rating pooled mortgage trusts;

49 (7) Any bond, note, debenture, commercial paper or
50 other evidence of indebtedness of any private corpora-
51 tion or association: *Provided*, That any such security is,
52 at the time of its acquisition, rated in one of the three

53 highest rating grades by an agency which is nationally
54 known in the field of rating corporate securities:
55 *Provided, however,* That if any commercial paper or any
56 such security will mature within one year from the date
57 of its issuance, it shall, at the time of its acquisition, be
58 rated in one of the two highest rating grades by any
59 such nationally known agency and commercial paper or
60 other evidence of indebtedness of any private corpora-
61 tion or association shall be purchased only upon the
62 written recommendation from an investment advisor
63 that has over three hundred million dollars in other
64 funds under its management;

65 (8) Negotiable certificates of deposit issued by any
66 bank, trust company, national banking association or
67 savings institution which mature in less than one year
68 and are fully collateralized;

69 (9) Interest earning deposits including certificates of
70 deposit, with any duly designated state depository,
71 which deposits are fully secured by a collaterally
72 secured bond as provided in section four, article one,
73 chapter twelve of this code; and

74 (10) Mutual funds registered with the securities and
75 exchange commission which have assets in excess of
76 three hundred million dollars.

§8-22-11a. Restrictions on investment.

1 Moneys invested as permitted by section eleven of this
2 article are subject to the restrictions and conditions
3 contained in this section:

4 (1) At no time may more than seventy-five percent of
5 the portfolio of either fund be invested in securities
6 described in subdivision (7), section eleven of this article;

7 (2) At no time may more than twenty percent of the
8 portfolio of either fund be invested in securities
9 described in subdivision (7), section eleven of this article
10 which mature within one year from the date of issuance
11 thereof;

12 (3) At no time may more than nine percent of the
13 portfolio be invested in securities issued by a single

14 private corporation or association;

15 (4) At no time may more than sixty percent of the
16 portfolio be invested in equity mutual funds under
17 subdivision (10), section eleven of this article;

18 (5) Notwithstanding any other provision of this article,
19 any investments in equity mutual funds under subdivi-
20 sion (10), section eleven of this article by a policemen's
21 pension and relief fund or a firemen's pension and relief
22 fund shall be in a securities and exchange commission
23 registered no sales-load equity mutual funds whose
24 stated investment policy requires investment in a
25 portfolio of securities which are at least eighty-five
26 percent in New York Stock Exchange instruments and
27 requires multi-industry diversification: *Provided*, That
28 the value of such investments shall not exceed the lesser
29 of: (a) One percent times completed months since
30 enactment of this section; or (b) fifty percent of the total
31 assets of said pension and relief fund.

CHAPTER 81

(H. B. 4377—By Delegates Phillips, Rutledge and Burk)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine-c, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to investment of funds by the state board of investments, administrators and political subdivisions of the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-9c. Authorization of additional investments.

1 Notwithstanding the restrictions which may otherwise
2 be provided by law with respect to the investment of

3 funds, the state board of investments, all administrators,
4 custodians or trustees of pension funds, each political
5 subdivision of this state and each county board of
6 education is authorized to invest funds in the securities
7 of or any other interest in any investment company or
8 investment trust registered under the Investment
9 Company Act of 1940, 15 U.S.C. §80a, the portfolio of
10 which is limited (i) to obligations issued by or guaran-
11 teed as to the payment of both principal and interest by
12 the United States of America or its agencies or
13 instrumentalities, and (ii) to repurchase agreements
14 fully collateralized by obligations of the United States
15 government or its agencies or instrumentalities: *Pro-*
16 *vided*, That the investment company or investment trust
17 takes delivery of the collateral either directly or through
18 an authorized custodian: *Provided, however*, That the
19 investment company or investment trust is rated within
20 one of the top two rating categories of any nationally
21 recognized rating service such as Moody's or Standard
22 and Poor's.

CHAPTER 82

(S. B. 527—Originating in the Committee on Finance)

[Passed March 11, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article seven, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to placing limitations on investments by the jobs investment trust board; providing for an additional short-term debt investment; providing for an extension of the twelve-month repayment term; specifying criteria for granting an extension; and requiring the board to report any extension to the governor and the Legislature.

Be it enacted by the Legislature of West Virginia:

That section seven, article seven, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, be amended and reenacted to read as follows:

ARTICLE 7. JOBS INVESTMENT TRUST FUND.

§12-7-7. Limitation on investments.

1 Subject to the provisions of section nine of this article,
2 the board may invest in any eligible business: *Provided*,
3 That at the time of the placement of the investment not
4 more than twenty percent of the board's total investment
5 portfolio is invested in one eligible business within any
6 two-year period: *Provided, however*, That the board may
7 invest in an eligible business up to an additional twenty
8 percent of the board's total investment portfolio, or up
9 to a total of two million dollars, whichever is less. The
10 additional investment must be in the form of a short-
11 term debt investment to be repaid within twelve months
12 of the investment: *Provided further*, That the board may
13 extend said twelve-month repayment term until the
14 thirtieth day of September, one thousand nine hundred
15 ninety-four, and upon terms consistent with the actions
16 of other investors involved in similar investments with
17 the eligible business if the eligible business demon-
18 strates to the board: (i) That said business is progressing
19 with a plan for capital formation and business develop-
20 ment; and (ii) that said extension of the twelve-month
21 period, and any other modification thereto, will not
22 substantially prejudice the position of the board in
23 relation to the other investors in, and creditors of, the
24 eligible business. The board shall report any extension
25 of any repayment term made prior to the thirty-first day
26 of March, one thousand nine hundred ninety-four, and
27 approved by the board pursuant to the provisions of this
28 section, to the governor and to the Legislature's joint
29 committee on government and finance within twenty
30 days of such approval: *And provided further*, That the
31 board shall report to the governor and the joint
32 committee on government and finance of its intention to
33 extend any repayment term at least twenty days prior
34 to the board approving any extension made on or after
35 the first day of April, one thousand nine hundred ninety-
36 four.

CHAPTER 83

(H. B. 4009—By Mr. Speaker, Mr. Chambers, and
Delegates Martin, Evans and Nicol)

[Passed March 4, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-j, relating to the Jennings Randolph Lake Project Compact; authorizing the governor to execute a certain Jennings Randolph Lake Project Compact between the state of West Virginia and the state of Maryland with concurrence by the United States army corps of engineers; stating certain purposes and goals related to establishing the compact; establishing through the compact certain responsibilities of the state of West Virginia, the state of Maryland and the corps of engineers, respectively, with respect to the Jennings Randolph Lake Project; providing through the compact for certain coordination between the states and the corps of engineers in planning, operation and maintenance of the Jennings Randolph Lake Project so as to provide for public recreation and for protection and management of fish and wildlife resources; establishing through the compact that the states and the corps of engineers will have certain concurrent jurisdiction over the lands and waters of the Jennings Randolph Lake Project for enforcing certain natural resources and boating laws; establishing the effective date of the compact following certain other ratifications and approvals; providing certain procedures for amending the compact; providing for termination of the compact under certain circumstances; and generally relating to and authorizing the governor to execute the Jennings Randolph Lake Project Compact.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-nine of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article one-j, to read as follows:

ARTICLE 1J. JENNINGS RANDOLPH LAKE PROJECT COMPACT.

§29-1J-1. Jennings Randolph Lake Project Compact authorized.

§29-1J-2. Date on which article becomes effective.

§29-1J-1. Jennings Randolph Lake Project Compact authorized.

1 The governor is hereby authorized and directed to
2 execute a compact on behalf of the state of West
3 Virginia with the state of Maryland, with participation
4 through concurrence by the United States army corps
5 of engineers legally joining in the form substantially as
6 follows:

7 **JENNINGS RANDOLPH LAKE**

8 **PROJECT COMPACT**

9 **PREAMBLE**

10 WHEREAS, The signatory parties hereto desire to
11 provide for joint natural resource management and
12 enforcement of laws and regulations pertaining to
13 natural resources and boating at the Jennings Randolph
14 Lake Project lying in Garrett County, Maryland, and
15 Mineral County, West Virginia, for which they have a
16 joint responsibility; and they declare as follows:

17 a. The Congress, under Public Law 87-874, authorized
18 the development of the Jennings Randolph Lake Project
19 for the North Branch of the Potomac River substantially
20 in accordance with House Document Number 469, 87th
21 Congress, 2nd Session for flood control, water supply,
22 water quality and recreation; and

23 b. Section 4 of the Flood Control Act of 1944 (CH 665,
24 58 STAT.534) provides that the chief of engineers, under
25 the supervision of the secretary of war (now secretary
26 of the army), is authorized to construct, maintain and
27 operate public park and recreational facilities in
28 reservoir areas under control of such secretary for the
29 purpose of boating, swimming, bathing, fishing and

30 other recreational purposes, so long as the same is not
31 inconsistent with the laws for the protection of fish and
32 wildlife of the state(s) in which such area is situated; and

33 c. Pursuant to the authorities cited above, the U.S.
34 army engineer district (Baltimore), hereinafter "Dis-
35 trict," did construct and now maintains and operates the
36 Jennings Randolph Lake Project; and

37 d. The National Environmental Policy Act of 1969
38 (P.L. 91-190) encourages productive and enjoyable
39 harmony between man and his environment, promotes
40 efforts which will stimulate the health and welfare of
41 man, and encourages cooperation with state and local
42 governments to achieve these ends; and

43 e. The Fish and Wildlife Coordination Act (16 U.S.C.
44 661-666C) provides for the consideration and coordina-
45 tion with other features of water-resource development
46 programs through the effectual and harmonious plan-
47 ning, development, maintenance and coordination of
48 wildlife conservation and rehabilitation; and

49 f. The District has fisheries and wildlife plans as part
50 of the District's project operational plan management;
51 and

52 g. In the respective states, the Maryland department
53 of natural resources (hereinafter referred to as Mary-
54 land DNR) and the West Virginia division of natural
55 resources (hereinafter referred to as West Virginia
56 DNR) are primarily responsible for providing a system
57 of control, propagation, management, protection and
58 regulation of natural resources and boating in Maryland
59 and West Virginia and the enforcement of laws and
60 regulations pertaining to those resources as provided in
61 annotated code of Maryland natural resources article
62 and West Virginia chapter 20, respectively, and the
63 successors thereof; and

64 h. The District, the Maryland department of natural
65 resources and the West Virginia division of natural
66 resources are desirous of conserving, perpetuating and
67 improving fish and wildlife resources and recreational
68 benefits of the Jennings Randolph Lake Project; and

69 i. The District and the states of Maryland and West
70 Virginia wish to implement the aforesaid acts and
71 responsibilities through this compact and they each
72 recognize that consistent enforcement of the natural
73 resources and boating laws and regulations can best be
74 achieved by entering this compact:

75 Now, therefore

76 The states of West Virginia and Maryland, with the
77 concurrence of the United States department of the
78 army, corps of engineers, hereby solemnly covenant and
79 agree with each other, upon enactment of concurrent
80 legislation by the Congress of the United States and by
81 the respective state legislatures, to the Jennings
82 Randolph Lake Project Compact, which consists of this
83 preamble and the articles that follow:

84 ARTICLE I. NAME, FINDINGS AND PURPOSE.

85 a. This compact shall be known and may be cited as
86 the Jennings Randolph Lake Project Compact.

87 b. The legislative bodies of the respective signatory
88 parties, with the concurrence of the U.S. army corps of
89 engineers, hereby find and declare:

90 1. The water resources and project lands of the
91 Jennings Randolph Lake Project are affected with local,
92 state, regional and national interest, and the planning,
93 conservation, utilization, protection and management of
94 these resources, under appropriate arrangements for
95 intergovernmental cooperation, are public purposes of
96 the respective signatory parties; and

97 2. The lands and waters of the Jennings Randolph
98 Lake Project are subject to the sovereign rights and
99 responsibilities of the signatory parties, and it is the
100 purpose of this compact that, notwithstanding any
101 boundary between Maryland and West Virginia that
102 preexisted the creation of Jennings Randolph Lake, the
103 parties will have and exercise concurrent jurisdiction
104 over any lands and waters of the Jennings Randolph
105 Lake Project concerning natural resources and boating
106 laws and regulations in the common interest of the
107 people of the region.

108 ARTICLE II. DISTRICT RESPONSIBILITIES.

109 The District, within the Jennings Randolph Lake
110 Project,

111 a. Acknowledges that the West Virginia division of
112 natural resources and the Maryland department of
113 natural resources have authorities and responsibilities
114 in the establishment, administration and enforcement of
115 the natural resources and boating laws and regulations
116 applicable to this project: *Provided*, That the laws and
117 regulations promulgated by the states support and
118 implement, where applicable, the intent of the rules and
119 regulations governing public use of water resources
120 development projects administered by the chief of
121 engineers in Title 36, Chapter III, Part 327, Code of
122 Federal Regulations,

123 b. Agrees to practice those forms of resource manage-
124 ment as determined jointly by the District, the West
125 Virginia division of natural resources and the Maryland
126 department of natural resources to be beneficial to
127 natural resources and which will enhance public
128 recreational opportunities compatible with other auth-
129 orized purposes of the project,

130 c. Agrees to consult with the West Virginia division
131 of natural resources and the Maryland department of
132 natural resources prior to the issuance of any permits
133 for activities or special events which would include, but
134 not necessarily be limited to, fishing tournaments,
135 training exercises, regattas, marine parades, placement
136 of ski ramps, slalom water ski courses and the establish-
137 ment of private markers or lighting. All such permits
138 issued by the District will require the permittee to
139 comply with all state laws and regulations,

140 d. Agrees to consult with the West Virginia division
141 of natural resources and the Maryland department of
142 natural resources regarding any recommendations for
143 regulations affecting natural resources including, but
144 not limited to, hunting, trapping, fishing or boating at
145 the Jennings Randolph Lake Project which the District
146 believes might be desirable for reasons of public safety,
147 administration, or public use and enjoyment,

148 e. Agrees to consult with the West Virginia division
149 of natural resources and the Maryland department of
150 natural resources relative to the marking of the lake
151 with buoys, aids to navigation, regulatory markers and
152 establishing and posting of speed limits, no wake zones,
153 restricted or other control areas and to provide, install
154 and maintain such buoys, aids to navigation and
155 regulatory markers as are necessary for the implemen-
156 tation of the District's operational management plan. All
157 buoys, aids to navigation and regulatory markers to be
158 used shall be marked in conformance with the uniform
159 state waterway marking system,

160 f. Agrees to allow hunting, trapping, boating and
161 fishing by the public in accordance with the laws and
162 regulations relating to the Jennings Randolph Lake
163 Project.

164 g. Agrees to provide, install and maintain public
165 ramps, parking areas, courtesy docks, etc., as provided
166 for by the approved Corps of Engineers master plan,
167 and

168 h. Agrees to notify the West Virginia division of
169 natural resources and the Maryland department of
170 natural resources of each reservoir drawdown prior
171 thereto excepting drawdown for the reestablishment of
172 normal lake levels following flood control operations and
173 drawdown resulting from routine water control man-
174 agement operations described in the reservoir regula-
175 tion manual including releases requested by water
176 supply owners and normal water quality releases. In
177 case of emergency releases or emergency flow curtail-
178 ments, telephone or oral notification will be provided.
179 The District reserves the right, following issuance of the
180 above notice, to make operational and other tests which
181 may be necessary to ensure the safe and efficient
182 operation of the dam, for inspection and maintenance
183 purposes, and for the gathering of water quality data
184 both within the impoundment and in the Potomac River
185 downstream from the dam.

186 ARTICLE III. STATE RESPONSIBILITIES.

187 The state of West Virginia and the state of Maryland
188 agree:

189 a. That each state will have and exercise concurrent
190 jurisdiction with the District and the other state for the
191 purpose of enforcing the civil and criminal laws of the
192 respective states pertaining to natural resources and
193 boating laws and regulations over any lands and waters
194 of the Jennings Randolph Lake Project;

195 b. That existing natural resources and boating laws
196 and regulations already in effect in each state shall
197 remain in force on the Jennings Randolph Lake Project
198 until either state amends, modifies or rescinds its laws
199 and regulations;

200 c. That the agreement for fishing privileges dated the
201 twenty-fourth day of June, one thousand nine hundred
202 eighty-five, between the state of West Virginia and the
203 state of Maryland, as amended, remains in full force and
204 effect;

205 d. To enforce the natural resources and boating laws
206 and regulations applicable to the Jennings Randolph
207 Lake Project;

208 e. To supply to the District with the name, address
209 and telephone number of the persons to be contacted
210 when any drawdown except those resulting from normal
211 regulation procedures occurs;

212 f. To inform the reservoir manager of all emergencies
213 or unusual activities occurring on the Jennings Ran-
214 dolph Lake Project;

215 g. To provide training to District employees in order
216 to familiarize them with natural resources and boating
217 laws and regulations as they apply to the Jennings
218 Randolph Lake Project; and

219 h. To recognize that the District and other federal
220 agencies have the right and responsibility to enforce,
221 within the boundaries of the Jennings Randolph Lake
222 Project, all applicable federal laws, rules and regula-
223 tions so as to provide the public with safe and healthful
224 recreational opportunities and to provide protection to
225 all federal property within the project.

227 Pursuant to the aims and purposes of this compact,
228 the state of West Virginia, the state of Maryland and
229 the District mutually agree that representatives of their
230 natural resource management and enforcement agencies
231 will cooperate to further the purposes of this compact.
232 This cooperation includes, but is not limited to, the
233 following:

234 a. Meeting jointly at least once annually, and provid-
235 ing for other meetings as deemed necessary for discus-
236 sion of matters relating to the management of natural
237 resources and visitor use on lands and waters within the
238 Jennings Randolph Lake Project;

239 b. Evaluating natural resources and boating, to
240 develop natural resource and boating management
241 plans and to initiate and carry out management
242 programs;

243 c. Encouraging the dissemination of joint publica-
244 tions, press releases or other public information and the
245 interchange between parties of all pertinent agency
246 policies and objectives for the use and perpetuation of
247 natural resources of Jennings Randolph Lake Project;
248 and

249 d. Entering into working arrangements as occasion
250 demands for the use of lands, waters, construction and
251 use of buildings and other facilities at the project.

252 ARTICLE V. GENERAL PROVISIONS.

253 a. Each and every provision of this compact is subject
254 to the laws of the states of West Virginia and Maryland
255 and the laws of the United States, and the delegated
256 authority in each instance.

257 b. The enforcement and applicability of natural
258 resources and boating laws and regulations referenced
259 in this compact shall be limited to the lands and waters
260 of the Jennings Randolph Lake Project, including, but
261 not limited to, the prevailing reciprocal fishing laws and
262 regulations between the states of West Virginia and
263 Maryland.

264 c. Nothing in this compact shall be construed as

265 obligating any party hereto to the expenditure of funds
266 or the future payment of money in excess of appropri-
267 ations authorized by law.

268 d. The provisions of this compact shall be severable,
269 and if any phrase, clause, sentence or provision of the
270 Jennings Randolph Lake Project Compact is declared to
271 be unconstitutional or inapplicable to any signatory
272 party or agency of any party, the constitutionality and
273 applicability of the compact shall not be otherwise
274 affected as to any other provision, party or agency. It
275 is the legislative intent that the provisions of this
276 compact be reasonably and liberally construed to
277 effectuate the stated purposes of the compact.

278 e. No member or delegate to Congress, or signatory
279 shall be admitted to any share or part of this compact,
280 or to any benefit that may arise therefrom; but this
281 provision shall not be construed to extend to this
282 agreement if made with a corporation for its general
283 benefit.

284 f. When this compact has been ratified by the
285 Legislature of each respective state, when the governor
286 of West Virginia and the governor of Maryland have
287 executed this compact on behalf of their respective
288 states and have caused a verified copy thereof to be filed
289 with the secretary of state of each respective state, when
290 the Baltimore district engineer of the U.S. army corps
291 of engineers has executed its concurrence with this
292 compact, and when this compact has been consented to
293 by the Congress of the United States, then this compact
294 shall become operative and effective.

295 g. Either state may, by legislative act, after one year's
296 written notice to the other, withdraw from this compact,
297 the U.S. army corps of engineers may withdraw its
298 concurrence with this compact upon one year's written
299 notice from the Baltimore district engineer to the
300 governor of each state.

301 h. This compact may be amended from time to time.

302 Each proposed amendment shall be presented in
303 resolution form to the governor of each state and the

304 Baltimore district engineer of the U.S. army corps of
305 engineers. An amendment to this compact shall become
306 effective only after it has been ratified by the legisla-
307 tures of both signatory states and concurred in by the
308 U.S. army corps of engineers, Baltimore district.
309 Amendments shall become effective thirty days after the
310 date of the last concurrence or ratification.

§29-1J-2. Date on which article becomes effective.

1 This article shall take effect and become operative
2 and the compact be executed for and on behalf of this
3 state only from and after the approval, ratification, and
4 adoption, and entering into thereof by the state of
5 Maryland and with the concurrence of the United States
6 army corps of engineers, Baltimore, Maryland district.

CHAPTER 84

(Com. Sub. for H. B. 4129—By Delegates S. Williams, Phillips,
H. White, Rutledge and Harrison)

[Passed March 1, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-three, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to joint deposit accounts; payment, pledge or garnishment of joint accounts; notice to accountholders; effective date; notice to banking institutions; and limitation on liability of banking institutions.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES
GENERALLY.**

§31A-4-33. Deposits in trust; deposits in more than one name; limitation on liability of institutions making payments from certain accounts; notice requirements; pledges or garnishment of joint accounts.

1 (a) If any deposit in any banking institution be made
2 by any person describing him or herself in making such
3 deposit as trustee for another, and no other or further
4 notice of the existence and terms of a legal and valid
5 trust than such description shall be given in writing to
6 the banking institution, in the event of the death of the
7 person so described as trustee, such deposit, or any part
8 thereof, together with the interest thereon, may be paid
9 to the person for whom the deposit was thus stated to
10 have been made.

11 (b) When a deposit is made by any person in the name
12 of such depositor and another or others and in form to
13 be paid to any one of such depositors, or the survivor
14 or survivors of them, such deposit, and any additions
15 thereto, made by any of such persons, upon the making
16 thereof, shall become the property of such persons as
17 joint tenants. All such deposits, together with all interest
18 thereon, shall be held for the exclusive use of the persons
19 so named, and may be paid to any one of them during
20 the lifetime of them, or to the survivor or survivors after
21 the death of any of them.

22 (c) Payment to any joint depositor and the receipt or
23 the acquittance of the one to whom such payment is
24 made shall be a valid and sufficient release and
25 discharge for all payments made on account of such
26 deposit, prior to the receipt by the banking institution
27 of notice in writing, signed by any one of such joint
28 tenants not to pay such deposit in accordance with the
29 terms thereof. Prior to the receipt of such notice no
30 banking institution shall be liable for the payment of
31 such sums.

32 (d) When any joint deposit account is opened on or
33 after the first day of July, one thousand nine hundred
34 ninety-four, the owners thereof shall be given written
35 notice either on a signature card or in connection with
36 the execution of a signature card, on a form to be
37 approved by the banking commissioner, that the entire
38 balance of any such account may be paid to a creditor
39 or other claimant of any one of the joint tenants
40 pursuant to legal process, including, but not limited to,
41 garnishment, suggestion, or execution, regardless of the

42 receipt of any notice from any of the joint tenants. Such
43 notice shall also advise the owners of a joint deposit
44 account that the entire balance of any such account may
45 be paid to any of the named joint tenants at any time;
46 pledged as security to a banking institution by any of
47 the named joint tenants; or otherwise encumbered at the
48 request of any of the named joint tenants unless written
49 notice is given to the banking institution, signed by any
50 one of the joint tenants, not to permit such payment,
51 pledge or encumbrance. The giving of the notice
52 required by this section to any of the joint deposit
53 account owners shall be deemed effective notice to all
54 owners of the joint deposit account.

55 (e) If a pledge or encumbrance of any joint account
56 created pursuant to this section is made to a banking
57 institution and the banking institution has not received,
58 prior to the date of the pledge, any written notice signed
59 by any one of the joint tenants prohibiting such a pledge
60 or encumbrance, the banking institution shall not be
61 liable to any one of the joint tenants for its recourse
62 against the deposit in accordance with the terms of the
63 pledge.

64 (f) A banking institution may pay the entire amount
65 of a deposit account created pursuant to this section to
66 a creditor or other claimant of any one of the joint
67 tenants in response to legal process employed by the
68 creditor including, but not limited to, garnishment,
69 suggestion, or execution, regardless of any notice
70 received from any of the joint tenants. Upon such
71 payment, the banking institution shall be released and
72 discharged from all payments on account of such
73 deposit: *Provided*, That payment by a banking institu-
74 tion to any such creditor shall be without prejudice to
75 any right or claim of any joint tenant against the
76 creditor or any other person to recover his interest in
77 the deposit.

78 (g) The commissioner shall promulgate rules in
79 accordance with the provisions of chapter twenty-nine-
80 a of this code regarding the approval of forms and
81 procedures required by this section.

CHAPTER 85

(H. B. 4140—By Delegate S. Cook)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a, relating to safety and welfare of employees; and establishing a guaranteed meal break for all employees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SAFETY AND WELFARE OF EMPLOYEES.

§21-3-10a. Meal breaks.

- 1 During the course of a workday of six or more hours,
- 2 all employers shall make available for each of their
- 3 employees, at least twenty minutes for meal breaks, at
- 4 times reasonably designated by the employer. This
- 5 provision shall be required in all situations where
- 6 employees are not afforded necessary breaks and/or
- 7 permitted to eat lunch while working.

CHAPTER 86

(H. B. 4133—By Delegates S. Williams, H. White,
Phillips, Rutledge and Harrison)

[Passed March 10, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections thirteen and eighteen, article six, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to distress that may be levied on the goods of a lessee.

Be it enacted by the Legislature of West Virginia:

That sections thirteen and eighteen, article six, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follow:

ARTICLE 6. LANDLORD AND TENANT.

§37-6-13. Property subject to distress.

§37-6-18. Removal of goods by third party having lien.

§37-6-13. Property subject to distress.

1 The distress may be levied on any goods of the lessee,
2 or his assignee or undertenant, found on the premises,
3 or which may have been removed therefrom not more
4 than thirty days. If the goods of such lessee, assignee or
5 undertenant, when carried on the premises, are subject
6 to a lien which is valid against his creditors, his interest
7 only in such goods shall be liable to such distress. If any
8 lien be created thereon while they are upon the leased
9 premises, they shall be liable to distress, but for not
10 more than one year's rent, whether it shall have accrued
11 before or after the creation of the lien: *Provided*, That
12 if the goods are subject to a perfected purchase money
13 security interest, as defined in section one hundred
14 seven, article nine, chapter forty-six of this code, and
15 that such purchase money security interest is in effect
16 under the terms set forth in section four hundred three,
17 article nine of chapter forty-six of this code, then the
18 goods are liable to distress only to the extent of the
19 unencumbered interest of the lessee, assignee or
20 undertenant. No goods shall be liable to distress other
21 than such as are declared to be so liable in this section.

§37-6-18. Removal of goods by third party having lien.

1 If, after the commencement of any tenancy, a lien be
2 obtained or created by trust deed, mortgage, or other-
3 wise, upon the interest or property in goods on premises
4 leased or rented, of any person liable for the rent, the
5 party having such lien may remove such goods from the
6 premises on the following terms, and not otherwise, that
7 is to say: On the terms of paying to the person entitled
8 to the rent, so much as is in arrear, and securing to him

9 so much as is to become due; what is so paid or secured
10 not being more altogether than a year's rent in any case:
11 *Provided*, That if the party removing such goods has
12 perfected a purchase money security interest in the
13 goods, as defined in section one hundred seven, article
14 nine, chapter forty-six of this code and that such
15 purchase money security interest is in effect under the
16 terms set forth in section four hundred three, article
17 nine, chapter forty-six of this code, then the goods are
18 liable to distress only to the extent of the unencumbered
19 interest of the lessee, assignee or undertenant. If the
20 goods be taken under legal process, the officer executing
21 it shall, out of the proceeds of the goods, make such
22 payment of what is in arrear; and, as to what is to
23 become due, he shall sell a sufficient portion of the goods
24 on a credit till then, taking from the purchaser bond,
25 with good security, payable to the person so entitled, and
26 delivering such bond to him. If the goods be not taken
27 under legal process, such payment and security shall be
28 made and given before their removal. Neither this nor
29 any other section of this article shall affect any lien for
30 taxes or levies.

CHAPTER 87

(Com. Sub. for H. B. 4043—By Delegates Rowe, Reed, Huffman,
Manuel, Tribett and Faircloth)

[Passed March 3, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact sections ten and thirteen, article two, chapter eleven-a 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 to the disposition of delinquent, nonentered, escheated and waste and unappropriated lands.

Be it enacted by the Legislature of West Virginia:

That sections ten and thirteen, article two, chapter eleven-a 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

2. **Delinquency and Methods of Enforcing Payment.**
3. **Sale of Tax Liens and Nonentered, Escheated and Waste and Unappropriated Lands.**
4. **Remedies Relating to Tax Sales.**

ARTICLE 2. DELINQUENCY AND METHODS OF ENFORCING PAYMENT.

§11A-2-10. Sale of tax liens on real estate.

§11A-2-13. Publication and posting of delinquent tax lists.

§11A-2-10. Sale of tax liens on real estate.

- 1 In addition to the methods for the collection of taxes
- 2 provided for in this article, tax liens on real estate may
- 3 be sold for the taxes assessed thereon in the manner
- 4 prescribed in article three of this chapter.

§11A-2-13. Publication and posting of delinquent tax lists.

- 1 A copy of each of the delinquent lists shall be posted
- 2 at the front door of the courthouse of the county at least
- 3 two weeks before the session of the county commission
- 4 at which they are to be presented for examination. At
- 5 the same time a copy of each list shall be published as
- 6 a Class I-O legal advertisement in compliance with the
- 7 provisions of article three, chapter fifty-nine of this code,
- 8 and the publication area for such publication shall be
- 9 the county. Only the aggregate amount of the taxes owed
- 10 by each person need be published. To cover the costs of
- 11 preparing, publishing and posting the delinquent lists,
- 12 a charge of ten dollars shall be added to the taxes and
- 13 interest already due on each item listed.

- 14 Any person whose taxes were delinquent on May first
- 15 may have his name removed from the delinquent lists
- 16 prior to the time the same is delivered to the newspapers
- 17 for publication by paying to the sheriff the full amount
- 18 of the taxes and costs owed by such person at the date
- 19 of such redemption. The sheriff shall collect a charge of
- 20 only three dollars if redemption is made before the list

21 is delivered for publication. Costs collected by the sheriff
 22 hereunder which are not expended for publication shall
 23 be paid into the general county fund.

**ARTICLE 3. SALE OF TAX LIENS AND NONENTERED,
 ESCHEATED AND WASTE AND UNAPPROP-
 RIATED LANDS.**

- §11A-3-1. Declaration of legislative purpose and policy.
- §11A-3-2. Second publication of list of delinquent real estate; notice.
- §11A-3-3. Waiver of notice by person claiming lien.
- §11A-3-4. Redemption after second publication and before sale.
- §11A-3-5. Sale by sheriff; immunity; penalty; mandamus.
- §11A-3-6. Purchase by sheriff and clerk of county commission prohibited; co-owner free to purchase at tax sale.
- §11A-3-7. Suspension from sale; amended delinquent lists; subsequent sale.
- §11A-3-8. Certification of unsold property to the auditor.
- §11A-3-9. Sheriff's list of sales, suspensions, redemptions and certifications; oath.
- §11A-3-10. Sheriff to account for proceeds; disposition of surplus.
- §11A-3-11. Return of list of sales, suspensions and redemptions.
- §11A-3-12. Amendment of such list.
- §11A-3-13. Publication by sheriff of sales list.
- §11A-3-14. Purchase by individual at tax sale; certificate of sale.
- §11A-3-15. Certificate of sale assignable.
- §11A-3-16. Subsequent tax payments by purchaser.
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- §11A-3-19. What purchaser must do before he can secure deed.
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- §11A-3-21. Notice to redeem.
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- §11A-3-23. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.
- §11A-3-24. Notice of redemption to purchaser; moneys received by sheriff.
- §11A-3-25. Distribution of surplus to purchaser.
- §11A-3-26. Certificate of redemption issued by clerk; recordation; disposition of redemption money.
- §11A-3-27. Deed to purchaser; record.
- §11A-3-28. Compelling service of notice or execution of deed.
- §11A-3-29. One deed for separate purchases.
- §11A-3-30. Title acquired by individual purchaser; action to quiet title.
- §11A-3-31. Effect of irregularity on title acquired by purchaser.
- §11A-3-32. Sheriff to keep proceeds in separate accounts; disposition.
- §11A-3-33. State commissioner of delinquent and nonentered lands.
- §11A-3-34. Deputy commissioners of delinquent and nonentered lands; bond.
- §11A-3-35. Land record in auditor's office.
- §11A-3-36. Operating fund for land department in auditor's office.
- §11A-3-37. Disposition of nonentered lands.

- §11A-3-38. Redemption of nonentered or certified lands.
- §11A-3-39. Certificate of redemption issued by auditor; recordation.
- §11A-3-40. Compulsory redemption at election of auditor.
- §11A-3-41. Auditor to report redemptions to county officers; disposition of redemption money; credit of state taxes to proper fund.
- §11A-3-42. Lands subject to sale by deputy commissioner.
- §11A-3-43. Officers to report lands subject to sale.
- §11A-3-44. Auditor to certify list of lands to be sold; lands so certified are subject to sale.
- §11A-3-45. Deputy commissioner to hold annual auction.
- §11A-3-46. Publication of notice of auction.
- §11A-3-47. Redemption prior to sale.
- §11A-3-48. Unsold lands subject to sale without auction or additional advertising.
- §11A-3-49. Purchase by owner or deputy commissioner or other officers prohibited; co-owner free to purchase at sale.
- §11A-3-50. Receipt to purchaser for purchase price.
- §11A-3-51. Deputy commissioner to report sales to auditor; auditor to approve sales.
- §11A-3-52. What purchaser must do before he can secure a deed.
- §11A-3-53. Refund to purchaser of payment made at deputy commissioner's sale where property is subject of an erroneous assessment or is otherwise nonexistent.
- §11A-3-54. Notice to redeem.
- §11A-3-55. Service of notice.
- §11A-3-56. Redemption from purchase; receipt; list of redemptions; certificate of redemption; lien; lien of person redeeming interest of another; record.
- §11A-3-57. Notice of redemption to purchaser; moneys received by sheriff.
- §11A-3-58. Distribution of surplus to purchaser.
- §11A-3-59. Deed to purchaser; record.
- §11A-3-60. Compelling service of notice or execution of deed.
- §11A-3-61. One deed for separate purchases.
- §11A-3-62. Title acquired by individual purchaser.
- §11A-3-63. Effect of irregularity on title acquired by purchaser.
- §11A-3-64. Sheriff to receive proceeds of deputy commissioners; sales and redemptions from the deputy commissioner; disposition.
- §11A-3-65. Right of former owner to surplus proceeds.
- §11A-3-66. Compensation of deputy commissioner.
- §11A-3-67. Liability of officer failing to perform duty; penalty.
- §11A-3-68. Disposition of lands heretofore purchased by or forfeited to state.

PART I

§11A-3-1. Declaration of legislative purpose and policy.

- 1 In view of the paramount necessity of providing
- 2 regular tax income for the state, county and municipal
- 3 governments, particularly for school purposes; and in
- 4 view of the further fact that delinquent land not only
- 5 constitutes a public liability, but also represents a

6 failure on the part of delinquent private owners to bear
7 a fair share of the costs of government; and in view of
8 the rights of owners of real property to adequate notice
9 and an opportunity for redemption before they are
10 divested of their interests in real property for failure to
11 pay taxes or have their property entered on the land-
12 books; and in view of the fact that the circuit court suits
13 heretofore provided prior to deputy commissioners' sales
14 are unnecessary and a burden on the judiciary of the
15 state; and in view of the necessity to continue the
16 mechanism for the disposition of escheated and waste
17 and unappropriated lands; now therefore, the Legisla-
18 ture declares that its purposes in the enactment of this
19 article are as follows: (1) To provide for the speedy and
20 expeditious enforcement of the tax claims of the state
21 and its subdivisions; (2) to provide for the transfer of
22 delinquent and nonentered lands to those more respon-
23 sible to, or better able to bear, the duties of citizenship
24 than were the former owners; (3) to secure adequate
25 notice to owners of delinquent and nonentered property
26 of the pending issuance of a tax deed; (4) to permit
27 deputy commissioners of delinquent and nonentered
28 lands to sell such lands without the necessity of
29 proceedings in the circuit courts; (5) to reduce the
30 expense and burden on the state and its subdivisions of
31 tax sales so that such sales may be conducted in an
32 efficient manner while respecting the due process rights
33 of owners of real property; and (6) to provide for the
34 disposition of escheated and waste and unappropriated
35 lands.

§11A-3-2. Second publication of list of delinquent real estate; notice.

1 (a) On or before September tenth of each year, the
2 sheriff shall prepare a second list of delinquent lands,
3 which shall include all real estate in his county
4 remaining delinquent as of September first, together
5 with a notice of sale, in form or effect as follows:

6 Notice is hereby given that tax liens for the following
7 described tracts or lots of land or undivided interests
8 therein in the County of _____ which are
9 delinquent for the nonpayment of taxes for the year (or

10 years) 19____, will be offered for sale by the undersigned
 11 sheriff (or collector) at public auction at the front door
 12 of the courthouse of the county, between the hours of ten
 13 in the morning and four in the afternoon, on the _____
 14 day of _____, 19____

15 Tax liens on each unredeemed tract or lot, or each
 16 unredeemed part thereof or undivided interest therein,
 17 will be sold at public auction to the highest bidder for
 18 cash in an amount which shall not be less than the taxes,
 19 interest and charges which shall be due thereon to the
 20 date of sale, as set forth in the following table:

21	Name of person	Quantity	Local	Total amount of taxes,
22	charged	of	descrip-	interest and charges
23	with taxes	land	tion	due to date of sale

24 Any of the aforesaid tracts or lots, or part thereof or
 25 an undivided interest therein, may be redeemed by the
 26 payment to the undersigned sheriff (or collector) before
 27 sale, of the total amount of taxes, interest and charges
 28 due thereon up to the date of redemption.

29 Given under my hand this _____ day of
 30 _____, 19____

31
 32

 Sheriff (or collector).

33 The sheriff shall publish the list and notice prior to
 34 the sale date fixed in the notice as a Class III-O legal
 35 advertisement in compliance with the provisions of
 36 article three, chapter fifty-nine of this code, and the
 37 publication area for such publication shall be the county.

38 (b) In addition to such publication, no less than thirty
 39 days prior to the sale the sheriff shall send a notice of
 40 such delinquency and the date of sale by certified mail
 41 (1) to the last known address of each person listed in the
 42 landbooks whose taxes are delinquent, (2) to each person
 43 having a lien on real property upon which the taxes are
 44 due as disclosed by a statement filed with the sheriff
 45 pursuant to the provisions of section three of this article,
 46 (3) to each other person with an interest in the property
 47 or with a fiduciary relationship to a person with an

48 interest in the property who has in writing delivered to
49 the sheriff on a form prescribed by the tax commis-
50 sioner a request for such notice of delinquency, and (4)
51 in the case of property which includes a mineral interest
52 but does not include an interest in the surface other than
53 an interest for the purpose of developing the minerals,
54 to each person who has in writing delivered to the
55 sheriff, on a form prescribed by the tax commissioner,
56 a request for such notice which identifies the person as
57 an owner of an interest in the surface of real property
58 that is included in the boundaries of such property:
59 *Provided*, That in a case where one owner owns more
60 than one parcel of real property upon which taxes are
61 delinquent, the sheriff may, at his option, mail separate
62 notices to the owner and each lienholder for each parcel,
63 or may prepare and mail to the owner and each
64 lienholder a single notice which pertains to all such
65 delinquent parcels. If he elects to mail only one notice,
66 that notice shall set forth a legally sufficient description
67 of all parcels of property on which taxes are delinquent.
68 In no event shall failure to receive the mailed notice by
69 the landowner or lienholder affect the validity of the
70 title of the property conveyed if it is conveyed pursuant
71 to sections twenty-seven or fifty-nine of this article.

72 (c) (1) To cover the cost of preparing and publishing
73 the second delinquent list, a charge of ten dollars shall
74 be added to the taxes, interest and charges already due
75 on each item and all such charges shall be stated in the
76 list as a part of the total amount due.

77 (2) To cover the cost of preparing and mailing notice
78 to the landowner, lienholder or any other person entitled
79 thereto pursuant to this section, a charge of five dollars
80 per addressee shall be added to the taxes, interest and
81 charges already due on each item and all such charges
82 shall be stated in the list as a part of the total amount
83 due.

84 (d) Any person whose taxes were delinquent on
85 September first may have his name removed from the
86 delinquent list prior to the time the same is delivered
87 to the newspapers for publication by paying to the
88 sheriff the full amount of taxes and costs owed by such

89 person at the date of such redemption. In such case, the
90 sheriff shall include but three dollars of the costs
91 provided in this section in making such redemption.
92 Costs collected by the sheriff hereunder which are not
93 expended for publication and mailing shall be paid into
94 the general county fund.

§11A-3-3. Waiver of notice by person claiming lien.

1 (a) Any person claiming a lien against real property
2 shall be deemed to have waived any right to notice
3 provided by sections two, twenty-two and fifty-five of
4 this article unless he shall have filed a statement
5 declaring such interest with the sheriff. Such statement
6 shall be filed upon creation of the lien and upon release
7 of said lien and upon any change of the lienholder's
8 postal address since the original filing of such
9 statement.

10 Such statement shall be sufficient if it is filed at the
11 time the document creating the lien is filed and when
12 said lien is released on a form and in a manner to be
13 prescribed from time to time by the tax commissioner,
14 which form shall include the name of the person
15 charged with taxes for the real property; the tax map
16 and parcel number of the property; the assessor's
17 account number of the property; a description of the
18 interest claimed; and the address to which notice is to
19 be sent. The statement may be amended at any time by
20 the person claiming the lien, upon such amended form
21 and in such manner as may be prescribed by the tax
22 commissioner: *Provided*, That in counties with a
23 population greater than two hundred thousand any
24 person claiming liens against more than fifty parcels of
25 real estate may file such statement electronically in a
26 similar format as before described designed by the tax
27 commissioner.

28 (b) At least once a year prior to July first, the sheriff
29 shall publish a notice that any person claiming a lien
30 against taxable real property must file the statement
31 required by this section or such person will be deemed
32 to have waived any right to notice provided by the
33 preceding section. The notice shall be published as a

34 Class I legal advertisement in compliance with the
35 provisions of article three, chapter fifty-nine of this code,
36 and the publication area for such publication shall be
37 the county in which such land is located.

§11A-3-4. Redemption after second publication and before sale.

1 Any of the real estate included in the list published
2 pursuant to the provisions of section two of this article
3 may be redeemed at any time before sale as provided
4 in section eighteen, article two of this chapter.

§11A-3-5. Sale by sheriff; immunity; penalty; mandamus.

1 (a) The tax lien on each unredeemed tract or lot, or
2 each unredeemed part thereof or undivided interest
3 therein shall be sold by the sheriff at public auction to
4 the highest bidder for cash, between the hours of ten in
5 the morning and four in the afternoon on any business
6 working day after the fourteenth day of October and
7 before the twenty-third day of November: *Provided*,
8 That no tax lien for such unredeemed tract or lot or
9 undivided interest therein shall be sold upon any bid or
10 for any sum less than the total amount of taxes, interest
11 and charges then due: *Provided, however*, That at any
12 such sale, the tax lien for each unredeemed tract or lot,
13 or undivided interest therein, shall be offered for sale
14 and sold for the entirety of such tract or lot or undivided
15 interest therein as the same is described and constituted
16 as a unit or entity in the list and notice prescribed in
17 section two of this article. If the sale shall not be
18 completed on the day designated in the notice for the
19 holding of such sale, it shall be continued from day to
20 day between the same hours until disposition shall have
21 been made of all the land.

22 (b) Each sheriff is immune from liability if a loss or
23 claim results from the sale of a tax lien conducted
24 pursuant to the provisions of this article or from any
25 subsequent conveyance of the property to which the lien
26 attaches: *Provided*, That where a sheriff fails or refuses
27 to sell said tax lien pursuant to the provisions of this
28 article for reasons other than those provided by section
29 seven of this article, the sheriff may be compelled by

30 mandamus to sell the same upon the petition of the
31 auditor or any taxpayer of the county in a court of
32 competent jurisdiction.

**§11A-3-6. Purchase by sheriff and clerk of county
commission prohibited; co-owner free to
purchase at tax sale.**

1 (a) No sheriff, clerk of the county commission or
2 circuit court, assessor, nor deputy of any of them, shall
3 directly or indirectly become the purchaser, or be
4 interested in the purchase, of any tax lien on any real
5 estate at the tax sale or receive any tax deed conveying
6 such real estate. Any such officer so purchasing shall
7 forfeit one thousand dollars for each offense. The sale
8 of any tax lien on any real estate, or the conveyance of
9 such real estate by tax deed, to one of the officers named
10 in this section shall be voidable, at the instance of any
11 person having the right to redeem, until such real estate
12 reaches the hands of a bona fide purchaser.

13 (b) Any co-owner, except a coparcener, in the absence
14 of satisfactory proof of a fiduciary relationship, shall be
15 entitled to acquire by tax purchase for his own account
16 the tax lien on the interest of any, or all, of his co-owners
17 in any real estate, and to receive a tax deed conveying
18 such interest without being required to hold such tax
19 lien or interest or interests under any constructive trust.
20 There shall be a prima facie presumption against the
21 existence of any such constructive trust.

**§11A-3-7. Suspension from sale; amended delinquent
lists; subsequent sale.**

1 (a) Whenever it shall appear to the sheriff that any
2 real estate included in the list has been previously
3 conveyed by deed and no tax thereon is currently
4 delinquent, or that the tax lien thereon has been sold
5 previously and not redeemed, or that the tax lien
6 thereon ought not to be sold for the amount stated
7 therein, he shall suspend the sale thereof and report his
8 reasons therefor to the county commission and to the
9 auditor. If the commission finds that the tax lien on the
10 real estate ought not to be sold, it shall so order; but if
11 the commission finds that the tax lien on the real estate

12 ought to be sold for the amount stated, or for a greater
 13 or less amount, it shall order the sheriff to include such
 14 real estate in his next September list, unless sooner
 15 redeemed.

16 (b) In the event the list and notice of sale prescribed
 17 in section two of this article is not published, posted and
 18 completed in the manner provided by said section two,
 19 so that it is impossible for that reason, or by reason of
 20 omission of any necessary procedural act, for the sheriff
 21 to make sale of the tax lien for the real estate embraced
 22 in said list pursuant to the provisions of this chapter,
 23 then and in that event the sheriff shall certify to the
 24 auditor, on or before the second day of December
 25 following the month in which such sale should have been
 26 held, an amended list or lists of such taxes which then
 27 remain delinquent. The sheriff shall include the real
 28 estate in the last-mentioned amended list or lists in his
 29 next September list, unless sooner redeemed.

§11A-3-8. Certification of unsold property to the auditor.

1 If no person present bids the amount of taxes, interest
 2 and charges due on any real estate offered for sale, the
 3 sheriff shall certify the real estate to the auditor for
 4 disposition pursuant to section forty-four of this article,
 5 subject, however, to the right of redemption provided by
 6 section thirty-eight of this article. The auditor shall
 7 prescribe the form by which the sheriff certifies the
 8 property.

**§11A-3-9. Sheriff's list of sales, suspensions, redemptions
 and certifications; oath.**

1 As soon as the sale provided for in section five of this
 2 article has been completed, the sheriff shall prepare a
 3 list of all tax liens on delinquent real estate purchased
 4 at the sale, or suspended from sale, or redeemed before
 5 sale, or certified to the auditor. The heading of the list
 6 shall be in form or effect as follows:

7 List of sales of tax liens on real estate in the county
 8 of _____, returned delinquent for nonpay-
 9 ment of taxes thereon for the year (or years) 19____, and
 10 sold in the month (or months) of _____,

11 19____, or suspended from sale, or redeemed before sale,
12 or certified to the auditor.

13 The sheriff shall, at the foot of such list, subscribe an
14 oath, which shall be subscribed before and certified by
15 some person duly authorized to administer oaths, in
16 form or effect as follows:

17 I, _____, sheriff (or deputy sheriff or
18 collector) of the county of _____, do swear
19 that the above list contains a true account of all the tax
20 liens on real estate within my county returned delin-
21 quent for nonpayment of taxes thereon for the year (or
22 years) 19____, which were sold by me or which were
23 suspended from sale or redeemed before sale or certified
24 to the auditor, and that I am not now, nor have I at any
25 time been, directly or indirectly interested in the
26 purchase of any such tax liens.

27 Except for the heading and the oath, the tax commis-
28 sioner shall prescribe the form of the list.

§11A-3-10. Sheriff to account for proceeds; disposition of surplus.

1 (a) The sheriff shall account for the proceeds of all
2 sales and redemptions included in such list in the same
3 way he accounts for other taxes collected by him, except
4 that if the purchase money paid for any property sold
5 is in excess of the amount of taxes, interest and charges
6 due thereon, the surplus shall be deposited in a special
7 county fund to be known and designated as the "sale of
8 tax lien surplus fund". Where there is a redemption
9 after the sale, the sheriff shall also deposit into said fund
10 the amount of taxes, interest and charges due on the
11 date of the sale, plus the interest at the rate of one
12 percent per month from the date of sale to the date of
13 redemption, described in subdivision (2), subsection (b),
14 section twenty-four of this article. Such surpluses shall
15 be disposed of as follows:

16 (1) In any case where the property was redeemed,
17 such surplus shall be distributed to the person or
18 persons who purchased the tax lien thereon, or the heirs,
19 devisees, legatees, executors, administrators, successors

20 or assigns thereof, if a proper claim therefor is filed
21 with the sheriff within two years from and after the date
22 of the sale; or

23 (2) If a claim as specified in subdivision (1) hereof is
24 not timely filed, or if there was no redemption, such
25 surplus shall be distributed to the person or persons who
26 owned the property at the time of the sale, or the heirs,
27 devisees, legatees, executors, administrators, successors
28 or assigns thereof, if a proper claim therefor is filed
29 with the sheriff within three years from and after the
30 date of the sale; or

31 (3) If there be no proper claim filed under either
32 subdivision (1) or (2) hereof within the time limits
33 aforesaid, all claims to such surplus shall be barred and
34 such surplus shall be distributed by the sheriff in the
35 manner provided by law for the distribution of property
36 taxes collected by him.

37 (b) All real estate included in the first delinquent list
38 sent to the auditor, and not accounted for in the list of
39 sales, suspensions, redemptions and certifications, shall
40 be deemed to have been redeemed before sale, and the
41 taxes, interest and charges due thereon shall be
42 accounted for by the sheriff as if they had been received
43 by him before the sale.

§11A-3-11. Return of list of sales, suspensions and redemptions.

1 (a) Within one month after completion of the sale, the
2 sheriff shall deliver the original list of sales, suspensions
3 and redemptions described in section nine of this article,
4 with a copy thereof, to the clerk of the county commis-
5 sion. The clerk shall bind the original of such list in a
6 permanent book to be kept for the purpose in his office,
7 and shall note each sale and suspension, each redemp-
8 tion not previously noted, and each certification on his
9 record of delinquent lands. The clerk, within ten days
10 after delivery of the list to him, shall transmit the copy
11 to the auditor, who shall note each sale, suspension,
12 redemption and certification on the record of delinquent
13 lands kept in his office.

14 (b) Any sheriff who fails to prepare and return the
15 list of sales, suspensions, redemptions and certifications
16 within the time required by this section shall forfeit not
17 less than fifty nor more than five hundred dollars, for
18 the benefit of the general school fund, to be recovered
19 by the auditor or by any taxpayer of the county on
20 motion in a court of competent jurisdiction. Upon the
21 petition of any person interested, the sheriff may be
22 compelled by mandamus to make out and return such
23 list, and the proceedings thereon shall be at his cost.

§11A-3-12. Amendment of such list.

1 If the sheriff shall make any error or omission in the
2 list of sales, suspensions, redemptions and certifications
3 returned to the clerk of the county commission, he or
4 any person interested may, within six months after the
5 sale, apply by petition to the county commission for an
6 order permitting or requiring amendment of the list.
7 Any person who might be prejudiced by the proposed
8 amendment must, if found within the county, be given
9 at least ten days' notice of such application. Upon proof
10 of the error or mistake the commission shall make an
11 order permitting or requiring the sheriff to file an
12 amended list with the clerk of the commission. The
13 sheriff shall thereupon prepare and deliver to the clerk
14 of the commission the amended list and a copy thereof,
15 with a copy of the order of the commission permitting
16 or requiring it to be filed attached to the list and to the
17 copy. The clerk shall substitute the original of the
18 amended list for the list already in his office, and make
19 the necessary corrections on his record of delinquent
20 lands. The clerk shall transmit the copy of the amended
21 list to the auditor who shall note the corrections on his
22 record of delinquent lands.

§11A-3-13. Publication by sheriff of sales list.

1 Within one month after completion of the sale, the
2 sheriff shall prepare and publish a list of all the sales
3 and certifications made by him, in form or effect as
4 follows, which list shall be published as a Class II-O
5 legal advertisement in compliance with the provisions of

6 article three, chapter fifty-nine of this code, and the
7 publication area for such publication shall be the county.

8 List of tax liens on real estate sold in the county of
9 _____, in the month (or months) of
10 _____, 19____, for nonpayment of taxes
11 thereon for the year (or years) 19____, and purchased
12 by individuals or certified to the auditor of the state of
13 West Virginia:

14	Name of	Local	Quantity			
15	person	descrip-	of land	Name	Whole	
16	charged	tion	Quantity	for which	amount	
17	with	of	of land	tax lien	of	paid by
18	taxes	lands	charged	is sold	purchaser	purchaser

19 The owner of any real estate listed above, or any other
20 person entitled to pay the taxes thereon, may, however,
21 redeem such real estate as provided by law.

22 Given under my hand this _____ day of
23 _____, 19_____.

24 To cover the costs of preparing and publishing such
25 list, a charge of ten dollars shall be added to the taxes,
26 interest and charges already due on each item listed.

§11A-3-14. Purchase by individual at tax sale; certificate of sale.

1 (a) If any person, being the highest bidder present at
2 the sale provided for in section five of this article, bids
3 and pays at least the amount of taxes, interest and
4 charges for which the tax lien on any real estate is
5 offered for sale, the sheriff shall issue to him a
6 certificate of sale for the purchase money. The heading
7 of the certificate shall be:

8 Memorandum of tax lien on real estate sold in the
9 county of _____ on this _____ day
10 of _____, 19____ for the nonpayment of
11 taxes charged thereon for the year (or years) 19____ .

12 Except for the heading, the tax commissioner shall
13 prescribe the form of the receipt.

14 (b) The certificate of sale shall describe the real estate

15 subject to the tax lien that was sold, the total amount
16 of all taxes, interest, penalties and costs paid for each
17 lot or tract, and the rate of interest to which the
18 purchaser shall be entitled upon redemption. The
19 certificate shall also set forth columns for the entry of
20 subsequent taxes and costs paid. For each certificate so
21 delivered, the purchaser shall pay a fee of ten dollars,
22 and such amount shall be included in the costs described
23 therein.

§11A-3-15. Certificate of sale assignable.

1 The certificate of sale shall be assignable by endor-
2 sement, and an assignment thereof, when entered upon
3 the delinquent lands book of the clerk of the county
4 commission, shall vest in the assignee or his legal
5 representative all the right and title of the original
6 purchaser. The clerk shall be entitled to a fee of two
7 dollars for the entry thereof.

§11A-3-16. Subsequent tax payments by purchaser.

1 Any person desiring to pay any subsequent taxes on
2 lands for which he holds the certificate of sale described
3 in section fourteen or fifteen of this article shall produce
4 such certificate to the sheriff, who shall endorse the
5 amount of such subsequent taxes and the date of
6 payment thereof in his records upon the payment to the
7 sheriff of a fee therefor in the amount of two dollars.
8 He shall also present such certificate to the clerk of the
9 county commission, who shall enter the amount of such
10 tax in his record of delinquent lands upon the payment
11 to the clerk of a fee therefor in the amount of two
12 dollars.

§11A-3-17. Sale of subsequent tax liens.

1 Whenever any tax lien on any real estate has been sold
2 at a tax sale to an individual purchaser, and the tax on
3 such real estate for the year of the sale or for any
4 subsequent year have become delinquent, the sheriff
5 shall include the real estate in the delinquent lists of the
6 proper year and shall sell any subsequent tax liens
7 therefor on the whole or a part thereof for taxes as if
8 the former sale had not occurred. The purchaser at the

9 first sale may, however, prevent the second sale by
10 paying the amount due, or he may redeem from the
11 second sale. If the purchaser bought the lien upon only
12 a part of the land at the first sale, he may prevent a
13 second sale thereof by paying the proportionate part of
14 the taxes assessed against the whole which are charge-
15 able to the part purchased.

§11A-3-18. Limitations on tax certificates.

1 (a) No lien upon real property conveyed by a tax
2 certificate of sale issued by a sheriff on account of any
3 delinquent property taxes shall remain a lien thereon
4 for a period longer than eighteen months after the
5 original issuance thereof.

6 (b) No tax deed shall issue on any tax sale evidenced
7 by a tax certificate of sale where such certificate has
8 ceased to be a lien pursuant to the provisions of this
9 section and application for such tax deed is not pending
10 at the time of the expiration of the limitation period
11 provided for in this section.

12 (c) Whenever a lien conveyed by a tax certificate of
13 sale has expired by reason of the provisions of this
14 section, the sheriff shall immediately issue a certificate
15 of cancellation describing the real estate included in the
16 certificate of purchase or tax certificate and giving the
17 date of cancellation; and he shall also make proper
18 entries in his records. He shall also present every such
19 certificate of cancellation to the county clerk who shall
20 enter the same in his records and file the same, and such
21 certificate and the record thereof shall be prima facie
22 evidence of the cancellation of the certificate of sale and
23 of the release of the lien of such certificate on the lands
24 therein described. Failure to record such certificate of
25 cancellation shall not extend the lien conveyed by the
26 certificate of sale. The sheriff and county clerk shall not
27 be entitled to any fees for the issuing of such certificate
28 of cancellation nor for the entries in their books made
29 under the provisions of this subsection.

§11A-3-19. What purchaser must do before he can secure deed.

1 (a) At any time after October thirty-first of the year
2 following the sheriff's sale, and on or before December
3 thirty-first of the same year, the purchaser, his heirs or
4 assigns, in order to secure a deed for the real estate
5 subject to the tax lien or liens purchased, shall: (1)
6 Prepare a list of those to be served with notice to redeem
7 and request the clerk to prepare and serve the notice
8 as provided in sections twenty-one and twenty-two of
9 this article; (2) deposit, or offer to deposit, with the clerk
10 a sum sufficient to cover the costs of preparing and
11 serving the notice; and (3) present the purchaser's
12 certificate of sale, or order of the county commission
13 where the certificate has been lost or wrongfully
14 withheld from the owner, to the clerk of the county
15 commission. For failure to meet these requirements, the
16 purchaser shall lose all the benefits of his purchase.

17 (b) If the person requesting preparation and service
18 of the notice is an assignee of the purchaser, he shall,
19 at the time of the request, file with the clerk a written
20 assignment to him of the purchaser's rights, executed,
21 acknowledged and certified in the manner required to
22 make a valid deed.

23 (c) Whenever any certificate given by the sheriff for
24 a tax lien on any land, or interest therein sold for
25 delinquent taxes, or any assignment thereof, is lost or
26 wrongfully withheld from the rightful owner thereof
27 and such land or interest has not been redeemed, the
28 county commission may receive evidence of such loss or
29 wrongful detention and, upon satisfactory proof of such
30 fact, may cause a certificate of such proof and finding,
31 properly attested by the county clerk under the seal of
32 the county, to be delivered to such rightful claimant, and
33 a record thereof shall be duly made by the county clerk
34 in the recorded proceedings of the commission.

**§11A-3-20. Refund to purchaser of payment made at
sheriff's sale where property is subject of
an erroneous assessment or is otherwise
nonexistent.**

1 If, after payment of the amount bid at a sheriff's sale,
2 the purchaser discovers that the lien purchased at such

3 sale is the subject of an erroneous assessment or is
 4 otherwise nonexistent, such purchaser shall submit the
 5 certificate of an attorney-at-law that the property is the
 6 subject of an erroneous assessment or is otherwise
 7 nonexistent. Upon receipt thereof, the sheriff shall cause
 8 the moneys so paid to be refunded. Upon refund, the
 9 sheriff shall inform the assessor of the erroneous
 10 assessment for the purpose of having the assessor
 11 correct said error.

§11A-3-21. Notice to redeem.

1 Whenever the provisions of section nineteen of this
 2 article have been complied with, the clerk of the county
 3 commission shall thereupon prepare a notice in form or
 4 effect as follows:

5 To _____

6 You will take notice that _____, the
 7 purchaser (or _____, the assignee, heir or
 8 devisee of _____, the purchaser) of the tax
 9 lien(s) on the following real estate, _____,
 10 (here describe the real estate for which the tax lien(s)
 11 thereon were sold) located in _____, (here
 12 name the city, town or village in which the real estate
 13 is situated or, if not within a city, town or village, give
 14 the district and a general description) which was
 15 returned delinquent in the name of _____,
 16 and for which the tax lien(s) thereon was sold by the
 17 sheriff of _____ County at the sale for delinquent
 18 taxes made on the _____ day of
 19 _____, 19____, has requested that you be
 20 notified that a deed for such real estate will be made
 21 to him on or after the first day of April, 19____, as
 22 provided by law, unless before that day you redeem such
 23 real estate. The amount you will have to pay to redeem
 24 on the last day, March thirty-first, will be as follows:

25 Amount paid sheriff at sale, with interest to March
 26 31st \$ _____.

27 Amount of taxes paid on the property, since the sale,
 28 with interest to March 31st \$ _____

29 Amount paid for title examination and preparation

30 of list of those to be served, and for preparation
 31 and service of the notice with interest to
 32 _____ \$ _____

33 Amount paid for other statutory costs (describe)
 34 _____ \$ _____

35 Total \$ _____

36 You may redeem at any time before March thirty-
 37 first by paying the above total less any unearned
 38 interest.

39 Given under my hand this day of _____,
 40 19____.

41 _____
 42 Clerk of the County Commission
 43 of _____ County,
 44 State of West Virginia

45 The clerk for his service in preparing the notice shall
 46 receive a fee of five dollars for the original and one
 47 dollar for each copy required. Any costs which must be
 48 expended in addition thereto for publication, or service
 49 of such notice in the manner provided for serving
 50 process commencing a civil action, or for service of
 51 process by certified mail, shall be charged by the clerk.
 52 All costs provided by this section shall be included as
 53 redemption costs and included in the notice described
 54 herein.

§11A-3-22. Service of notice.

1 As soon as the clerk has prepared the notice provided
 2 for in section twenty-one of this article, he shall cause
 3 it to be served upon all persons named on the list
 4 generated by the purchaser pursuant to the provisions
 5 of section nineteen of this article.

6 The notice shall be served upon all such persons
 7 residing or found in the state in the manner provided
 8 for serving process commencing a civil action, or by
 9 certified mail, return receipt requested. The notice shall
 10 be served on or before the tenth day following the
 11 request for such notice.

12 If any person entitled to notice is a nonresident of this
13 state, whose address is known to the purchaser, he shall
14 be served at such address by certified mail, return
15 receipt requested.

16 If the address of any person entitled to notice, whether
17 a resident or nonresident of this state, is unknown to the
18 purchaser and cannot be discovered by due diligence on
19 the part of the purchaser, the notice shall be served by
20 publication as a Class III-O legal advertisement in
21 compliance with the provisions of article three, chapter
22 fifty-nine of this code, and the publication area for such
23 publication shall be the county in which such real estate
24 is located. If service by publication is necessary,
25 publication shall be commenced when personal service
26 is required as set forth above, and a copy of the notice
27 shall at the same time be sent by certified mail, return
28 receipt requested, to the last known address of the
29 person to be served. The return of service of such notice,
30 and the affidavit of publication, if any, shall be in the
31 manner provided for process generally and shall be filed
32 and preserved by the clerk in his office, together with
33 any return receipts for notices sent by certified mail.

**§11A-3-23. Redemption from purchase; receipt; list of
redemptions; lien; lien of person redeeming
interest of another; record.**

1 (a) After the sale of any tax lien on any real estate
2 pursuant to section five of this article, the owner of, or
3 any other person who was entitled to pay the taxes on,
4 any real estate for which a tax lien thereon was
5 purchased by an individual, may redeem at any time
6 before a tax deed is issued therefor. In order to redeem,
7 he must pay to the clerk of the county commission the
8 following amounts: (1) An amount equal to the taxes,
9 interest and charges due on the date of the sale, with
10 interest thereon at the rate of one percent per month
11 from the date of sale; (2) all other taxes thereon, which
12 have since been paid by the purchaser, his heirs or
13 assigns, with interest at the rate of one percent per
14 month from the date of payment; (3) such additional
15 expenses as may have been incurred in preparing the
16 list of those to be served with notice to redeem, and any

17 title examination incident thereto, with interest at the
18 rate of one percent per month from the date of payment,
19 but the amount he shall be required to pay, excluding
20 said interest, for such expenses incurred for the
21 preparation of the list of those to be served with notice
22 to redeem required by section nineteen of this article,
23 and any title examination incident thereto, shall not
24 exceed one hundred dollars; and (4) all additional
25 statutory costs paid by the purchaser. Where the clerk
26 has not received from the purchaser satisfactory proof
27 of the expenses incurred in preparing the notice to
28 redeem, and any examination of title incident thereto,
29 in the form of receipts or other evidence thereof, the
30 person redeeming shall pay the clerk the sum of one
31 hundred dollars plus interest thereon at the rate of one
32 percent per month from the date of the sale for
33 disposition by the sheriff pursuant to the provisions of
34 sections ten, twenty-four, twenty-five and thirty-two of
35 this article.

36 The person redeeming shall be given a receipt for the
37 payment.

38 (b) Any person who, by reason of the fact that no
39 provision is made for partial redemption of the tax lien
40 on real estate purchased by an individual, is compelled
41 in order to protect himself to redeem the tax lien on all
42 of such real estate when it belongs, in whole or in part,
43 to some other person, shall have a lien on the interest
44 of such other person for the amount paid to redeem such
45 interest. He shall lose his right to the lien, however,
46 unless within thirty days after payment he shall file
47 with the clerk of the county commission his claim in
48 writing against the owner of such interest, together with
49 the receipt provided for in this section. The clerk shall
50 docket the claim on the judgment lien docket in his
51 office and properly index the same. Such lien may be
52 enforced as other judgment liens are enforced.

§11A-3-24. Notice of redemption to purchaser; moneys received by sheriff.

1 (a) Upon payment of the sum necessary to redeem, the
2 clerk shall promptly notify the purchaser, his heirs or

3 assigns, by mail of the redemption, deliver to the sheriff
4 the redemption money paid, and note the fact of
5 redemption on his record of delinquent lands. The notice
6 by mail shall advise that upon the request of the
7 purchaser, his heirs or assigns, the sheriff shall pay to
8 the purchaser the sums described in section twenty-five
9 of this article.

10 (b) Of the redemption money received by the sheriff
11 pursuant to this section, the sheriff shall deposit into the
12 sale of tax lien surplus fund provided by section ten of
13 this article the amount thereof equal to (1) the surplus
14 of money paid in excess of the amount of the taxes,
15 interest and charges due and paid to the sheriff at the
16 sale; and (2) the amount of taxes, interest and charges
17 due on the date of the sale, plus the interest at the rate
18 of one percent per month thereon from the date of sale
19 to the date of redemption.

§11A-3-25. Distribution of surplus to purchaser.

1 (a) Where the land has been redeemed in the manner
2 set forth in section twenty-three of this article, and the
3 clerk has delivered the redemption money to the sheriff
4 pursuant to section twenty-four of this article, the
5 sheriff shall, upon request made of him by the pur-
6 chaser, his heirs or assigns, and upon delivery to the
7 sheriff of the certificate of sale or assignment thereof,
8 pay to the purchaser, his heirs or assigns the following
9 amounts: (1) From the sale of tax lien surplus fund
10 provided by section ten of this article, (A) the surplus
11 of money paid in excess of the amount of the taxes,
12 interest and charges due and paid to the sheriff at the
13 sale, and (B) the amount of taxes, interest and charges
14 due on the date of the sale, plus the interest at the rate
15 of one percent per month from the date of sale to the
16 date of redemption; (2) all other taxes thereon, which
17 have since been paid by the purchaser, his heirs or
18 assigns, with interest at the rate of one percent per
19 month from the date of payment; (3) such additional
20 expenses as may have been incurred in preparing the
21 list of those to be served with notice to redeem, and any
22 title examination incident thereto, with interest at the
23 rate of one percent per month from the date of payment,

24 but the amount which shall be paid, excluding said
25 interest, for such expenses incurred for the preparation
26 of the list of those to be served with notice to redeem
27 required by section nineteen of this article, and any title
28 examination incident thereto, shall not exceed one
29 hundred dollars; and (4) all additional statutory costs
30 paid by the purchaser.

31 (b) Where, pursuant to section twenty-three of this
32 article, the clerk has not received from the purchaser
33 satisfactory proof of the expenses incurred in preparing
34 the notice to redeem, and any title examination incident
35 thereto, in the form of receipts or other evidence thereof,
36 and therefore received from the purchaser as required
37 by said section and delivered to the sheriff the sum of
38 one hundred dollars plus interest thereon at the rate of
39 one percent per month from the date of the sale to the
40 date of redemption, and the sheriff has not received
41 from the purchaser such satisfactory proof of such
42 expenses within thirty days from the date of redemp-
43 tion, the sheriff shall refund such amount to the person
44 redeeming and the purchaser is barred from any claim
45 thereto. Where pursuant to section twenty-three of this
46 article, the clerk has received from the purchaser and
47 therefore delivered to the sheriff said sum of one
48 hundred dollars plus interest thereon at the rate of one
49 percent per month from the date of the sale to the date
50 of redemption, and the purchaser provides the sheriff
51 within thirty days from the date of redemption such
52 satisfactory proof of such expenses, and the amount of
53 such expenses is less than the amount paid by the person
54 redeeming, the sheriff shall refund the difference to the
55 person redeeming.

**§11A-3-26. Certificate of redemption issued by clerk;
recordation; disposition of redemption
money.**

1 (a) Upon payment of the sum necessary to redeem, the
2 clerk shall execute a certificate of redemption in
3 duplicate, which certificate shall specify the real estate
4 redeemed, or the part thereof or the interest therein, as
5 the case may be, together with any changes in respect
6 thereto which were made in the landbook and in the

7 record of delinquent lands; shall specify the year or
 8 years for which payment was made; and shall state that
 9 it is a receipt for the money paid and a release of the
 10 tax lien on the real estate redeemed. The original
 11 certificate shall be retained in the files in the clerk's
 12 office and one copy shall be delivered to the person
 13 redeeming. The clerk shall make any necessary changes
 14 in his record of delinquent lands and shall note the fact
 15 of redemption on such record, and shall record the
 16 certificate in a separate volume provided for the
 17 purpose.

18 The fee for issuing the certificate of redemption shall
 19 be twenty-five dollars.

20 (b) All certificates of redemption issued by the clerk
 21 in each year shall be numbered consecutively and shall
 22 be filed by the clerk in numerical order. Reference to
 23 the year and number of the certificate shall be included
 24 in the notation of redemption required herein. No fee
 25 shall be charged by the clerk for any recordation, filing
 26 or notation required by this section.

27 (c) In April of each year, the clerk shall prepare and
 28 certify to the auditor a list of all redemptions which
 29 have not been included in any other lists.

§11A-3-27. Deed to purchaser; record.

1 If the real estate described in the notice is not
 2 redeemed within the time specified therein, but in no
 3 event prior to the first day of April of the second year
 4 following the sheriff's sale, the person entitled thereto
 5 shall make and deliver to the clerk of the county
 6 commission at any time thereafter, subject to the
 7 provisions of section eighteen of this article, a quitclaim
 8 deed for such real estate in form or effect as follows:

9 This deed made this _____ day of
 10 _____, 19____, by and between
 11 _____, clerk of the county commission of
 12 _____ County, West Virginia, (or by and
 13 between _____, a commissioner appointed
 14 by the Circuit Court of _____ County, West
 15 Virginia) grantor, and _____, purchaser,

16 (or _____, heir, devisee or assignee of
 17 _____, purchaser,) grantee, witnesseth,
 18 that:

19 Whereas, In pursuance of the statutes in such case
 20 made and provided, _____, Sheriff of
 21 _____ County, (or _____, deputy for
 22 _____, Sheriff of _____ County,) (or
 23 _____, collector of _____
 24 County,) did, in the month of _____, in the
 25 year 19____, sell the tax lien(s) on real estate, here-
 26 inafter mentioned and described, for the taxes delin-
 27 quent thereon for the year (or years) 19____, and
 28 _____, (here insert name of purchaser) for
 29 the sum of \$_____, that being the amount
 30 of purchase money paid to the sheriff, did become the
 31 purchaser of the tax lien(s) on such real estate (or on
 32 _____ acres, part of the tract or land, or on an
 33 undivided _____ interest in such real
 34 estate) which was returned delinquent in the name of
 35 _____, and

36 Whereas, The clerk of the county commission has
 37 caused the notice to redeem to be served on all persons
 38 required by law to be served therewith; and

39 Whereas, The tax lien(s) on the real estate so pur-
 40 chased has not been redeemed in the manner provided
 41 by law and the time for redemption set in such notice
 42 has expired;

43 Now, therefore, the grantor, for and in consideration
 44 of the premises and in pursuance of the statutes, doth
 45 grant unto _____, grantee, his heirs and assigns
 46 forever, the real estate on which the tax lien(s) so pur-
 47 chased existed, situate in the county of _____,
 48 bounded and described as follows: _____.

49 Witness the following signature:

50 _____

51 Clerk of the County Commission of _____ County.

52 Except when ordered to do so, as provided in section
 53 twenty-eight of this article, no clerk of the county

54 commission shall execute and deliver such a deed more
55 than thirty days after the person entitled to the deed
56 delivers the same and requests the execution thereof.
57 Upon the clerk's determination that the deed presented
58 substantially complies with the requirements of this
59 section, the clerk shall execute the deed and acknowl-
60 edge the same, record the deed in the clerk's office, and
61 deliver the original thereof to the purchaser.

62 For the execution of the deed and for all the recording
63 required by this section, a fee of ten dollars shall be
64 charged, to be paid by the grantee upon delivery of the
65 deed. The deed, when duly acknowledged or proven,
66 shall be recorded by the clerk of the county commission
67 in the deed book in his office, together with assignment
68 from the purchaser, if one was made, the notice to
69 redeem, the return of service of such notice, the affidavit
70 of publication, if the notice was served by publication,
71 and any return receipts for notices sent by certified
72 mail.

§11A-3-28. Compelling service of notice or execution of deed.

1 If the clerk of the county commission fails or refuses
2 to prepare and serve the notice to redeem as required
3 in sections twenty-one and twenty-two of this article, the
4 person requesting the notice may, at any time within
5 two weeks after discovery of such failure or refusal, but
6 in no event later than sixty days following the date the
7 person requested that notice be prepared and served,
8 apply by petition to the circuit court of the county for
9 an order compelling the clerk to prepare and serve the
10 notice or appointing a commissioner to do so. If the
11 person requesting the notice fails to make such appli-
12 cation within the time allowed, he shall lose his right
13 to the notice, but his rights against the clerk under the
14 provisions of section sixty-seven of this article shall not
15 be affected. Notice given pursuant to an order of the
16 court or judge shall be as valid for all purposes as if
17 given within the time required by section twenty-two of
18 this article.

19 If the clerk fails or refuses to execute the deed as

20 required in section twenty-seven of this article, the
21 person requesting the deed may, at any time after such
22 failure or refusal, but not more than six months after
23 his right to the deed accrued, apply by petition to the
24 circuit court of the county for an order compelling the
25 clerk to execute the deed or appointing a commissioner
26 to do so. If the person requesting the deed fails to make
27 such application within the time allowed, he shall lose
28 his right to the deed, but his rights against the clerk
29 under the provisions of section sixty-seven of this article
30 shall not be affected. Any deed executed pursuant to an
31 order of the court or judge shall have the same force and
32 effect as if executed and delivered by the clerk within
33 the time specified in the preceding section.

34 Ten days' written notice of every such application
35 must be given to the clerk. If, upon the hearing of such
36 application, the court or judge is of the opinion that the
37 applicant is not entitled to the notice or deed requested,
38 the petition shall be dismissed at his costs; but if the
39 court or judge is of the opinion that he is entitled to such
40 notice or deed, then, upon his deposit with the clerk of
41 the circuit court of a sum sufficient to cover the costs
42 of preparing and serving the notice, unless such a
43 deposit has already been made with the clerk of the
44 county commission, an order shall be made by the court
45 or judge directing the clerk to prepare and serve the
46 notice or execute the deed, or appointing a commissioner
47 for the purpose, as the court or judge shall determine.
48 If it appears to the court or judge that the failure or
49 refusal of the clerk was without reasonable cause,
50 judgment shall be given against him for the costs of the
51 proceedings; otherwise the costs shall be paid by the
52 applicant.

53 Any commissioner appointed under the provisions of
54 this section shall be subject to the same liabilities as are
55 provided for the clerk. For the preparation of the notice
56 to redeem, he shall be entitled to the same fee as is
57 provided for the clerk. For the execution of the deed,
58 he shall also be entitled to a fee of ten dollars, to be paid
59 by the grantee upon delivery of the deed.

§11A-3-29. One deed for separate purchases.

1 Whenever one purchaser at the tax sale has purchased
2 tax liens on two or more pieces of real estate, or
3 undivided interests therein, charged with taxes for the
4 same year, or years, he, his heirs or assigns may request
5 the clerk of the county commission to execute a separate
6 deed for each piece of real estate, or undivided interest
7 therein, or separate deeds for some and one deed for the
8 remainder, or one deed for all, as he or they may prefer.
9 Every deed for two or more pieces of real estate, or
10 undivided interests therein, shall describe each piece of
11 real estate and each undivided interest separately.

**§11A-3-30. Title acquired by individual purchaser;
action to quiet title.**

1 (a) Whenever the purchaser of any tax lien on any real
2 estate sold at a tax sale, his heirs or assigns shall have
3 obtained a deed for such real estate from the clerk of
4 the county commission or from a commissioner ap-
5 pointed to make the deed, he or they shall thereby
6 acquire all such right, title and interest, in and to the
7 real estate, as was, at the time of the execution and
8 delivery of the deed, vested in or held by any person who
9 was entitled to redeem, unless such person is one who,
10 being required by law to have his interest separately
11 assessed and taxed, has done so and has paid all the
12 taxes due thereon, or unless the rights of such person
13 are expressly saved by the provisions of section six of
14 this article or section two, three, four or six, article four
15 of this chapter.

16 The tax deed shall be conclusive evidence of the
17 acquisition of such title. The title so acquired shall relate
18 back to July first of the year in which the taxes, for
19 nonpayment of which the tax lien on the real estate was
20 sold, were assessed.

21 (b) Any individual purchaser to whom a tax deed has
22 been issued may institute and prosecute actions to quiet
23 title in any such real estate conveyed thereby. Such
24 action may be maintained for all or any one or more of
25 the lots or tracts conveyed.

**§11A-3-31. Effect of irregularity on title acquired by
purchaser.**

1 No irregularity, error or mistake in respect to any
2 step in the procedure leading up to and including
3 delivery of the tax deed by the clerk shall invalidate the
4 title acquired by the purchaser unless such irregularity,
5 error or mistake is, by the provisions of section six of
6 this article or section two, three, four or six, article four
7 of this chapter, expressly made ground for instituting
8 a suit to set aside the sale or the deed.

**§11A-3-32. Sheriff to keep proceeds in separate accounts;
disposition.**

1 (a) The sheriff shall keep in a separate fund the
2 proceeds of all redemptions and sales paid to him under
3 the provisions of this chapter, except for those proceeds
4 for which a separate fund is directed by the provisions
5 of section sixty-four of this article. Out of the total
6 proceeds of each sale or redemption he shall in the order
7 of priority stated below credit the following amounts, for
8 payment as hereinafter provided: (1) To the general
9 county fund, such part as represents costs paid out of
10 such fund for publishing the sheriff's delinquent and
11 sales list and all other costs incurred by the sheriff
12 pursuant to the provisions of this article; (2) surplus
13 proceeds from the sale of tax liens on delinquent lands
14 shall be held by the sheriff for the periods provided for
15 in section ten of this article, and if no application is
16 made within the time therein specified, such surplus
17 shall be distributed by the sheriff in the manner
18 provided by law for the distribution of property taxes
19 collected by him; and (3) the balance, if any, of the
20 proceeds of the lands included in each suit shall be
21 prorated among the various taxing units on the basis of
22 the total amount of taxes due them in respect to the
23 lands that were sold or redeemed. The amounts so
24 determined shall be credited as follows, for payment as
25 hereinafter provided: (1) To the auditor, such part as
26 represents state taxes and interest; and (2) to the fund
27 kept by the sheriff for each local taxing unit, such part
28 as represents taxes and interest payable to such unit.

29 (b) All amounts which under the provisions of this
30 section were so credited by the sheriff to the auditor
31 shall be paid to him semiannually; and those credited

32 to the various local taxing units shall be transferred
33 semiannually by the sheriff to the fund kept by him for
34 each such taxing unit.

35 (c) The tax commissioner, in cooperation with the land
36 department in the auditor's office, shall prescribe the
37 form of the records to be kept by the sheriff for the
38 purposes of this section, and the method to be used by
39 him in making the necessary pro rata distributions.

PART II

§11A-3-33. State commissioner of delinquent and nonentered lands.

1 The state auditor shall ex officio be state commis-
2 sioner of delinquent and nonentered lands. The term
3 "auditor" whenever used in this chapter in connection
4 with delinquent, nonentered, escheated or waste and
5 unappropriated lands, shall be construed to refer to the
6 auditor in his capacity as state commissioner of
7 delinquent and nonentered lands.

8 The auditor is empowered, and it shall be his duty,
9 through the land department in his office, to administer
10 and carry into execution the laws with reference to such
11 lands. The auditor on behalf of the state shall have
12 power to hold and manage such lands, and to exercise
13 all other powers incident to the powers and duties
14 conferred upon him by this article.

§11A-3-34. Deputy commissioners of delinquent and nonentered lands; bond.

1 The auditor shall appoint for each county in the state
2 a deputy commissioner of delinquent and nonentered
3 lands. Persons serving in that capacity when this article
4 takes effect shall continue to serve, subject to the
5 provisions of this article. The auditor shall make new
6 appointments from time to time thereafter whenever
7 vacancies occur, or when in the auditor's judgment it is
8 deemed advisable. The auditor may promulgate rules
9 respecting the tenure of deputy commissioners. In the
10 absence of such rules, the deputy commissioner for each
11 county shall, so long as he satisfies the requirements of
12 this section in respect to professional qualifications and
13 bonding, continue to act without reappointment until the

14 auditor designates his successor.

15 The auditor shall appoint deputy commissioners in
16 such numbers and to serve such counties as the auditor
17 deems advisable to effect the purposes of this article.
18 Appointments shall be limited to persons duly licensed
19 to practice law in this state. Any person appointed as
20 deputy commissioner for a single county shall reside in
21 said county. Any person appointed as deputy commis-
22 sioner for more than one county shall reside in one of
23 the counties for which he has been appointed.

24 Whenever in respect to any land the deputy commis-
25 sioner, in his own judgment or in the opinion of the
26 auditor, is disqualified or otherwise unable to serve,
27 because of his personal interest, or because of his
28 representation of clients in matters affecting such land,
29 or because of vacancies or failure to act, the auditor may
30 appoint a special deputy, including an employee of his
31 office licensed to practice law in this state, to assume
32 all of the disqualified deputy commissioner's rights,
33 duties, responsibilities and liabilities relating to such
34 land.

35 The deputy commissioner shall be subject to the
36 orders and control of the auditor, shall be accountable
37 to him, and shall serve as his local agent within the
38 county. It shall be his duty to do whatever is required
39 of him by the auditor or by the provisions of this article.
40 The deputy commissioner before entering upon his
41 duties shall give a bond, with satisfactory corporate
42 surety, conditioned upon the faithful performance of his
43 duties and the payment of any forfeitures incurred. The
44 penalty of such bond shall be not less than twenty-five
45 thousand dollars nor more than one hundred thousand
46 dollars, as the auditor may direct. The premium
47 therefor shall be paid by the auditor out of the operating
48 fund for the land department in his office.

§11A-3-35. Land record in auditor's office.

1 The auditor shall prepare and keep in his office a
2 permanent record of all delinquent, nonentered,
3 escheated and waste and unappropriated lands. The
4 record shall as to every tract or lot listed set forth the

5 information available as to quantity, local description,
6 and, except in the case of waste and unappropriated
7 lands, the name of the former owner and the respective
8 dates of nonentry, or delinquency and certification to the
9 auditor, or escheat, as the case may be. The record shall
10 be prima facie evidence of all matters required by this
11 section to be set forth therein, including the correctness
12 of the description of lands as nonentered, delinquent,
13 escheated or waste and unappropriated.

**§11A-3-36. Operating fund for land department in
auditor's office.**

1 (a) The auditor shall establish a special operating
2 fund for the land department in his office. He shall pay
3 into such fund all redemption fees, all publication or
4 other charges collected by him, if such charges were
5 paid by or were payable to him, the unclaimed surplus
6 proceeds received by him from the sale of delinquent
7 and other lands pursuant to this article, and all
8 payments made to him under the provisions of sections
9 sixty-four and sixty-five of this article, except such part
10 thereof as represents state taxes and interest. All
11 payments so excepted shall be credited by the auditor
12 to the general school fund or other proper state fund.

13 (b) The operating fund shall be used by the auditor
14 in cases of deficits in land sales to pay any balances due
15 to deputy commissioners for services rendered, and any
16 unpaid costs including those for publication which have
17 accrued or will accrue under the provisions of this
18 article, to pay fees due surveyors under the provisions
19 of section forty-three of this article, and to pay for the
20 operation and maintenance of the land department in
21 his office. The surplus over and above the amount of one
22 hundred thousand dollars, remaining in the fund at the
23 end of any fiscal year, shall be paid by the auditor into
24 the general school fund.

§11A-3-37. Disposition of nonentered lands.

1 It is the duty of the owner of land to have his land
2 entered for taxation on the landbooks of the appropriate
3 county, have himself charged with the taxes due
4 thereon, and pay the same. Land which, for any five

5 successive years, shall not have been so entered and
6 charged shall, without any proceedings therefor, be
7 subject to the authority and control of the auditor and
8 such nonentered lands shall thereafter be subject to
9 transfer or sale under the provisions of this article
10 relating to the auditor's disposition of lands certified to
11 the auditor pursuant to section eight thereof.

§11A-3-38. Redemption of nonentered or certified lands.

1 (a) The owner of any real estate certified to the
2 auditor pursuant to section eight of this article, or of any
3 nonentered real estate subject to the authority of the
4 auditor pursuant to section thirty-seven of this article,
5 or any other person who was entitled to pay the taxes
6 thereon, may redeem such real estate from the auditor
7 at any time prior to the certification of such real estate
8 to the deputy commissioner as provided in section forty-
9 four of this article. Thereafter such real estate shall be
10 subject to disposition pursuant to section forty-four of
11 this article, and subsequent sections.

12 (b) In order to redeem the person seeking redemption
13 must pay to the auditor such of the following amounts
14 as may be due: (1) The taxes, interest and charges due
15 on the real estate on the date of certification to the
16 auditor or the discovery of the nonentry, with interest
17 at the rate of twelve percent per annum from the date
18 of such certification or discovery; (2) all taxes assessed
19 thereon for the year in which the certification occurred
20 or nonentry was discovered, with interest at the rate of
21 twelve percent per annum from the date on which they
22 became delinquent, except when such taxes are cur-
23 rently due and payable to the sheriff; (3) all taxes except
24 those for the current year which would have been
25 assessed thereon since the certification had the certifi-
26 cation not occurred, or which, in case of nonentered
27 lands, would have been assessed thereon had the land
28 been properly entered, with interest at the rate of twelve
29 percent per annum from the date on which such taxes
30 would have become delinquent: *Provided*, That in the
31 case of nonentered lands, the owner shall not be liable
32 for more than the taxes and interest which would have
33 become due and payable during the ten years imme-

34 diately preceding the date of the discovery of the
35 nonentry.

36 (c) In computing the amount due under subdivision
37 (3), subsection (b) of this section on real estate certified
38 to the auditor by the sheriff, the auditor shall use as the
39 basis for computation the classification and valuation
40 placed thereon by the assessor for each year since the
41 sale. If such valuation and classification have not been
42 made, he shall use the last valuation and classification
43 appearing on the property books. In computing the
44 amount due under subdivision (3), subsection (b) of this
45 section on nonentered real estate, the auditor shall use
46 as the basis for computation such classification and
47 valuation as may, at the request of the auditor or the
48 person redeeming, be certified to the auditor by the
49 assessor as the classification and valuation which in his
50 opinion would be proper for each year of nonentry.

51 (d) Redemption of an undivided interest included in
52 a group assessment shall not be permitted until the
53 applicable provisions of section nine or ten of article one
54 of this chapter have been complied with, except that
55 instead of presenting the assessor's certificate to the
56 sheriff as therein provided, the person redeeming shall
57 present it to the auditor, who, after making the
58 necessary changes in the land book, and in the record
59 of delinquent lands kept in his office, shall compute the
60 taxes due on the part or interest redeemed.

**§11A-3-39. Certificate of redemption issued by auditor;
recordation.**

1 (a) Upon payment of the sum necessary to redeem, the
2 auditor shall execute a certificate of redemption in
3 triplicate, which certificate shall specify the real estate
4 redeemed, or the interest therein, as the case may be,
5 together with any changes in respect thereto which were
6 made in the land book and in the record of delinquent
7 lands, shall specify the year or years for which payment
8 was made, and shall state that it is a receipt for the
9 money paid and a release of the state's lien against the
10 real estate redeemed. The original certificate shall be
11 retained in the files in the auditor's office, one copy shall

12 be delivered to the person redeeming and the second
13 copy shall be mailed by the auditor to the clerk of the
14 county commission of the county in which the real estate
15 is situated, who, after making any necessary changes in
16 his record of delinquent lands, shall note the fact of
17 redemption on such record, and shall record the
18 certificate in a separate volume provided for the
19 purpose.

20 The fee for issuing the certificate of redemption shall
21 be ten dollars or seven and one-half percent of the total
22 taxes, interest and charges due, whichever is greater.

23 (b) All certificates of redemption issued by the auditor
24 in each year shall be numbered consecutively and shall
25 be filed by the clerk of the county commission in
26 numerical order. Reference to the year and number of
27 the certificate shall be included in the notation of
28 redemption required of the clerk of the county commis-
29 sion. No fee shall be charged by the clerk for any
30 recordation, filing or notation required by this section.

§11A-3-40. Compulsory redemption at election of auditor.

1 The auditor, if he so elects, may at any time compel
2 redemption of any nonentered lands or real estate
3 certified to the auditor by the sheriff. In order to collect
4 from the owner of such real estate an amount sufficient
5 for redemption, he may use any of the methods provided
6 in article two of this chapter for collection of taxes by
7 the sheriff.

§11A-3-41. Auditor to report redemptions to county officers; disposition of redemption money; credit of state taxes to proper fund.

1 (a) The auditor shall report monthly to the sheriff, the
2 assessor and the clerk of the county commission of each
3 county all land in such county which was redeemed in
4 his office during the preceding month. The assessor
5 shall enter the fact of such redemption in the land book
6 in his office. The clerk shall file and index the report
7 in a separate volume provided for the purpose.

8 (b) Between August fifteenth and August thirty-first
9 of each year, the auditor shall report to the sheriff of

10 each county for inclusion in his next September
11 delinquent list all tracts of land redeemed from the
12 auditor, which after certification to the auditor have
13 been reported to him by the sheriff as suspended from
14 sale, if the taxes for the year or years of suspension were
15 not collected by the auditor. The sheriff shall be charged
16 with such taxes and shall account for them as is
17 required in the case of current taxes. Instead of making
18 this report, the auditor may collect the taxes due for the
19 year or years of suspension. Upon collection thereof he
20 shall issue a second certificate of redemption, and such
21 certificate shall be a release of the state's lien for such
22 taxes.

23 (c) The auditor shall each month draw his warrant
24 upon the treasury, payable to the sheriff of each county,
25 for that part of the taxes, interest and charges received
26 by him upon the redemption of the property included
27 in his report, which was owing to any of the taxing units
28 in such county. The sheriff shall account for and pay
29 over such money as if it had been paid to him for
30 redemption before sale.

31 Upon collection of delinquent taxes due the state, the
32 auditor shall credit them to the proper fund.

§11A-3-42. Lands subject to sale by deputy commissioner.

1 All lands for which no person present at the sheriff's
2 sale, held pursuant to section five of this article, has bid
3 the total amount of taxes, interest and charges due, and
4 which were subsequently certified to the auditor
5 pursuant to section eight of this article, and which have
6 not been redeemed from the auditor within eighteen
7 months after such certification, together with all
8 nonentered lands, all escheated lands and all waste and
9 unappropriated lands, shall be subject to sale by the
10 deputy commissioner of delinquent and nonentered
11 lands as further provided in this article. References in
12 this chapter to the sale or purchase of certified or
13 nonentered lands by or from the deputy commissioner
14 shall be construed as the sale or purchase of the tax lien
15 or liens thereon.

§11A-3-43. Officers to report lands subject to sale.

1 (a) Whenever an assessor, sheriff, clerk of the county
2 commission or county surveyor learns of the existence
3 within the county of any nonentered land, he shall
4 promptly report that fact to the auditor, together with
5 his information relating thereto. The assessor, as
6 escheator, shall likewise report all lands which escheat
7 to the state.

8 (b) Whenever the deputy commissioner learns of the
9 existence of any waste and unappropriated lands within
10 his county, except lands lying under the bed of a
11 navigable stream, he shall direct the county surveyor,
12 or some other competent surveyor, to make a survey,
13 plat and report thereof, listing all discovered claims of
14 title thereto. For his services in making the survey, plat
15 and report, the surveyor shall be entitled to a fee of fifty
16 dollars, and such additional compensation as the deputy
17 commissioner may recommend and the auditor approve,
18 to be paid out of the operating fund for the land
19 department in the auditor's office.

**§11A-3-44. Auditor to certify list of lands to be sold; lands
so certified are subject to sale.**

1 On or after the first day of May and on or before the
2 first day of October of each year, the auditor shall
3 certify to the deputy commissioner of each county a list
4 of all lands in the county subject to sale under this
5 article. He shall note the fact of certification on the land
6 record in his office. Upon completion of the list for
7 certification, a charge of twenty-five dollars shall be
8 added to the taxes, interest and charges already due on
9 each tract listed, to cover the costs incurred by the
10 auditor in the preparation of the list, and in the event
11 of sale or redemption, the same shall be collected and
12 paid into the operating fund provided for in this article.

13 Escheated lands and waste and unappropriated lands
14 shall be listed separately. The list shall be arranged by
15 districts and, except in the case of waste and unappropriated
16 lands, alphabetically by the name of the owner.
17 The list shall state as to each item listed the information
18 required by section thirty-five of this article to be set
19 forth in the land record in the auditor's office, and shall

20 specify as to each tract listed as delinquent or nonen-
21 tered the amount of taxes and interest due or chargeable
22 thereon on the date of certification, the publication and
23 other charges due, with interest, and the total currently
24 due. The specification of taxes due or chargeable shall
25 as to delinquent land commence with those for nonpay-
26 ment of which it was sold, and as to nonentered land
27 with those properly chargeable to it for the first year
28 of nonentry, subject to the provisions of the proviso set
29 forth in subsection (b), section thirty-eight of this article.

30 All items certified to each deputy commissioner shall
31 be numbered consecutively. All subsequent entries,
32 applications or proceedings under this article in respect
33 to any item shall refer to its number and the year of
34 certification. All tracts, lots, or parcels certified to the
35 auditor as a unit may be treated by the auditor as a
36 single item for purposes of certification. Subject to the
37 provisions of this section, the auditor shall prescribe a
38 form for the list and shall provide in such form adequate
39 space to show the subsequent history and final disposi-
40 tion of each item certified.

41 The list shall be made in triplicate. The auditor shall
42 keep the original and send one copy to the clerk of the
43 county commission and one to the deputy commissioner.
44 The clerk of the county commission shall bind his copy
45 in a permanent book to be labeled "Report of State
46 Commissioner of Delinquent and Nonentered Lands"
47 and shall note the fact of the certification of each item
48 on his record of delinquent lands. Such copies shall
49 become permanent records, and shall be preserved as
50 such in the offices of the auditor and the clerk of the
51 county commission.

§11A-3-45. Deputy commissioner to hold annual auction.

1 (a) Each tract or lot certified to the deputy commis-
2 sioner pursuant to the preceding section shall be sold by
3 the deputy commissioner at public auction at the front
4 door of the courthouse of the county to the highest
5 bidder, for cash, between the hours of ten in the
6 morning and four in the afternoon on any business
7 working day within sixty days after the auditor has

8 certified the lands to the deputy commissioner as
9 required by the preceding section. No part or interest
10 in any tract or lot subject to such sale, or any part
11 thereof of interest therein, that is less than the entirety
12 of such unredeemed tract, lot or interest, as the same
13 is described and constituted as a unit or entity in said
14 list, shall be offered for sale or sold at such sale. If the
15 sale shall not be completed on the first day of the sale,
16 it shall be continued from day to day between the same
17 hours until all the land shall have been offered for sale.

18 (b) A private, nonprofit, charitable corporation,
19 incorporated in this state, which has been certified as
20 a nonprofit corporation pursuant to the provisions of
21 §501(c)(3) of the federal Internal Revenue Code, as
22 amended, which has as its principal purpose the
23 construction of housing or other public facilities, and
24 which notifies the deputy commissioner of an intention
25 to bid and subsequently submits a bid that is not more
26 than five percent lower than the highest bid submitted
27 by any person or organization which is not a private,
28 nonprofit, charitable corporation as defined in this
29 subsection, shall be sold the property offered for sale by
30 the deputy commissioner pursuant to the provisions of
31 this section at the public auction as opposed to the
32 highest bidder.

33 The nonprofit corporation referred to in this subsec-
34 tion does not include a business organized for profit, a
35 labor union, a partisan political organization or an
36 organization engaged in religious activities and it does
37 not include any other group which does not have as its
38 principal purpose the construction of housing or public
39 facilities.

§11A-3-46. Publication of notice of auction.

1 Once a week for three consecutive weeks prior to the
2 auction required in the preceding section, the deputy
3 commissioner shall publish notice of the auction as a
4 Class III-O legal advertisement in compliance with the
5 provisions of article three, chapter fifty-nine of this code,
6 and the publication area for such publication shall be
7 the county.

8 The notice shall be in form or effect as follows:

9 Notice is hereby given that the following described
 10 tracts or lots of land in the County of _____,
 11 have been certified by the Auditor of the State of West
 12 Virginia to _____, Deputy Commissioner of
 13 Delinquent and Nonentered Lands of said County, for
 14 sale at public auction. The lands will be offered for sale
 15 by the undersigned deputy commissioner at public
 16 auction at the front door of the courthouse of
 17 _____ County between the hours of ten in
 18 the morning and four in the afternoon, on the
 19 _____ day of _____, 19____.

20 Each tract or lot as described below, will be sold to
 21 the highest bidder for cash. If any of said tracts or lots
 22 remain unsold following the auction, they will be subject
 23 to sale by the deputy commissioner without additional
 24 advertising or public auction. All sales are subject to the
 25 approval of the auditor of the State of West Virginia.

26 (here insert description of lands to be sold)

27 Any of the aforesaid tracts or lots may be redeemed
 28 by any person entitled to pay the taxes thereon at any
 29 time prior to the sale by payment to the deputy
 30 commissioner of the total amount of taxes, interest and
 31 charges thereon up to the date of redemption. Lands
 32 listed above as escheated or waste and unappropriated
 33 lands may not be redeemed.

34 Given under my hand this _____ day of
 35 _____, 19____.

36 _____ Deputy Commissioner of Delin-
 37 quent and Nonentered Lands of _____
 38 County

39 The description of lands required in the notice shall
 40 be in the same form as the list certifying said lands to
 41 the deputy commissioner for sale. If the deputy commis-
 42 sioner is required to auction lands certified to him in
 43 any previous years, pursuant to section forty-eight of
 44 this article, he shall include such lands in the notice,
 45 with reference to the year of certification and the item
 46 number of the tract or interest.

47 To cover the cost of preparing and publishing the
48 notice, a charge of twenty-five dollars shall be added to
49 the taxes, interest and charges due on the delinquent
50 and nonentered property.

§11A-3-47. Redemption prior to sale.

1 Any of the delinquent and nonentered lands certified
2 to the deputy commissioner may be redeemed, prior to
3 the auction, by the owner of such land or any other
4 person entitled to pay the taxes thereon, by payment of
5 the taxes, interest and charges due. The deputy commis-
6 sioner shall give to the person redeeming a duplicate
7 receipt, one of which shall be filed with the clerk of the
8 county commission, who shall note the fact of such
9 redemption on his record of delinquent lands. Any
10 person redeeming the interest of another shall be
11 subrogated to the lien of the state on such interest as
12 provided in section nine, article one of this chapter.

**§11A-3-48. Unsold lands subject to sale without auction
or additional advertising.**

1 If any of the lands which have been offered for sale
2 at the public auction provided in section forty-five of this
3 article shall remain unsold following such auction, or if
4 the auditor refuses to approve the sale pursuant to
5 section fifty-one of this article, the deputy commissioner
6 may sell such lands at any time subsequent to such
7 auction, without any further public auction or additional
8 advertising of such land, to any party willing to
9 purchase such property. The price of such property shall
10 be as agreed upon by the deputy commissioner and
11 purchaser, subject to approval by the auditor as
12 provided in section fifty-one of this article: *Provided,*
13 That any of such unsold lands, which remain unsold at
14 the time the deputy commissioner publishes notice of
15 subsequent annual auctions, shall be included in such
16 notice and offered for sale at such auction: *Provided,*
17 *however,* That in no event shall the deputy commissioner
18 be required to offer a tract, lot or interest for sale at
19 more than three consecutive annual auctions.

**§11A-3-49. Purchase by owner or deputy commissioner
or other officers prohibited; co-owner free
to purchase at sale.**

1 (a) It shall be illegal for an owner, in whose name any
 2 real estate was certified to the auditor or was subjected
 3 to the authority of the auditor because of the nonentry
 4 thereof, or his heirs or assigns, or his or their agent, to
 5 purchase such real estate at sale provided in section
 6 forty-five or forty-eight of this article. No deputy
 7 commissioner, sheriff, clerk of the county commission or
 8 circuit court, assessor, nor deputy of any of them, shall
 9 directly or indirectly become the purchaser, or be
 10 interested in the purchase of any real estate at the sale.
 11 Any such person or officer so purchasing shall for each
 12 offense forfeit one thousand dollars, to be collected as
 13 other forfeitures are collected. The sale of any real
 14 estate, or the conveyance of such real estate by tax deed,
 15 to one of the persons or officers named in this section
 16 shall be voidable at the instance of any person having
 17 the right to redeem until such real estate reaches the
 18 hands of a bona fide purchaser.

19 (b) Any co-owner, except a coparcener, in the absence
 20 of satisfactory proof of a fiduciary relationship, shall be
 21 entitled to purchase at the sale for his own account the
 22 interest of any, or all, of his co-owners in any real estate,
 23 without being required to hold such interest or interests
 24 under a constructive trust. There shall be a prima facie
 25 presumption against such constructive trust.

§11A-3-50. Receipt to purchaser for purchase price.

1 The deputy commissioner shall issue to the purchaser
 2 a duplicate receipt for the purchase money, one of which
 3 shall be filed with the clerk of the county commission,
 4 who shall note the fact of such sale on his record of
 5 delinquent lands. The heading of the receipt shall be:

6 Memorandum of real estate sold in the county of
 7 _____ on this _____ day of
 8 _____, 19____, by the _____,
 9 deputy commissioner of delinquent and nonentered
 10 lands of said county.

11 Except for the heading, the auditor shall prescribe
 12 the form of the receipt.

§11A-3-51. Deputy commissioner to report sales to auditor; auditor to approve sales.

1 Within fourteen days following the auction required
2 by section forty-five of this article, and within fourteen
3 days of any sale pursuant to section forty-eight of this
4 article, the deputy commissioner must report such sales
5 to the auditor. The report must include the year that the
6 land was certified by the auditor for sale, the item
7 number of the land on the list certifying the land for
8 sale, the amount of taxes, interest and charges on such
9 land at the time of the sale, the quantity of the land,
10 the name and address of the purchaser and the purchase
11 price. The report shall be filed in duplicate with the
12 auditor. The auditor may prescribe the form of the
13 report.

14 As soon as possible after receiving the report, the
15 auditor shall determine whether the sale is in the best
16 interest of the state, and shall either approve or
17 disapprove the sale. The auditor shall then note such
18 approval or disapproval and, if disapproved, the reasons
19 therefor, on the copy of the report, and return the copy
20 to the deputy commissioner. The original shall be
21 retained by the auditor.

22 If the auditor shall disapprove any such sale, the
23 deputy commissioner shall forthwith refund the pur-
24 chase price to the purchaser. The land shall then be
25 again subject to sale pursuant to sections forty-five and
26 forty-eight of this article. If the auditor approves the
27 sale, the purchaser shall immediately commence the
28 steps to obtain a deed, as provided in section fifty-two
29 of this article.

**§11A-3-52. What purchaser must do before he can secure
a deed.**

1 (a) Within thirty days following the approval of the
2 sale by the auditor pursuant to section fifty-one of this
3 article, the purchaser, his heirs or assigns, in order to
4 secure a deed for the real estate purchased, shall: (1)
5 Prepare a list of those to be served with notice to redeem
6 and request the deputy commissioner to prepare and
7 serve the notice as provided in sections fifty-four and
8 fifty-five of this article; and (2) deposit, or offer to
9 deposit, with the deputy commissioner a sum sufficient
10 to cover the costs of preparing and serving the notice.

11 For failure to meet these requirements, the purchaser
12 shall lose all the benefits of his purchase.

13 (b) If the person requesting preparation and service
14 of the notice is an assignee of the purchaser, he shall,
15 at the time of the request, file with the deputy commis-
16 sioner a written assignment to him of the purchaser's
17 rights, executed, acknowledged and certified in the
18 manner required to make a valid deed.

**§11A-3-53. Refund to purchaser of payment made at
deputy commissioner's sale where prop-
erty is subject of an erroneous assessment
or is otherwise nonexistent.**

1 If, after payment of the amount bid at a deputy
2 commissioner's sale, the purchaser discovers that the
3 property purchased at such sale is the subject of an
4 erroneous assessment or is otherwise nonexistent, such
5 purchaser shall submit the certificate of an attorney-at-
6 law that the property is the subject of an erroneous
7 assessment or is otherwise nonexistent. Upon receipt
8 thereof, the deputy commissioner shall cause the moneys
9 so paid to be refunded. Upon refund, the deputy
10 commissioner shall inform the assessor of the erroneous
11 assessment for the purpose of having the assessor
12 correct said error.

§11A-3-54. Notice to redeem.

1 Whenever the provisions of section fifty-two of this
2 article have been complied with, the deputy commis-
3 sioner shall thereupon prepare a notice in form or effect
4 as follows:

5 To _____

6 You will take notice that _____, the
7 purchaser (or _____, the assignee, heir or
8 devisee of _____, the purchaser) of the
9 following real estate, _____, (here describe
10 the real estate sold) located in _____, (here
11 name the city, town or village in which the real estate
12 is situated or, if not within a city, town or village, give
13 the district and a general description) which was
14 _____ (here put whether the property was
15 returned delinquent or nonentered) in the name of

16 _____, and was sold by the deputy commis-
 17 sioner of delinquent and nonentered lands of
 18 _____ County at the sale for delinquent
 19 taxes (or nonentry) on the _____ day of
 20 _____, 19____, has requested that you be
 21 notified that a deed for such real estate will be made
 22 to him on or after the _____ day of
 23 _____, 19____, as provided by law, unless
 24 before that day you redeem such real estate. The amount
 25 you will have to pay to redeem on the _____
 26 day of _____, will be as follows:

27 Amount paid deputy commissioner at sale, with
 28 interest to _____ \$ _____

29 Amount of taxes paid on the property, since the sale,
 30 with interest to _____ \$ _____

31 Amount paid for title examination and preparation of
 32 list of those to be served, and for preparation and service
 33 of the notice with interest to _____ \$
 34 _____

35 Amount paid for other statutory costs (describe).....
 36 \$ _____

37 Total \$ _____

38 You may redeem at any time before _____
 39 by paying the above total less any unearned interest.

40 Given under my hand this _____ day of
 41 _____, 19____.

42 _____
 43 Deputy Commissioner of Delinquent and
 44 Nonentered Lands
 45 _____ County,
 46 State of West Virginia

47 The deputy commissioner for his service in preparing
 48 the notice shall receive a fee of ten dollars for the
 49 original and two dollars for each copy required. Any
 50 costs which must be expended in addition thereto for
 51 publication, or service of such notice in the manner
 52 provided for serving process commencing a civil action,
 53 or for service of process by certified mail, shall be
 54 charged by the deputy commissioner. All costs provided

55 by this section shall be included as redemption costs and
56 included in the notice described herein.

§11A-3-55. Service of notice.

1 As soon as the deputy commissioner has prepared the
2 notice provided for in section fifty-four of this article,
3 he shall cause it to be served upon all persons named
4 on the list generated by the purchaser pursuant to the
5 provisions of section fifty-two of this article. Such notice
6 shall be mailed and, if necessary, published, at least
7 thirty days prior to the first day of the third month
8 following the deputy commissioner's sale.

9 The notice shall be served upon all such persons
10 residing or found in the state in the manner provided
11 for serving process commencing a civil action, or by
12 certified mail, return receipt requested. The notice shall
13 be served on or before the tenth day following the
14 request for such notice.

15 If any person entitled to notice is a nonresident of this
16 state, whose address is known to the purchaser, he shall
17 be served at such address by certified mail, return
18 receipt requested.

19 If the address of any person entitled to notice, whether
20 a resident or nonresident of this state, is unknown to the
21 purchaser and cannot be discovered by due diligence on
22 the part of the purchaser, the notice shall be served by
23 publication as a Class III-O legal advertisement in
24 compliance with the provisions of article three, chapter
25 fifty-nine of this code, and the publication area for such
26 publication shall be the county in which such real estate
27 is located. If service by publication is necessary,
28 publication shall be commenced when personal service
29 is required as set forth above, and a copy of the notice
30 shall at the same time be sent by certified mail, return
31 receipt requested, to the last known address of the
32 person to be served. The return of service of such notice,
33 and the affidavit of publication, if any, shall be in the
34 manner provided for process generally and shall be filed
35 and preserved by the deputy commissioner in his office,
36 together with any return receipts for notices sent by
37 certified mail.

§11A-3-56. Redemption from purchase; receipt; list of redemptions; certificate of redemption; lien; lien of person redeeming interest of another; record.

1 (a) After the sale of any tax lien on any real estate
2 pursuant to section forty-five or forty-eight of this
3 article, the owner of, or any other person who was
4 entitled to pay the taxes on, any real estate for which
5 a tax lien thereon was purchased by an individual, may
6 redeem at any time before a tax deed is issued therefor.
7 In order to redeem, he must pay to the deputy commis-
8 sioner the following amounts: (1) An amount equal to the
9 taxes, interest and charges due on the date of the sale,
10 with interest thereon at the rate of one percent per
11 month from the date of sale; (2) all other taxes thereon,
12 which have since been paid by the purchaser, his heirs
13 or assigns, with interest at the rate of one percent per
14 month from the date of payment; (3) such additional
15 expenses as may have been incurred in preparing the
16 list of those to be served with notice to redeem, and any
17 title examination incident thereto, with interest at the
18 rate of one percent per month from the date of payment,
19 but the amount he shall be required to pay, excluding
20 said interest, for such expenses incurred for the
21 preparation of the list of those to be served with notice
22 to redeem required by section fifty-two of this article,
23 and any title examination incident thereto, shall not
24 exceed one hundred dollars; (4) all additional statutory
25 costs paid by the purchaser; and (5) the deputy commis-
26 sioner's fee and commission as provided by section sixty-
27 six of this article. Where the deputy commissioner has
28 not received from the purchaser satisfactory proof of the
29 expenses incurred in preparing the notice to redeem,
30 and any examination of title incident thereto, in the
31 form of receipts or other evidence thereof, the person
32 redeeming shall pay the deputy commissioner the sum
33 of one hundred dollars plus interest thereon at the rate
34 of one per cent per month from the date of the sale for
35 disposition pursuant to the provisions of sections fifty-
36 seven, fifty-eight and sixty-four of this article. Upon
37 payment to the deputy commissioner of any those and
38 any other unpaid statutory charges required by this

39 article, including the fee of the clerk of the county
40 commission for the issuance of a certificate of redemp-
41 tion, and of any unpaid expenses incurred by the sheriff,
42 the auditor and the deputy commissioner in the exercise
43 of their duties pursuant to this article, the deputy
44 commissioner shall issue duplicate receipts for the
45 payment and shall note on said receipts that the
46 property has been redeemed. One of such receipts shall
47 be given to the person redeeming and the other receipt
48 shall be filed with the clerk of the county commission
49 with the fee for the certificate of redemption. The clerk
50 shall endorse on the receipt the fact and time of such
51 filing, note the fact of redemption on his record of
52 delinquent lands, and issue a certificate of redemption
53 pursuant to the provisions of section twenty-six of this
54 article.

55 (b) Any person who, by reason of the fact that no
56 provision is made for partial redemption of the tax lien
57 on real estate purchased by an individual, is compelled
58 in order to protect himself to redeem the tax lien on all
59 of such real estate when it belongs, in whole or in part,
60 to some other person, shall have a lien on the interest
61 of such other person for the amount paid to redeem such
62 interest. He shall lose his right to the lien, however,
63 unless within thirty days after payment he shall file
64 with the clerk of the county commission his claim in
65 writing against the owner of such interest, together with
66 the receipt provided for in this section. The clerk shall
67 docket the claim on the judgment lien docket in his
68 office and properly index the same. Such lien may be
69 enforced as other judgment liens are enforced.

**§11A-3-57. Notice of redemption to purchaser; moneys
received by sheriff.**

1 (a) Upon payment of the sum necessary to redeem, the
2 deputy commissioner shall promptly notify the pur-
3 chaser, his heirs or assigns, by mail of the redemption
4 and deliver to the sheriff the redemption money paid.
5 The notice by mail shall advise that upon the request
6 of the purchaser, his heirs or assigns, the sheriff shall
7 pay to the purchaser the sums described in section fifty-
8 eight of this article.

9 (b) Of the redemption money received by the sheriff
10 pursuant to this section, the sheriff shall hold as surplus
11 to be disposed of pursuant to section sixty-four of this
12 article an amount thereof equal to (1) the surplus of
13 money paid in excess of the amount of the taxes, interest
14 and charges due and paid to the sheriff at the sale; and
15 (2) the amount of taxes, interest and charges due on the
16 date of the sale, plus the interest at the rate of one
17 percent per month thereon from the date of sale to the
18 date of redemption.

§11A-3-58. Distribution of surplus to purchaser.

1 (a) Where the land has been redeemed in the manner
2 set forth in section fifty-six of this article, and the
3 deputy commissioner has delivered the redemption
4 money to the sheriff pursuant to section fifty-seven of
5 this article, the sheriff shall, upon request made of him
6 by the purchaser, his heirs or assigns, and upon delivery
7 to the sheriff of the purchaser's receipt for the sale, pay
8 to the purchaser, his heirs or assigns the following
9 amounts: (1) (A) The surplus of money paid in excess of
10 the amount of the taxes, interest and charges due and
11 paid to the deputy commissioner at the sale, and (B) the
12 amount of taxes, interest and charges due on the date
13 of the sale, plus the interest at the rate of one percent
14 per month from the date of sale to the date of redemp-
15 tion; (2) all other taxes thereon, which have since been
16 paid by the purchaser, his heirs or assigns, with interest
17 at the rate of one percent per month from the date of
18 payment; (3) such additional expenses as may have been
19 incurred in preparing the list of those to be served with
20 notice to redeem, and any title examination incident
21 thereto, with interest at the rate of one percent per
22 month from the date of payment, but the amount which
23 shall be paid, excluding said interest, for such expenses
24 incurred for the preparation of the list of those to be
25 served with notice to redeem required by section fifty-
26 two of this article, and any title examination incident
27 thereto, shall not exceed one hundred dollars; and (4) all
28 additional statutory costs paid by the purchaser.

29 (b) Where, pursuant to section fifty-six of this article,
30 the deputy commissioner has not received from the

31 purchaser satisfactory proof of the expenses incurred in
 32 preparing the notice to redeem, and any title examina-
 33 tion incident thereto, in the form of receipts or other
 34 evidence thereof, and therefore received from the
 35 purchaser as required by said section and delivered to
 36 the sheriff the sum of one hundred dollars plus interest
 37 thereon at the rate of one percent per month from the
 38 date of the sale to the date of redemption, and the sheriff
 39 has not received from the purchaser such satisfactory
 40 proof of such expenses within thirty days from the date
 41 of redemption, the sheriff shall refund such amount to
 42 the person redeeming and the purchaser is barred from
 43 any claim thereto. Where pursuant to section fifty-six of
 44 this article, the deputy commissioner has received from
 45 the purchaser and therefore delivered to the sheriff said
 46 sum of one hundred dollars plus interest thereon at the
 47 rate of one percent per month from the date of the sale
 48 to the date of redemption, and the purchaser provides
 49 the sheriff within thirty days from the date of redemp-
 50 tion such satisfactory proof of such expenses, and the
 51 amount of such expenses is less than the amount paid
 52 by the person redeeming, the sheriff shall refund the
 53 difference to the person redeeming.

§11A-3-59. Deed to purchaser; record.

1 If the real estate described in the notice is not
 2 redeemed within the time specified therein, but in no
 3 event prior to the first day of the third month following
 4 the deputy commissioner's sale, the deputy commis-
 5 sioner shall, upon the request of the purchaser, make
 6 and deliver to the person entitled thereto a quitclaim
 7 deed for such real estate in form or effect as follows:

8 This deed, made this _____ day of
 9 _____, 19____, by and between
 10 _____, deputy commissioner of delinquent
 11 and nonentered lands of _____ County,
 12 West Virginia, grantor, and _____, pur-
 13 chaser (or _____ heir, devisee, assignee of
 14 _____, purchaser) grantee, witnesseth, that

15 Whereas, in pursuance of the statutes in such case
 16 made and provided, _____, deputy commis-

17 sioner of delinquent and nonentered lands of _____
18 County, did, on the _____ day of
19 _____, 19____, sell the real estate
20 hereinafter mentioned and described for the taxes
21 delinquent thereon for the year(s) 19____, (or as
22 nonentered land for failure of the owner thereof to have
23 the land entered on the land books for the years
24 _____, or as property escheated to the State of West
25 Virginia, or as waste or unappropriated property) for
26 the sum of \$ _____, that being the amount
27 of purchase money paid to the deputy commissioner, and
28 _____ (here insert name of purchaser) did
29 become the purchaser of such real estate, which was
30 returned delinquent in the name of _____
31 (or nonentered in the name of, or escheated from the
32 estate of, or which was discovered as waste or unappropriated
33 property); and

34 Whereas, the deputy commissioner has caused the
35 notice to redeem to be served on all persons required by
36 law to be served therewith; and

37 Whereas, the real estate so purchased has not been
38 redeemed in the manner provided by law and the time
39 for redemption set forth in such notice has expired.

40 Now, therefore, the grantor for and in consideration
41 of the premises recited herein, and pursuant to the
42 provisions of Article 3, Chapter 11A of the West
43 Virginia Code, doth grant unto _____,
44 grantee, his heirs and assigns forever, the real estate so
45 purchased, situate in the County of _____,
46 bounded and described as follows: _____
47 (here insert description of property)

48 Witness the following signature:

49 _____ Deputy Commis-
50 sioner of Delinquent and Nonentered Lands of
51 _____ County

52 Except when ordered to do so as provided in section
53 sixty of this article, the deputy commissioner shall not
54 execute and deliver a deed more than thirty days after
55 the purchaser's right to the deed accrued.

56 For the preparation and execution of the deed and for
57 all the recording required by this section, a fee of fifty
58 dollars shall be charged, to be paid by the grantee upon
59 delivery of the deed. The deed, when duly acknowledged
60 or proven, shall be recorded by the clerk of the county
61 commission in the deed book in his office, together with
62 the assignment from the purchaser, if one was made, the
63 notice to redeem, the return of service of such notice,
64 the affidavit of publication, if the notice was served by
65 publication, and any return receipts for notices sent by
66 certified mail.

§11A-3-60. Compelling service of notice or execution of deed.

1 If the deputy commissioner fails or refuses to prepare
2 and serve the notice to redeem as required in sections
3 fifty-four and fifty-five of this article, the person
4 requesting the notice may, at any time within two weeks
5 after discovery of such failure or refusal, but in no event
6 later than sixty days following the date the person
7 requested that notice be prepared and served, apply by
8 petition to the circuit court of the county for an order
9 compelling the deputy commissioner to procure and
10 serve the notice, or appointing a commissioner to do so.
11 If the person requesting the notice fails to make such
12 application within the time allowed, he shall lose his
13 right to the notice, but his rights against the deputy
14 commissioner under the provisions of section sixty-seven
15 of this article shall not be affected. Notice given
16 pursuant to an order of the court or judge shall be valid
17 for all purposes as if given within the time required by
18 section fifty-five of this article.

19 If the deputy commissioner fails or refuses to prepare
20 and execute the deed as required in the preceding
21 section, the person requesting the deed may, at any time
22 after such failure or refusal, but not more than six
23 months after his right to the deed accrued, apply by
24 petition to the circuit court of the county for an order
25 compelling the deputy commissioner to prepare and
26 execute the deed or appointing a commissioner to do so.
27 If the person requesting the deed fails to make such
28 application within the time allowed, he shall lose his

29 right to the deed, but his rights against deputy
30 commissioner under the provisions of section sixty-seven
31 of this article shall remain unaffected. Any deed
32 executed pursuant to an order of the court shall have
33 the same force and effect as if executed and delivered
34 by deputy commissioner within the time specified in the
35 preceding section.

36 Ten days written notice of every such application
37 must be given to deputy commissioner. If, upon the
38 hearing of such application, the court is of the opinion
39 that the applicant is not entitled to the notice or deed
40 requested, the petition shall be dismissed at his costs;
41 but, if the court is of the opinion that he is entitled to
42 such notice or deed, then, upon his deposit with the clerk
43 of the circuit court of a sum sufficient to cover the costs
44 of preparing and serving the notice, unless such a
45 deposit has already been made with deputy commis-
46 sioner, an order shall be made by the court directing the
47 deputy commissioner to prepare and serve the notice or
48 execute the deed, or appointing a commissioner for the
49 purpose, as the court or judge shall determine. The
50 order shall be filed with the clerk of the circuit court
51 and entered in the civil order book. If it appears to the
52 court that the failure or refusal of deputy commissioner
53 was without reasonable cause, judgment shall be given
54 against him for the costs of the proceedings, otherwise
55 the costs shall be paid by the applicant.

56 Any commissioner appointed under the provisions of
57 this section shall be subject to the same liabilities as
58 deputy commissioner. For the preparation of the notice
59 to redeem, he shall be entitled to the same fee as is
60 provided for deputy commissioner. For the preparation
61 and execution of the deed, he shall also be entitled to
62 a fee of fifty dollars, to be paid by the grantee upon
63 delivery of the deed.

§11A-3-61. One deed for separate purchases.

1 Whenever one purchaser at the tax sale has purchased
2 two or more pieces of real estate, or undivided interests
3 therein, charged with taxes for the same year, or years,
4 he, his heirs or assigns, may request the deputy

5 commissioner to execute a separate deed for each piece
6 of real estate or undivided interest therein, or separate
7 deeds for some and one deed for the remainder, or one
8 deed for all, as he or they may prefer. Every deed for
9 two or more pieces of real estate, or undivided interests
10 therein, shall describe each piece of real estate and each
11 undivided interest separately.

§11A-3-62. Title acquired by individual purchaser.

1 (a) Whenever the purchaser of any tax lien on any real
2 estate sold at a tax sale, his heirs or assigns, shall have
3 obtained a deed for such real estate from the deputy
4 commissioner or from a commissioner appointed to
5 make the deed, he or they shall thereby acquire all such
6 right, title and interest, in and to the real estate, as was,
7 at the time of the execution and delivery of the deed,
8 vested in or held by any person who was entitled to
9 redeem, unless such person is one who, being required
10 by law to have his interest separately assessed and
11 taxed, has done so and has paid all the taxes due
12 thereon, or unless the rights of such person are expressly
13 saved by the provisions of section forty-nine of this
14 article or section two, three, four or six, article four of
15 this chapter.

16 The tax deed shall be conclusive evidence of the
17 acquisition of such title. If the property was sold for
18 nonpayment of taxes, the title so acquired shall relate
19 back to the first day of July of the year in which the
20 taxes, for nonpayment of which the real estate was sold,
21 were assessed. If the property was sold for nonentry
22 pursuant to section thirteen of this article, or escheated
23 to the state, or is waste and unappropriated property,
24 the title shall relate back to the date of sale.

25 (b) Any individual purchaser to whom a tax deed has
26 been issued may institute and prosecute actions to quiet
27 title in any such real estate conveyed thereby. Such
28 action may be maintained for all or any one or more of
29 the lots or tracts conveyed.

§11A-3-63. Effect of irregularity on title acquired by purchaser.

1 No irregularity, error or mistake in respect to any
2 step in the procedure leading up to and including
3 delivery of the tax deed by the deputy commissioner
4 shall invalidate the title acquired by the purchaser
5 unless such irregularity, error or mistake is, by the
6 provisions of section forty-nine of this article or section
7 two, three, four or six, article four of this chapter,
8 expressly made ground for instituting a suit to set aside
9 the sale or the deed.

**§11A-3-64. Sheriff to receive proceeds of deputy commis-
sioners' sales and redemptions from the
deputy commissioner; disposition.**

1 (a) The sheriff shall receive all proceeds of sales held
2 by the deputy commissioner pursuant to sections forty-
3 five and forty-eight of this article, and all redemption
4 money paid to the deputy commissioner pursuant to this
5 article. All funds to be paid to the deputy commissioner
6 pursuant to any provision of this article shall be paid
7 by check or money order payable to the sheriff of the
8 county. The deputy commissioner shall, immediately
9 upon receipt of any such payment, turn such moneys
10 over to the sheriff.

11 (b) The sheriff shall keep in a separate fund the
12 proceeds of all redemptions and sales paid to him under
13 the provisions of sections forty-five, forty-eight and fifty-
14 six of this article. Out of the total proceeds of each sale
15 or redemption he shall, in the order of priority stated
16 below, credit the following amount for payment as
17 hereinafter provided: (1) To the deputy commissioner,
18 such part as represents compensation due him under the
19 provisions of section sixty-six of this article; (2) to the
20 auditor, such part as represents any charges which were
21 paid by or which are payable to him; and (3) to the
22 general county fund, such part as represents costs paid
23 out of such fund for publishing the sheriff's delinquent
24 and sales list and all other costs incurred by the sheriff
25 pursuant to the provisions of this article; and (4) to the
26 auditor for credit to the general school fund, such part
27 as represents all taxes and interest chargeable in
28 respect to any nonentered lands, and all surplus
29 proceeds of sale of any waste and unappropriated lands.

30 In addition thereto, surplus proceeds from the deputy
31 commissioner's sale of delinquent and nonentered lands,
32 as well as the proceeds from the sale of escheated lands,
33 shall be held by the sheriff for the periods provided in
34 section sixty-five of this article and section seven, article
35 four of this chapter, and if no claim is made therefore
36 to the sheriff within the time therein specified, such
37 amounts shall be paid to the auditor for credit to the
38 general school fund.

39 The balance, if any, of the proceeds of the lands sold
40 by the deputy commissioner shall be prorated among the
41 various taxing units on the basis of the total amount of
42 taxes due them in respect to the lands that were sold
43 or redeemed. The amounts so determined shall be
44 credited as follows, for payment as hereinafter provided:
45 (1) To the auditor, such part as represents state taxes
46 and interest; and (2) to the fund kept by the sheriff for
47 each local taxing unit, such part as represents taxes and
48 interest payable to such unit.

49 (c) All amounts which under the provisions of this
50 section were so credited by the sheriff to the deputy
51 commissioner shall be paid to him quarterly; those
52 credited to the auditor shall be paid to him semiannu-
53 ally; and those credited to the various local taxing units
54 shall be transferred semiannually by the sheriff to the
55 fund kept by him for each such taxing unit.

56 (d) The tax commissioner, in cooperation with the
57 land department in the auditor's office, shall prescribe
58 the form of the records to be kept by the sheriff for the
59 purposes of this section, and the method to be used by
60 him in making the necessary pro rata distributions.

§11A-3-65. Right of former owner to surplus proceeds.

1 The former owner of any delinquent or nonentered
2 lands sold pursuant to sections forty-five and forty-eight
3 of this article, his heirs or assigns, shall be entitled to
4 the surplus received from the sale over and above the
5 taxes and interest charged or chargeable thereon
6 including all costs of the sale, if his, or their claim be
7 filed in the circuit court of the county in which the land
8 is situated within two years after the date of confirma-

9 tion of said sale. If no claim is filed with the court within
10 the two years, then such surplus shall be paid by the
11 sheriff to the auditor for credit to the general school
12 fund.

§11A-3-66. Compensation of deputy commissioner.

1 As compensation for his services, the deputy commis-
2 sioner shall be entitled to a fee of ten dollars for each
3 item certified to him by the auditor pursuant to section
4 forty-four of this article. In addition thereto he shall
5 receive a commission of fifteen percent on each sale or
6 redemption. Such commission on sales shall be based on
7 sale price and on redemptions on the total taxes and
8 interest due. Such compensation shall be paid as
9 provided in this article.

PART III

**§11A-3-67. Liability of officer failing to perform duty;
penalty.**

1 If any officer mentioned in this article shall refuse to
2 perform any duty required of him, he shall forfeit not
3 less than twenty-five nor more than one hundred dollars
4 for each such failure or refusal, unless a different
5 penalty is imposed by the provisions of this article.

**§11A-3-68. Disposition of lands heretofore purchased by
or forfeited to state.**

1 All lands which have been heretofore purchased by
2 the state at a tax sale pursuant to the provisions of the
3 former article three of this chapter and which have not
4 been redeemed from the auditor or certified to the
5 circuit court for sale as provided in the former article
6 four of this chapter shall be reported by the auditor to
7 the sheriff of the county in which the lands are situated
8 for reentry on the landbooks. Such lands shall be
9 reentered on the landbooks in the name of the person
10 charged with taxes on the land at the time of purchase
11 by the state, and charged with all unpaid taxes thereon,
12 including those taxes which have accrued since such
13 purchase by the state, and all costs charged to such
14 lands arising from the tax sale and purchase by the
15 state. Such lands shall then be subject to disposition

16 pursuant to this article.

17 All lands which have heretofore been forfeited to the
18 state pursuant to the provisions of former article four
19 of this chapter, and which have not been certified to the
20 circuit court for sale pursuant to such article, shall be
21 deemed nonentered pursuant to section thirty-seven of
22 this article, and shall be subject to redemption and sale
23 as provided herein.

24 All lands which have heretofore been certified to the
25 circuit court for sale by the deputy commissioner
26 pursuant to the provisions of the former article four of
27 this chapter shall be deemed certified to the deputy
28 commissioner for sale pursuant to section forty-four of
29 this article, and shall be subject to redemption and sale
30 as provided herein. All suits heretofore instituted by the
31 deputy commissioners pursuant to the provisions of the
32 former article four of this chapter, which have not been
33 reduced to judgment for the sale of all lands listed in
34 such suits, are hereby dismissed, and the lands listed in
35 such suits shall be deemed certified to the deputy
36 commissioner pursuant to section forty-four of this
37 article and shall be subject to redemption and sale as
38 provided herein. All lands subject to sale under any
39 court order entered in any such suit, which have not yet
40 been sold pursuant to such order, shall be deemed
41 certified to the deputy commissioner for sale pursuant
42 to section forty-four of this article, and shall be subject
43 to redemption and sale as provided herein. All lands
44 which have been sold prior to the effective date of this
45 act under any court order entered in any such suit shall
46 be deemed sold and any tax deed which has or shall
47 issue for any such land pursuant to the provisions of the
48 former article four of this chapter are hereby confirmed
49 as valid, subject to the discretion of the court as set forth
50 in the former section thirty-one, article four of this
51 chapter: *Provided*, That if the court refuses to confirm
52 said sale, the land shall be deemed certified to the
53 deputy commissioner for sale pursuant to section forty-
54 four of this article, and shall be subject to redemption
55 and sale as provided herein.

ARTICLE 4. REMEDIES RELATING TO TAX SALES.

- §11A-4-1. Declaration of legislative purpose.
§11A-4-2. Right to set aside sale or deed when all taxes paid before sale.
§11A-4-3. Right to set aside deed improperly obtained.
§11A-4-4. Right to set aside deed when one entitled to notice not notified.
§11A-4-5. On whose behalf suits instituted; decree when deed set aside.
§11A-4-6. Redemption by persons under disability from purchase by individual.
§11A-4-7. Right of creditor of former owner of escheated land.

§11A-4-1. Declaration of legislative purpose.

1 In furtherance of the policy declared in section one,
2 article three of this chapter, it is the intent and purpose
3 of the Legislature to provide reasonable opportunities
4 for delinquent taxpayers to protect their interests in
5 their lands and to provide reasonable remedies in
6 certain circumstances for persons with interests in
7 delinquent and escheated lands.

§11A-4-2. Right to set aside sale or deed when all taxes paid before sale.

1 Any owner of real estate for which a tax lien was sold
2 for nonpayment of taxes pursuant to the provisions of
3 article three of this chapter, when all taxes thereon had
4 in fact been paid before the sale, his heirs and assigns,
5 or the person who paid the taxes, may, before the
6 expiration of three years following the sale, institute a
7 civil action to set aside the sale and to enjoin the proper
8 official from taking any further steps in the procedure
9 provided in this and the following article, or, if a deed
10 has been delivered to the purchaser, before the expira-
11 tion of three years following the delivery of the deed,
12 institute a civil action to set aside the deed. If such
13 action is instituted by or on behalf of the owner of an
14 undivided interest which was included in a group
15 assessment but which was separately redeemed as
16 provided in section eighteen, article two of this chapter,
17 the sale or the deed shall be set aside only insofar as
18 it affects his interest.

§11A-4-3. Right to set aside deed improperly obtained.

1 (a) Whenever the clerk of the county commission has
2 delivered a deed to the purchaser after the time
3 specified in section twenty-seven of article three of this
4 chapter, or, within that time, has delivered a deed to a

5 purchaser who was not entitled thereto either because
6 of his failure to meet the requirements of section
7 nineteen of said article three, or because the property
8 conveyed had been redeemed, the owner of such
9 property, his heirs and assigns, or the person who
10 redeemed the property, may, before the expiration of
11 three years following the delivery of the deed, institute
12 a civil action to set aside the deed. No deed shall be set
13 aside under the provisions of this section, except in the
14 case of redemption, until payment has been made or
15 tendered to the purchaser, or his heirs or assigns, of the
16 amount which would have been required for redemp-
17 tion, together with any taxes which have been paid on
18 the property since delivery of the deed, with interest at
19 the rate of twelve percent per annum.

20 (b) Whenever the deputy commissioner has delivered
21 a deed to the purchaser after the time specified in
22 section fifty-nine of article three of this chapter, or,
23 within that time, has delivered a deed to a purchaser
24 who was not entitled thereto either because of his failure
25 to meet the requirements of section fifty-two of said
26 article three, or because the property conveyed had been
27 redeemed, the owner of such property, his heirs and
28 assigns, or the person who redeemed the property, may,
29 before the expiration of three years following the
30 delivery of the deed, institute a civil action to set aside
31 the deed. No deed shall be set aside under the provisions
32 of this section, except in the case of redemption, until
33 payment has been made or tendered to the purchaser,
34 or his heirs or assigns, of the amount which would have
35 been required for redemption, together with any taxes
36 which have been paid on the property since delivery of
37 the deed, with interest at the rate of twelve percent per
38 annum.

**§11A-4-4. Right to set aside deed when one entitled to
notice not notified.**

1 (a) If any person entitled to be notified under the
2 provisions of section twenty-two or fifty-five, article
3 three of this chapter is not served with the notice as
4 therein required, and does not have actual knowledge
5 that such notice has been given to others in time to

6 protect his interests by redeeming the property, he, his
7 heirs and assigns, may, before the expiration of three
8 years following the delivery of the deed, institute a civil
9 action to set aside the deed. No deed shall be set aside
10 under the provisions of this section until payment has
11 been made or tendered to the purchaser, or his heirs or
12 assigns, of the amount which would have been required
13 for redemption, together with any taxes which have
14 been paid on the property since delivery of the deed,
15 with interest at the rate of twelve percent per annum.

16 (b) No title acquired pursuant to this article shall be
17 set aside in the absence of a showing by clear and
18 convincing evidence that the person who originally
19 acquired such title failed to exercise reasonably diligent
20 efforts to provide notice of his intention to acquire such
21 title to the complaining party or his predecessors in title.

22 (c) Upon a preliminary finding by the court that the
23 deed will be set aside pursuant to this section, such
24 amounts shall be paid within one month of the entry
25 thereof. Upon the failure to pay the same within said
26 period of time, the court shall upon the request of the
27 purchaser, enter judgment dismissing the action with
28 prejudice.

**§11A-4-5. On whose behalf suits instituted; decree when
deed set aside.**

1 Any civil action instituted under the provisions of
2 section two, three or four of this article by a person other
3 than the former owner, his heirs or assigns, must be
4 brought on his or their behalf. Whenever the deed in
5 such case is set aside, the decree shall be that all the
6 right, title and interest of the former owner, his heirs
7 or assigns, is revested in him or them.

**§11A-4-6. Redemption by persons under disability from
purchase by individual.**

1 In addition to and notwithstanding any other provi-
2 sions of this article, any infant or mentally incapacitated
3 person whose real estate was, during such disability,
4 conveyed by tax deed pursuant to this chapter to an
5 individual purchaser, may redeem such real estate by

6 paying to the purchaser, or his heirs or assigns, before
7 the expiration of one year after removal of the disability,
8 but in no event more than twenty years after the deed
9 was obtained, the amount of the purchase money,
10 together with the necessary charges incurred in obtain-
11 ing the deed, and any taxes paid on the property since
12 the sale, with interest on such items at the rate of twelve
13 percent per annum from the date each was paid. If such
14 person was the owner of an undivided interest in the
15 real estate sold, he may redeem such interest by paying
16 that proportion of the purchase money, charges, taxes
17 and interest chargeable to his interest; but after a deed
18 has been delivered to the purchaser, he shall not have
19 the right to redeem more than his own undivided
20 interest. If improvements have been made on such real
21 estate after the deed was obtained and before the offer
22 to redeem as herein provided, the person redeeming
23 shall pay to the purchaser, or his heirs or assigns, the
24 value of the improvements at the time of such offer,
25 after deducting therefrom the value of the use of such
26 real estate without the improvements, from the date of
27 the deed to the date of the offer. Upon payment or
28 tender of payment, the purchaser, his heirs or assigns,
29 shall, at the expense of the person redeeming, convey to
30 him by quitclaim deed the real estate so redeemed.

31 One entitled to redeem under the provisions of this
32 section may, if he is unable or is not willing to pay for
33 the improvements made by the purchaser, elect to
34 relinquish his interest in the property. If he so elects,
35 he shall be entitled to an amount equal to the estimated
36 present value of the land without the improvements less
37 what he would have had to pay to redeem the land had
38 no improvements been made. Upon payment to him of
39 such amount, he shall by quitclaim deed convey the land
40 to the purchaser, his heirs or assigns.

41 If in any case provided for in this section the parties
42 cannot agree on the amount to be paid, any of them may
43 upon ten days' notice in writing to the other, or others,
44 apply by petition, to the circuit court of the county in
45 which the real estate is situated to have the matter
46 referred to a commissioner to ascertain the proper

47 amount to be paid. Upon confirmation by the court or
48 judge of the report of the commissioner, and upon
49 payment or tender of the amount, if any, so ascertained
50 to be due, the person to whom payment or tender was
51 made, shall execute the quitclaim deed as provided
52 above. In the event of his refusal to do so, the court, or
53 judge, may appoint a commissioner to execute the deed.

54 If there is a refusal to execute the deed in any case
55 in which there was no dispute as to the amount
56 necessary for redemption, the person entitled to the deed
57 may, upon ten days' notice in writing to the other party
58 or parties, apply by petition to the circuit court for the
59 appointment of a commissioner to execute the deed.

**§11A-4-7. Right of creditor of former owner of escheated
land.**

1 Any surplus proceeds arising from the sale of
2 escheated land may be applied for by the creditors of
3 the decedent if application is made to the circuit court
4 of the county in which the land is situated within one
5 year after the auditor has confirmed the sale. Upon
6 proper application to the court within such time such
7 surplus may be applied to the satisfaction of the claims
8 of creditors of the decedent who had a lien on the land
9 at the time of his death, or who, being general creditors,
10 have properly proved their claims against his estate and
11 have been unable to obtain payment out of the person-
12 alty. In the disposition of such surplus, due preference
13 shall be given to lien creditors. Any part of such surplus
14 thereafter remaining shall be paid by the sheriff to the
15 auditor for credit to the general school fund.

CHAPTER 88

(Com. Sub. for H. B. 4214—By Mr. Speaker, Mr. Chambers, and
Delegates Huntwork, Houvouras, S. Williams, Linch, Fragale and Leach)

[Passed February 23, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty, article three,
chapter five-a of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to leases entered into by the secretary of the department of administration.

Be it enacted by the Legislature of West Virginia:

That section forty, 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-3-40. Selection of grounds, etc.; acquisition by contract or lease; long-term leases; requiring approval of secretary for permanent changes.

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

20 The secretary is hereby authorized to enter into long-
21 term agreements for buildings, land and space for
22 periods longer than one fiscal year: *Provided*, That such
23 long-term lease agreements shall not be for periods in
24 excess of forty years, except that the secretary may, in
25 the case of the adjutant general's department, enter into
26 lease agreements for a term of fifty years or a specific
27 term of more than fifty years so as to comply with
28 federal regulatory requirements, and shall contain, in
29 substance, all the following provisions: (1) That the

30 department of administration, as lessee, shall have the
31 right to cancel the lease without further obligation on
32 the part of the lessee upon giving thirty days' written
33 notice to the lessor, such notice being given at least
34 thirty days prior to the last day of the succeeding month;
35 (2) that the lease shall be considered canceled without
36 further obligation on the part of the lessee if the state
37 Legislature or the federal government should fail to
38 appropriate sufficient funds therefor or should other-
39 wise act to impair the lease or cause it to be canceled;
40 and (3) that the lease shall be considered renewed for
41 each ensuing fiscal year during the term of the lease
42 unless it is canceled by the department of administra-
43 tion before the end of the then current fiscal year.

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

CHAPTER 89

(S. B. 243—By Senators Lucht and Macnaughtan)

[Passed March 11, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article seventeen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to legislative rules; authorizing specific regulations relating to higher education including acceptance of advanced placement credit; assessment, payment and refund of fees; personnel administration; and resource allocation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. LEGISLATIVE RULES.

§18B-17-2. Board of trustees.

§18B-17-3. Board of directors.

§18B-17-2. Board of trustees.

1 (a) The legislative rules filed in the state register on
2 the third day of December, one thousand nine hundred
3 ninety-one, modified by the board of trustees to meet the
4 objections of the legislative oversight commission on
5 education accountability and refiled in the state register
6 on the twenty-first day of January, one thousand nine
7 hundred ninety-two, relating to the board of trustees
8 (report card), are authorized.

9 (b) The legislative rules filed in the state register on
10 the thirteenth day of July, one thousand nine hundred
11 ninety-one, relating to the board of trustees (equal
12 opportunity and affirmative action), are authorized.

13 (c) The legislative rules filed in the state register on
14 the eighth day of September, one thousand nine hundred
15 ninety-two, relating to the board of trustees (holidays),
16 are authorized.

17 (d) The legislative rules filed in the state register on
18 the third day of April, one thousand nine hundred
19 ninety-two, relating to the board of trustees (alcoholic
20 beverages on campuses), are authorized.

21 (e) The legislative rules filed in the state register on
22 the fifteenth day of November, one thousand nine
23 hundred ninety-three, relating to the board of trustees
24 (acceptance of advanced placement credit), are
25 authorized.

26 (f) The legislative rules filed in the state register on
27 the thirteenth day of December, one thousand nine
28 hundred ninety-three, modified by the board of trustees
29 to meet the objections of the legislative oversight

30 commission on education accountability and refiled in
31 the state register on the twenty-first day of January, one
32 thousand nine hundred ninety-four, relating to the board
33 of trustees (assessment, payment and refund of fees), are
34 authorized.

35 (g) The legislative rules filed in the state register on
36 the first day of November, one thousand nine hundred
37 ninety-three, modified by the board of trustees to meet
38 the objections of the legislative oversight commission on
39 education accountability and refiled in the state register
40 on the twenty-first day of December, one thousand nine
41 hundred ninety-three, relating to the board of trustees
42 (personnel administration), are authorized.

§18B-17-3. Board of directors.

1 (a) The legislative rules filed in the state register on
2 the sixteenth day of December, one thousand nine
3 hundred ninety-one, modified by the board of directors
4 to meet the objections of the legislative oversight
5 commission on education accountability and refiled in
6 the state register on the twenty-first day of January, one
7 thousand nine hundred ninety-two, relating to the board
8 of directors (report card), are authorized.

9 (b) The legislative rules filed in the state register on
10 the twenty-seventh day of September, one thousand nine
11 hundred ninety-one, relating to the board of directors
12 (equal opportunity and affirmative action), are
13 authorized.

14 (c) The legislative rules filed in the state register on
15 the fourth day of December, one thousand nine hundred
16 ninety-one, relating to the board of directors (holiday
17 policy), are authorized.

18 (d) The legislative rules filed in the state register on
19 the nineteenth day of March, one thousand nine hundred
20 ninety-two, as modified and refiled in the state register
21 on the tenth day of July, one thousand nine hundred
22 ninety-two, relating to the board of directors (presiden-
23 tial appointments, responsibilities and evaluations), are
24 authorized.

25 (e) The legislative rules filed in the state register on

26 the twentieth day of September, one thousand nine
27 hundred ninety-three, relating to the board of directors
28 (acceptance of advanced placement credit), are
29 authorized.

30 (f) The legislative rules filed in the state register on
31 the tenth day of December, one thousand nine hundred
32 ninety-three, relating to the board of directors (resource
33 allocation policy), are authorized.

34 (g) The legislative rules filed in the state register on
35 the eighth day of December, one thousand nine hundred
36 ninety-three, modified by the board of directors to meet
37 the objections of the legislative oversight commission on
38 education accountability and refiled in the state register
39 on the eleventh day of January, one thousand nine
40 hundred ninety-four, relating to the board of directors
41 (assessment, payment and refund of fees), are
42 authorized.

43 (h) The legislative rules filed in the state register on
44 the first day of November, one thousand nine hundred
45 ninety-three, modified by the board of directors to meet
46 the objections of the legislative oversight commission on
47 education accountability and refiled in the state register
48 on the twenty-first day of December, one thousand nine
49 hundred ninety-three, relating to the board of directors
50 (personnel administration), are authorized.

CHAPTER 90

(Com. Sub. for H. B. 4066—By Delegate Gallagher)

[Passed February 21, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four; to amend and reenact section six, article two of said chapter; to amend and reenact sections five, nine, eleven, twelve, thirteen, fifteen, fifteen-a and fifteen-b, article three of said chapter; and to amend and reenact sections six, ten, sixteen and

sixteen-a, article three-a of said chapter, all relating to the filing of rules in the state register and the promulgation of legislative rules; providing for the application of the open governmental proceedings law; requiring the secretary of state to promulgate a procedural rule requiring the use of a uniform system of electronic transmission for the filing of rules with the secretary of state; authorizing the secretary of state to grant exceptions to such requirement; providing for notice of proposed rule making; prohibiting ex parte communications with an agency after close of public comment and before final agency approval of a proposed rule; requiring notice of a proposal of legislative rules and describing when a proposed rule shall have force and effect; authorizing the secretary of the executive department administering an agency to submit proposed rules to the legislative rule-making review committee unless an agency, board or commission proposing a rule is not administered by an executive department; allowing the Legislature to combine and group bills authorizing legislative rules by executive departments, by agencies and by bills having a unity of subject matter; providing that the single object of a bill of authorization is to authorize the promulgation of legislative rules; authorizing the secretary of the executive department administering an agency to promulgate legislatively authorized rules unless an agency, board or commission promulgating the rule is not administered by an executive department; redefining the authority of the secretary of state and the attorney general to disapprove the filing of an emergency rule or an amendment to an emergency rule; making certain technical changes throughout article three; providing for notice of proposed rule-making by the university of West Virginia board of trustees or the board of directors of the state college system; prohibiting ex parte communications with a board after close of public comment and before final board approval of a proposed rule; requiring notice of a proposal of legislative rules and describing when a proposed rule shall have force and effect; redefining the authority of the secretary of state to disapprove the filing of an

emergency rule or an amendment to an emergency rule; and making certain technical changes throughout article three-a.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **Definitions and Application of Chapter.**
2. **State Register.**
3. **Rule Making.**
- 3A. **Higher Education Rule Making.**

ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.

§29A-1-4. Application of open governmental proceedings law.

1 (a) All meetings of an agency, board or commission
2 of the executive branch of government or of the
3 legislative rule-making review committee which may
4 only be convened upon the presence of a required
5 quorum, and which are convened for the purpose of
6 making a decision or deliberating toward a decision as
7 to the form and substance of a rule, as defined in
8 subsection (i), section two of this article, are subject to
9 the open governmental proceedings law as set forth in
10 article nine-a, chapter six of this code, except as may
11 otherwise be provided for in this section.

12 (b) When an agency, board or commission is consid-
13 ering the form and substance of a rule or proposed rule,
14 the informal occurrence of (1) consultations between the
15 governing members of the agency, board or commission
16 and its staff members, (2) deliberations by the governing
17 members, or (3) the engagement of a governing member
18 or members in the process of making a decision, does
19 not constitute a meeting within the meaning of article

20 nine-a, chapter six of this code when, during such
21 stages, neither a quorum nor the convening of the
22 governing members of the agency, board or commission
23 is required.

24 (c) When the legislative rule-making review commit-
25 tee is considering the form and substance of a rule or
26 proposed rule, the informal occurrence of (1) consulta-
27 tions between the members of the committee and its
28 staff members, (2) deliberations by the governing
29 members, or (3) the engagement of a governing member
30 or members in the process of making a decision, does
31 not constitute a meeting within the meaning of article
32 nine-a, chapter six of this code when, during such
33 stages, neither a quorum nor the convening of the
34 members of the committee is required.

35 (d) After public hearing or the close of the public
36 comment period, during which hearing or period an
37 agency, board or commission has received statements
38 concerning the form and substance of a rule or proposed
39 rule, the agency, board or commission shall not permit
40 the filing or receipt of, nor shall it consider, any
41 attempted ex parte communications directed to it in the
42 form of additional comment, prior to the submission of
43 its final agency-approved rule to the legislative rule-
44 making review committee pursuant to the provisions of
45 section eleven, article three of this chapter. Nothing
46 contained herein shall prohibit the agency, board or
47 commission from soliciting or receiving information
48 relating to the rule or proposed rule from the federal
49 government, from the Legislature or its members, or
50 from another agency, board or commission of the
51 executive branch of the government of this state.

52 (e) After a proposed rule is approved for submission
53 and is submitted to the legislative rule-making review
54 committee pursuant to the provisions of section eleven,
55 article three of this chapter, the right of the people to
56 assemble, to petition government, to consult for the
57 common good, to instruct their representatives, and to
58 apply for redress of grievances, in accordance with the
59 provisions of section sixteen, article III of the Constitu-
60 tion, shall reserve to a person the right to freely

61 communicate, ex parte or otherwise, with the agency,
62 board or commission or the legislative rule-making
63 review committee in attempts to influence deliberations
64 or decision-making regarding the form and substance of
65 the proposed rule prior to authorization being granted
66 for promulgation of the rule.

ARTICLE 2. STATE REGISTER.

§29A-2-6. Format and numbering of agency rules filed in state register.

1 (a) Each proposed rule filed by an agency requiring
2 a notice to be published in the state register in
3 accordance with the provisions of section five, article
4 three of this chapter shall include as its initial provi-
5 sions: (1) A statement identifying such rule as a
6 legislative rule, an interpretive rule or a procedural
7 rule, as the case may be; (2) a statement of such section,
8 article and chapter of this code to which such rule or
9 any part thereof relates; and (3) a statement of the
10 section, article and chapter of this code or any other
11 provision of law which provides authority for the
12 promulgation of such rule. The agency shall be estopped
13 from relying on any authority for the promulgation of
14 such rule which is not stated therein in accordance with
15 the requirements of this subdivision.

16 (b) Each rule when filed, to be finally effective, shall
17 have attached thereto an abstract of its promulgation
18 history prepared by the agency showing the date of the
19 filing in the state register of the content of, or notice of
20 any procedure relating to, action necessary under this
21 chapter to cause such rules to be finally effective:
22 *Provided*, That any error or omission in such abstract
23 shall not affect the validity of any rule or action in
24 respect thereto.

25 (c) The secretary of state shall prescribe by legislative
26 rule a standard size, format, numbering and indexing
27 for rules to be filed in the state register and he may
28 prescribe such procedural or interpretive rules as he
29 deems advisable to clarify and interpret the provisions
30 in this section. The secretary of state shall refuse to
31 accept for filing any rules which do not comply with the

32 specific provisions of this section, and he may refuse to
33 accept for filing any rules which do not comply with the
34 procedural rules issued by him pursuant to this section
35 until the rules sought to be filed are brought into
36 conformity with the secretary of state's procedural rules.

37 (d) Unless and until the secretary of state prescribes
38 otherwise by rule issued and made effective under the
39 provisions of subsection (c) of this section, each rule filed
40 in this state register shall be on white paper measuring
41 eight and one-half inches by eleven inches, typewritten
42 and single-spaced, with a one inch margin at the top,
43 bottom and each side of each page, and shall be
44 reproduced photographically, or by xerography or other
45 duplication process. The secretary of state may grant
46 specific exceptions to such requirements in the case of
47 maps, diagrams and exhibits, if the same may not be
48 conveniently folded and fastened with the other pages
49 of rules and in the case of rules which incorporate the
50 promulgation of a federal agency or other organization
51 which could not be submitted in the standard size and
52 format except at undue expense. Materials submitted
53 for inclusion in the state register shall be fastened on
54 the left side by two or more fasteners attached through
55 holes suitable for insertion into ring binders.

56 (e) The secretary of state shall also prescribe by
57 procedural rule a uniform system for the electronic
58 filing of a proposed rule or emergency rule or a
59 modification thereof, or a legislatively authorized rule,
60 either (1) by the direct electronic transmission of data
61 to a terminal in the office of the secretary of state, or
62 (2) by the delivery to the secretary of state of a machine-
63 readable copy of the filing on a medium such as
64 magnetic tape or disk, or the like, which system shall
65 be used in the process of filing proposed rules, emer-
66 gency rules, modifications and authorized rules with the
67 secretary of state. The secretary of state may grant
68 exceptions to the requirement for electronic filing in the
69 case of agencies, boards or commissions which do not
70 have reasonable access to a compatible electronic
71 transmission system or a means of creating a machine-
72 readable copy, but, if an exception is granted, the

73 secretary of state shall create a machine-readable copy
 74 of the proposed rule, emergency rule, modification or
 75 authorized rule. The electronic filing required by the
 76 provisions of this section shall not obviate any require-
 77 ment for the filing of printed paper copies of the
 78 proposed rule, emergency rule, modification or autho-
 79 rized rule as may be required by this chapter.

ARTICLE 3. RULE MAKING.

- §29A-3-5. Notice of proposed rule making.
- §29A-3-9. Proposal of legislative rules.
- §29A-3-11. Submission of legislative rules to the legislative rule-making review committee.
- §29A-3-12. Submission of legislative rules to Legislature.
- §29A-3-13. Adoption of legislative rules; effective date.
- §29A-3-15. Emergency legislative rules; procedure for promulgation; definition.
- §29A-3-15a. Disapproval of emergency rules and amendments to emergency rules by the secretary of state; judicial review.
- §29A-3-15b. Disapproval of emergency rules and amendments to emergency rules by the attorney general; judicial review.

§29A-3-5. Notice of proposed rule making.

1 When an agency proposes to promulgate a rule other
 2 than an emergency rule, it shall file with the secretary
 3 of state, for publication in the state register, a notice of
 4 its action, including therein any request for the
 5 submission of evidence to be presented on any factual
 6 determinations or inquiries required by law to promul-
 7 gate such rule. At the time of filing the notice of its
 8 action, the agency shall also file with the secretary of
 9 state a copy of the full text of the rule proposed, and
 10 a fiscal note as defined in subsection (b), section four of
 11 this article. If the agency is considering alternative
 12 draft proposals, it may also file with the secretary of
 13 state the full text of such draft proposals.

14 The notice shall fix a date, time and place for the
 15 receipt of public comment in the form of oral state-
 16 ments, written statements, and documents bearing upon
 17 any findings and determinations which are a condition
 18 precedent to the final approval by the agency of the
 19 proposed rule, and shall contain a general description
 20 of the issues to be decided. If no specific findings and
 21 determinations are required as a condition precedent to

22 the final approval by the agency of the approved rule,
23 the notice shall fix a date, time and place for the receipt
24 of general public comment on the proposed rule.

25 If findings and determinations are a condition
26 precedent to the promulgation of such rule, then an
27 opportunity for general public comment on the merits
28 of the rule shall be afforded after such findings and
29 determinations are made. In such event, notice of the
30 hearing, or of the period for receiving public comment
31 on the proposed rule shall be attached to and filed as
32 a part of the findings and determinations of the agency
33 when filed in the state register.

34 In any hearing for public comment on the merits of
35 the rule, the agency may limit presentations to written
36 material. The time, date and place fixed in the notice
37 shall constitute the last opportunity to submit any
38 written material relevant to any hearing, all of which
39 may be earlier submitted by filing with the agency.
40 After the public hearing or the close of the public
41 comment period, whichever is later, the agency shall not
42 permit the filing or receipt of, nor shall it consider, any
43 attempted ex parte communications directed to it in the
44 form of additional comment, prior to the submission of
45 its final agency-approved rule to the legislative rule-
46 making review committee pursuant to the provisions of
47 section eleven of this article.

48 The agency may also, at its expense, cause to be
49 published as a Class I legal publication in every county
50 of the state any notice required by this section.

51 Any citizen or other interested party may appear and
52 be heard at such hearings as are required by this
53 section.

§29A-3-9. Proposal of legislative rules.

1 When an agency proposes a legislative rule, other
2 than an emergency rule, it shall be deemed to be
3 applying to the Legislature for permission, to be granted
4 by law, to promulgate such rule as approved by the
5 agency for submission to the Legislature or as amended
6 and authorized by the Legislature by law.

7 An agency proposing a legislative rule, other than an
8 emergency rule, after filing the notice of proposed rule-
9 making required by the provisions of section five of this
10 article, shall then proceed as in the case of a procedural
11 and interpretive rule to the point of, but not including,
12 final adoption. In lieu of final adoption, the agency shall
13 finally approve the proposed rule, including any
14 amendments, for submission to the Legislature and file
15 such notice of approval in the state register and with
16 the legislative rule-making review committee.

17 Such final agency approval of the rule under this
18 section is deemed to be approval for submission to the
19 Legislature only and does not give any force and effect
20 to the proposed rule. The rule shall have full force and
21 effect only when authority for promulgation of the rule
22 is granted by an act of the Legislature and the rule is
23 promulgated pursuant to the provisions of section
24 thirteen of this article.

**§29A-3-11. Submission of legislative rules to the legisla-
tive rule-making review committee.**

1 (a) When an agency finally approves a proposed
2 legislative rule for submission to the Legislature,
3 pursuant to the provisions of section nine of this article,
4 the secretary of the executive department which
5 administers the agency pursuant to the provisions of
6 article two, chapter five-f of this code shall submit to
7 the legislative rule-making review committee at its
8 offices or at a regular meeting of such committee fifteen
9 copies of: (1) The full text of the legislative rule as
10 finally approved by the agency, with new language
11 underlined and with language to be deleted from any
12 existing rule stricken through but clearly legible; (2) a
13 brief summary of the content of the legislative rule and
14 a description and a copy of any existing rule which the
15 agency proposes to amend or repeal; (3) a statement of
16 the circumstances which require the rule; (4) a fiscal
17 note containing all information included in a fiscal note
18 for either house of the Legislature and a statement of
19 the economic impact of the rule on the state or its
20 residents; and (5) any other information which the
21 committee may request or which may be required by

22 law. If the agency is an agency, board or commission
23 which is not administered by an executive department
24 as provided for in article two, chapter five-f of this code,
25 the agency shall submit the final agency-approved rule
26 as required by this subsection.

27 (b) The committee shall review each proposed legis-
28 lative rule and, in its discretion, may hold public
29 hearings thereon. Such review shall include, but not be
30 limited to, a determination of:

31 (1) Whether the agency has exceeded the scope of its
32 statutory authority in approving the proposed legislative
33 rule;

34 (2) Whether the proposed legislative rule is in
35 conformity with the legislative intent of the statute
36 which the rule is intended to implement, extend, apply,
37 interpret or make specific;

38 (3) Whether the proposed legislative rule conflicts
39 with any other provision of this code or with any other
40 rule adopted by the same or a different agency;

41 (4) Whether the proposed legislative rule is necessary
42 to fully accomplish the objectives of the statute under
43 which the rule was proposed for promulgation;

44 (5) Whether the proposed legislative rule is reasona-
45 ble, especially as it affects the convenience of the general
46 public or of persons particularly affected by it;

47 (6) Whether the proposed legislative rule could be
48 made less complex or more readily understandable by
49 the general public; and

50 (7) Whether the proposed legislative rule was pro-
51 posed for promulgation in compliance with the require-
52 ments of this article and with any requirements imposed
53 by any other provision of this code.

54 (c) After reviewing the legislative rule, the committee
55 shall recommend that the Legislature:

56 (1) Authorize the promulgation of the legislative rule,
57 or

58 (2) Authorize the promulgation of part of the legisla-

59 tive rule, or

60 (3) Authorize the promulgation of the legislative rule
61 with certain amendments, or

62 (4) Recommend that the proposed rule be withdrawn.

63 The committee shall file notice of its action in the
64 state register and with the agency proposing the rule:
65 *Provided*, That when the committee makes the recom-
66 mendations of subdivision (2), (3) or (4) of this subsec-
67 tion, the notice shall contain a statement of the reasons
68 for such recommendation.

69 (d) When the committee recommends that a rule be
70 authorized, in whole or in part, by the Legislature, the
71 committee shall instruct its staff or the office of
72 legislative services to draft a bill authorizing the
73 promulgation of all or part of the legislative rule, and
74 incorporating such amendments as the committee
75 desires. If the committee recommends that the rule not
76 be authorized, it shall include in its report a draft of a
77 bill authorizing promulgation of the rule together with
78 a recommendation. Any draft bill prepared under this
79 section shall contain a legislative finding that the rule
80 is within the legislative intent of the statute which the
81 rule is intended to implement, extend, apply or interpret
82 and shall be available for any member of the Legislature
83 to introduce to the Legislature.

§29A-3-12. Submission of legislative rules to Legislature.

1 (a) No later than forty days before the sixtieth day of
2 each regular session of the Legislature, the cochairmen
3 of the legislative rule-making review committee shall
4 submit to the clerk of the respective houses of the
5 Legislature copies of all proposed legislative rules which
6 have been submitted to and considered by the committee
7 pursuant to the provisions of section eleven of this article
8 and which have not been previously submitted to the
9 Legislature for study, together with the recommenda-
10 tions of the committee with respect to such rules, a
11 statement of the reasons for any recommendation that
12 a rule be amended or withdrawn, and a statement that
13 a bill authorizing the legislative rule has been drafted

14 by the staff of the committee or by legislative services
15 pursuant to section eleven of this article. The cochair-
16 man of the committee may also submit such rules at the
17 direction of the committee at any time before or during
18 a special session in which consideration thereof may be
19 appropriate. The committee may withhold from its
20 report any proposed legislative rule which was submit-
21 ted to the committee fewer than two hundred ten days
22 before the end of the regular session. The clerk of each
23 house shall submit the report to his or her house at the
24 commencement of the next session.

25 All bills introduced authorizing the promulgation of
26 a rule may be referred by the speaker of the House of
27 Delegates and by the president of the Senate to
28 appropriate standing committees of the respective
29 houses for further consideration or the matters may be
30 otherwise dealt with as each house or its rules provide.
31 The Legislature may by act authorize the agency to
32 adopt a legislative rule incorporating the entire rule, or
33 may authorize the agency to adopt a rule with any
34 amendments which the Legislature shall designate. The
35 clerk of the house originating such act shall forthwith
36 file a copy of any bill of authorization enacted with the
37 secretary of state and with the agency proposing such
38 rule and the clerk of each house may prepare and file
39 a synopsis of legislative action during any session on any
40 proposed rule submitted to the house during such
41 session for which authority to promulgate was not by
42 law provided during such session. In acting upon the
43 separate bills authorizing the promulgation of rules, the
44 Legislature may, by amendment or substitution, com-
45 bine the separate bills of authorization insofar as the
46 various rules authorized therein are proposed by
47 agencies which are placed under the administration of
48 one of the single separate executive departments
49 identified under the provisions of section two, article
50 one, chapter five-f of this code, or, the Legislature may
51 combine the separate bills of authorization by agency or
52 agencies within an executive department. In the case of
53 rules proposed for promulgation by an agency which is
54 not administered by an executive department pursuant
55 to the provisions of article two, chapter five-f of this

56 code, the separate bills of authorization for the proposed
57 rules of that agency may, by amendment or substitution,
58 be combined. The foregoing provisions relating to
59 combining separate bills of authorization according to
60 department or agency are not intended to restrict the
61 permissible breadth of bills of authorization and do not
62 preclude the Legislature from otherwise combining
63 various bills of authorization which have a unity of
64 subject matter. Any number of provisions may be
65 included in a bill of authorization, but the single object
66 of the bill shall be to authorize the promulgation of
67 proposed legislative rules.

68 (b) If the Legislature fails during its regular session
69 to act upon all or part of any legislative rule which was
70 submitted to it by the legislative rule-making review
71 committee during such session, no agency may thereaf-
72 ter issue any rule or directive or take other action to
73 implement such rule or part thereof unless and until
74 otherwise authorized to do so.

75 (c) Nothing herein shall be construed to prevent the
76 Legislature by law from authorizing, or authorizing and
77 directing, an agency to promulgate legislative rules not
78 proposed by the agency or upon which some procedure
79 specified in this chapter is not yet complete.

80 (d) Whenever the Legislature is convened by procla-
81 mation of the governor, upon his or her own initiative
82 or upon application of the members of the Legislature,
83 or whenever a regular session of the Legislature is
84 extended or convened by the vote or petition of its
85 members, the Legislature may by act enacted during
86 such extraordinary or extended session authorize, in
87 whole or in part, any legislative rule whether submitted
88 to the legislative rule-making review committee, or not,
89 if legislative action on such rule during such session is
90 a lawful order of business.

91 (e) Whenever a date is required by this section to be
92 computed in relation to the end of a regular session of
93 the Legislature, such date shall be computed without
94 regard to any extensions of such session occasioned
95 solely by the proclamation of the governor.

96 (f) Whenever a date is required to be computed from
97 or is fixed by the first day of a regular session of the
98 Legislature, it shall be computed or fixed in the year
99 one thousand nine hundred eighty-four, and each fourth
100 year thereafter without regard to the second Wednesday
101 of January of such years.

§29A-3-13. Adoption of legislative rules; effective date.

1 (a) Except as the Legislature may by law otherwise
2 provide, within sixty days after the effective date of an
3 act authorizing promulgation of a legislative rule, the
4 rule shall be promulgated only in conformity with the
5 provisions of law authorizing and directing the promul-
6 gation of such rule. In the case of a rule proposed by
7 an agency which is administered by an executive
8 department pursuant to the provisions of article two,
9 chapter five-f of this code, the secretary of the depart-
10 ment shall promulgate the rule as authorized by the
11 Legislature. In the case of an agency which is not
12 subject to administration by the secretary of an
13 executive department, the agency which proposed the
14 rule for promulgation shall promulgate the rule as
15 authorized by the Legislature.

16 (b) A legislative rule authorized by the Legislature
17 shall become effective thirty days after such filing in the
18 state register, or on the effective date fixed by the
19 authorizing act or if none is fixed by law, such later date
20 not to exceed ninety days, as is fixed by the agency.

21 (c) The secretary of state shall note in the state
22 register the effective date of an authorized and promul-
23 gated legislative rule, and shall promptly publish the
24 duly promulgated rule in a code of state rules main-
25 tained by his or her office.

§29A-3-15. Emergency legislative rules; procedure for promulgation; definition.

1 (a) Any agency with authority to propose legislative
2 rules may, without hearing, find that an emergency
3 exists requiring that emergency rules be promulgated
4 and promulgate the same in accordance with this
5 section. Such emergency rules, together with a state-

6 ment of the facts and circumstances constituting the
7 emergency, shall be filed with the secretary of state, and
8 a notice of such filing shall be published in the state
9 register. Such emergency rules shall become effective
10 upon the approval of the secretary of state in accordance
11 with section fifteen-a of this article or upon the approval
12 of the attorney general in accordance with section
13 fifteen-b or upon the forty-second day following such
14 filing, whichever occurs first. Such emergency rules
15 may adopt, amend or repeal any legislative rule, but the
16 circumstances constituting the emergency requiring
17 such adoption, amendment or repeal shall be stated with
18 particularity and be subject to de novo review by any
19 court having original jurisdiction of an action challeng-
20 ing their validity. Fourteen copies of the rules and of
21 the required statement shall be filed immediately with
22 the secretary of state and one copy shall be filed
23 immediately with the legislative rule-making review
24 committee.

25 An emergency rule shall be effective for not more
26 than fifteen months and shall expire earlier if any of the
27 following occurs:

28 (1) The secretary of state, acting under the authority
29 provided for in section fifteen-a of this article, or the
30 attorney general, acting under the authority provided
31 for in section fifteen-b of this article, disapproves the
32 emergency rule because: (A) The emergency rule or an
33 amendment to the emergency rule exceeds the scope of
34 the law authorizing or directing the promulgation
35 thereof; (B) an emergency does not exist justifying the
36 promulgation of the emergency rule; or (C) the emer-
37 gency rule was not promulgated in compliance with the
38 provisions of this section. An emergency rule may not
39 be disapproved pursuant to the authority granted by
40 paragraphs (A) or (B) of this subdivision on the basis
41 that the secretary of state or the attorney general
42 disagrees with the underlying public policy established
43 by the Legislature in enacting the supporting legisla-
44 tion. An emergency rule which would otherwise be
45 approved as being necessary to comply with a time
46 limitation established by this code or by a federal statute

47 or regulation may not be disapproved pursuant to the
48 authority granted by paragraphs (A) or (B) of this
49 subdivision on the basis that the agency has failed to file
50 the emergency rule prior to the date fixed by such time
51 limitation. When the supporting statute specifically
52 directs an agency to promulgate an emergency rule, or
53 specifically finds that an emergency exists and directs
54 the promulgation of an emergency rule, the emergency
55 rule may not be disapproved pursuant to the authority
56 granted by paragraph (B) of this subdivision. An
57 emergency rule may not be disapproved on the basis
58 that the Legislature has not specifically directed an
59 agency to promulgate the emergency rule, or has not
60 specifically found that an emergency exists and directed
61 the promulgation of an emergency rule,

62 (2) The agency has not previously filed and fails to file
63 a notice of public hearing on the proposed rule within
64 thirty days of the date the proposed rule was filed as
65 an emergency rule; in which case the emergency rule
66 expires on the thirty-first day.

67 (3) The agency has not previously filed and fails to file
68 the proposed rule with the legislative rule-making
69 review committee within ninety days of the date the
70 proposed rule was filed as an emergency rule; in which
71 case the emergency rule expires on the ninety-first day.

72 (4) The Legislature has authorized or directed
73 promulgation of an authorized legislative rule dealing
74 with substantially the same subject matter since such
75 emergency rule was first promulgated, and in which
76 case the emergency rule expires on the date the
77 authorized rule is made effective.

78 (5) The Legislature has, by law, disapproved of such
79 emergency rule; in which case the emergency rule
80 expires on the date the law becomes effective.

81 (b) Any amendment to an emergency rule made by
82 the agency shall be filed in the state register and does
83 not constitute a new emergency rule for the purpose of
84 acquiring additional time or avoiding the expiration
85 dates in subdivision (2), (3), (4) or (5), subsection (a) of
86 this section: *Provided*, That such emergency amendment

87 shall become effective upon the approval of the secretary
88 of state in accordance with section fifteen-a of this
89 article or upon approval of the attorney general in
90 accordance with section fifteen-b of this article or upon
91 the forty-second day following such filing, whichever
92 occurs first.

93 (c) Once an emergency rule expires due to the
94 conclusion of fifteen months or due to the effect of
95 subdivision (2), (3), (4) or (5), subsection (a) of this
96 section, the agency may not refile the same or similar
97 rule as an emergency rule.

98 (d) The provision of this section shall not be used to
99 avoid or evade any provision of this article or any other
100 provisions of this code, including any provisions for
101 legislative review and approval of proposed rules. Any
102 emergency rule promulgated for any such purpose may
103 be contested in a judicial proceeding before a court of
104 competent jurisdiction.

105 (e) The legislative rule-making review committee may
106 review any emergency rule to determine (1) whether the
107 emergency rule or an amendment to the emergency rule
108 exceeds the scope of the law authorizing or directing the
109 promulgation thereof; (2) whether there exists an
110 emergency justifying the promulgation of such emer-
111 gency rule; and (3) whether the emergency rule was
112 promulgated in compliance with the requirements and
113 prohibitions contained in this section. The committee
114 may recommend to the agency, the Legislature, or the
115 secretary of state such action as it may deem proper.

116 (f) For the purposes of this section, an emergency
117 exists when the promulgation of an emergency rule is
118 necessary (1) for the immediate preservation of the
119 public peace, health, safety or welfare, (2) to comply
120 with a time limitation established by this code or by a
121 federal statute or regulation, or (3) to prevent substan-
122 tial harm to the public interest.

**§29A-3-15a. Disapproval of emergency rules and amend-
ments to emergency rules by the secre-
tary of state; judicial review.**

1 (a) Upon the filing of an emergency rule or filing of
2 an amendment to an emergency rule by an agency,
3 under the provisions of section fifteen of this article, by
4 any agency, except for the secretary of state, the
5 secretary of state shall review such rule or such
6 amendment and, within forty-two days of such filing,
7 shall issue a decision as to whether or not such
8 emergency rule or such amendment to an emergency
9 rule should be disapproved. An emergency rule filed by
10 the secretary of state shall be reviewed by the attorney
11 general as provided for in section fifteen-b of this
12 article.

13 (b) The secretary of state shall disapprove an emer-
14 gency rule or an amendment to an emergency rule if he
15 determines:

16 (1) That the emergency rule or an amendment to the
17 emergency rule exceeds the scope of the law authorizing
18 or directing the promulgation thereof; or

19 (2) That an emergency does not exist justifying the
20 promulgation of the emergency rule or the filing of an
21 amendment to the emergency rule; or

22 (3) That the emergency rule or an amendment to the
23 emergency rule was not promulgated in compliance
24 with the provisions of section fifteen of this article.

25 (c) If the secretary of state determines, based upon the
26 contents of the rule or the supporting information filed
27 by the agency, that the emergency rule should be
28 disapproved, he may disapprove such rule without
29 further investigation, notice or hearing. If, however, the
30 secretary of state concludes that the information
31 submitted by the agency is insufficient to allow a proper
32 determination to be made as to whether the emergency
33 rule should be disapproved, he may make further
34 investigation, including, but not limited to, requiring
35 the agency or other interested parties to submit
36 additional information or comment or fixing a date,
37 time and place for the taking of evidence on the issues
38 involved in making a determination under the provi-
39 sions of this section.

40 (d) If the secretary of state determines, based upon the
41 contents of the amendment to an emergency rule or the
42 supporting information filed by the agency, that the
43 amendment to the emergency rule should be disap-
44 proved, he may disapprove such amendment without
45 further investigation, notice or hearing. If, however, the
46 secretary of state concludes that the information
47 submitted by the agency is insufficient to allow a proper
48 determination to be made as to whether the amendment
49 should be disapproved, he may make further investiga-
50 tion, including, but not limited to, requiring the agency
51 or other interested parties to submit additional informa-
52 tion or comment or fixing a date, time and place for the
53 taking of evidence on the issues involved in making a
54 determination under the provisions of this section.

55 (e) The determination of the secretary of state shall
56 be reviewable by the supreme court of appeals under its
57 original jurisdiction, based upon a petition for a writ of
58 mandamus, prohibition or certiorari, as appropriate.
59 Such proceeding may be instituted by:

60 (1) The agency which promulgated the emergency
61 rule;

62 (2) A member of the Legislature; or

63 (3) Any person whose personal property interests will
64 be significantly affected by the approval or disapproval
65 of the emergency rule by the secretary of state.

**§29A-3-15b. Disapproval of emergency rules and amend-
ments to emergency rules by the attorney
general; judicial review.**

1 (a) Upon the filing of an emergency rule or filing of
2 an amendment to an emergency rule by the secretary
3 of state under the provisions of section fifteen of this
4 article, the attorney general shall review such rule or
5 such amendment and, within forty-two days of such
6 filing, shall issue a decision as to whether or not such
7 emergency rule or such amendment to an emergency
8 rule should be disapproved.

9 (b) The attorney general shall disapprove an emer-

10 gency rule or an amendment to an emergency rule if he
11 determines:

12 (1) That the emergency rule or an amendment to the
13 emergency rule exceeds the scope of the law authorizing
14 or directing the promulgation thereof; or

15 (2) That an emergency does not exist justifying the
16 promulgation of the emergency rule or the filing of an
17 amendment to the emergency rule; or

18 (3) That the emergency rule or an amendment to the
19 emergency rule was not promulgated in compliance
20 with the provisions of section fifteen of this article.

21 (c) If the attorney general determines, based upon the
22 contents of the rule or the supporting information filed
23 by the secretary of state, that the emergency rule should
24 be disapproved, he may disapprove such rule without
25 further investigation, notice or hearing. If, however, the
26 attorney general concludes that the information submit-
27 ted by the secretary of state is insufficient to allow a
28 proper determination to be made as to whether the
29 emergency rule should be disapproved, he may make
30 further investigation, including, but not limited to,
31 requiring the secretary of state or other interested
32 parties to submit additional information or comment or
33 fixing a date, time and place for the taking of evidence
34 on the issues involved in making a determination under
35 the provisions of this section.

36 (d) If the attorney general determines, based upon the
37 contents of the amendment to an emergency rule or the
38 supporting information filed by the agency, that the
39 amendment to the emergency rule should be disap-
40 proved, he may disapprove such amendment without
41 further investigation, notice or hearing. If, however, the
42 attorney general concludes that the information submit-
43 ted by the agency is insufficient to allow a proper
44 determination to be made as to whether the amendment
45 should be disapproved, he may make further investiga-
46 tion, including, but not limited to, requiring the agency
47 or other interested parties to submit additional informa-
48 tion or comment or fixing a date, time and place for the
49 taking of evidence on the issues involved in making a

50 determination under the provisions of this section.

51 (e) The determination of the attorney general shall be
52 reviewable by the supreme court of appeals under its
53 original jurisdiction, based upon a petition for a writ of
54 mandamus, prohibition or certiorari, as appropriate.
55 Such proceeding may be instituted by:

56 (1) The secretary of state;

57 (2) A member of the Legislature; or

58 (3) Any person whose personal property interests will
59 be significantly affected by the approval or disapproval
60 of the emergency rule by the attorney general.

ARTICLE 3A. HIGHER EDUCATION RULE MAKING.

§29A-3A-6. Notice of proposed rule making.

§29A-3A-10. Proposal of legislative rules.

§29A-3A-16. Emergency legislative rules; procedure for promulgation;
definition.

§29A-3A-16a. Disapproval of emergency rules by the secretary of state;
judicial review.

§29A-3A-6. Notice of proposed rule making.

1 When the board proposes to promulgate a rule other
2 than an emergency rule, it shall file with the secretary
3 of state, for publication in the state register, a notice of
4 its action, including therein any request for the
5 submission of evidence to be presented on any factual
6 determinations or inquiries required by law to promul-
7 gate such rule. At the time of filing the notice of its
8 action, the board shall also file with the secretary of
9 state a copy of the full text of the rule proposed, and
10 a fiscal note as defined in subsection (b), section five of
11 this article. If the board is considering alternative draft
12 proposals, it may also file with the secretary of state the
13 full text of such draft proposals.

14 The notice shall fix a date, time and place for the
15 receipt of public comment in the form of oral state-
16 ments, written statements, and documents bearing upon
17 any findings and determinations which are a condition
18 precedent to the final approval by the board of the
19 proposed rule, and shall contain a general description
20 of the issues to be decided. If no specific findings and

21 determinations are required as a condition precedent to
22 the final approval by the board of the approved rule, the
23 notice shall fix a date, time and place for the receipt of
24 general public comment on the proposed rule.

25 If findings and determinations are a condition
26 precedent to the promulgation of such rule, then an
27 opportunity for general public comment on the merits
28 of the rule shall be afforded after such findings and
29 determinations are made. In such event, notice of the
30 hearing, or of the period for receiving public comment
31 on the proposed rule shall be attached to and filed as
32 a part of the findings and determinations of the board
33 when filed in the state register.

34 In any hearing for public comment on the merits of
35 the rule, the board may limit presentations to written
36 material. The time, date and place fixed in the notice
37 shall constitute the last opportunity to submit any
38 written material relevant to any hearing, all of which
39 may be earlier submitted by filing with the board. After
40 the public hearing or the close of the public comment
41 period, whichever is later, the board shall not permit the
42 filing or receipt of, nor shall it consider, any attempted
43 ex parte communications directed to it in the form of
44 additional comment, prior to the submission of its final
45 board-approved rule to the legislative oversight commis-
46 sion on education accountability pursuant to the
47 provisions of section twelve of this article.

48 The board may also, at its expense, cause to be
49 published as a Class I legal publication in every county
50 of the state any notice required by this section.

51 Any citizen or other interested party may appear and
52 be heard at such hearings as are required by this
53 section.

§29A-3A-10. Proposal of legislative rules.

1 When the board proposes a legislative rule, other than
2 an emergency rule, it shall be deemed to be applying
3 to the Legislature for permission, to be granted by law,
4 to promulgate such rule as approved by the board for
5 submission to the Legislature or as amended and

6 authorized by the Legislature by law.

7 When proposing a legislative rule, other than an
8 emergency rule, and after filing the notice of proposed
9 rule-making required by the provisions of section five
10 of this article, the board shall then proceed as in the case
11 of a procedural and interpretive rule to the point of, but
12 not including, final adoption. In lieu of final adoption,
13 the board shall finally approve the proposed rule,
14 including any amendments, for submission to the
15 Legislature and file such notice of approval in the state
16 register and with the legislative oversight commission
17 on education accountability.

18 Such final approval of the rule under this section is
19 deemed to be approval for submission to the Legislature
20 only and does not give any force and effect to the
21 proposed rule. The rule shall have full force and effect
22 only when authority for promulgation of the rule is
23 granted by an act of the Legislature and the rule is
24 promulgated pursuant to the provisions of section
25 fourteen of this article.

**§29A-3A-16. Emergency legislative rules; procedure for
promulgation; definition.**

1 (a) The board may, without hearing, find that an
2 emergency exists requiring that emergency rules be
3 promulgated and promulgate the same in accordance
4 with this section. Such emergency rules, together with
5 a statement of the facts and circumstances constituting
6 the emergency, shall be filed in the state register and
7 shall become effective immediately upon such filing.
8 Such emergency rules may adopt, amend or repeal any
9 legislative rule, but the circumstances constituting the
10 emergency requiring such adoption, amendment or
11 repeal shall be stated with particularity and be subject
12 to de novo review by any court having original jurisdic-
13 tion of an action challenging their validity. Fifteen
14 copies of the rules and of the required statement shall
15 be filed forthwith with the legislative oversight commis-
16 sion on education accountability.

17 An emergency rule shall be effective for not more
18 than fifteen months and shall expire earlier if any of the

19 following occurs:

20 (1) The secretary of state, acting under the authority
21 provided for in section sixteen-a of this article, disap-
22 proves the emergency rule because: (A) The emergency
23 rule or an amendment to the emergency rule exceeds the
24 scope of the law authorizing or directing the promulga-
25 tion thereof; (B) an emergency does not exist justifying
26 the promulgation of the emergency rule; or (C) the
27 emergency rule was not promulgated in compliance
28 with the provisions of this section. An emergency rule
29 may not be disapproved pursuant to the authority
30 granted by paragraphs (A) or (B) of this subdivision on
31 the basis that the secretary of state disagrees with the
32 underlying public policy established by the Legislature
33 in enacting the supporting legislation. An emergency
34 rule which would otherwise be approved as being
35 necessary to comply with a time limitation established
36 by this code or by a federal statute or regulation may
37 not be disapproved pursuant to the authority granted by
38 paragraphs (A) or (B) of this subdivision on the basis
39 that the board has failed to file the emergency rule prior
40 to the date fixed by such time limitation. When the
41 supporting statute specifically directs the board to
42 promulgate an emergency rule, or specifically finds that
43 an emergency exists and directs the promulgation of an
44 emergency rule, the emergency rule may not be
45 disapproved pursuant to the authority granted by
46 paragraph (B) of this subdivision. An emergency rule
47 may not be disapproved on the basis that the Legislature
48 has not specifically directed the board to promulgate the
49 emergency rule, or has not specifically found that an
50 emergency exists and directed the promulgation of an
51 emergency rule.

52 (2) The board has not previously filed and fails to file
53 a notice of public hearing on the proposed rule within
54 sixty days of the date the proposed rule was filed as an
55 emergency rule; in which case the emergency rule
56 expires on the sixty-first day.

57 (3) The board has not previously filed and fails to file
58 the proposed rule with the legislative oversight commis-
59 sion on education accountability within one hundred

60 eighty days of the date the proposed rule was filed as
61 an emergency rule; in which case the emergency rule
62 expires on the one hundred eighty-first day.

63 (4) The Legislature has authorized or directed
64 promulgation of an authorized legislative rule dealing
65 with substantially the same subject matter since such
66 emergency rule was first promulgated, and in which
67 case the emergency rule expires on the date the
68 authorized rule is made effective.

69 (5) The Legislature has, by law, disapproved of such
70 emergency rule; in which case the emergency rule
71 expires on the date the law becomes effective.

72 (b) Any amendment to an emergency rule made by
73 the board shall be filed in the state register and does
74 not constitute a new emergency rule for the purpose of
75 acquiring additional time or avoiding the expiration
76 dates in subdivision (2), (3), (4) or (5), subsection (a) of
77 this section.

78 (c) Once an emergency rule expires due to the
79 conclusion of fifteen months or due to the effect of
80 subdivision (2), (3), (4) or (5), subsection (a) of this
81 section, the board may not refile the same or similar
82 rule as an emergency rule.

83 (d) Emergency legislative rules currently in effect
84 under the prior provisions of this section may be refiled
85 under the provisions of this section.

86 (e) The provision of this section shall not be used to
87 avoid or evade any provision of this article or any other
88 provisions of this code, including any provisions for
89 legislative review and approval of proposed rules. Any
90 emergency rule promulgated for any such purpose may
91 be contested in a judicial proceeding before a court of
92 competent jurisdiction.

93 (f) The legislative oversight commission on education
94 accountability may review any emergency rule to
95 determine (1) whether the board has exceeded the scope
96 of its statutory authority in promulgating the emer-
97 gency rule; (2) whether there exists an emergency
98 justifying the promulgation of such rule; and (3)

99 whether the rule was promulgated in compliance with
100 the requirements and prohibitions contained in this
101 section. The commission may recommend to the board,
102 the Legislature, or the secretary of state such action as
103 it may deem proper.

104 (g) For the purposes of this section, an emergency
105 exists when the promulgation of a rule is necessary for
106 the immediate preservation of the public peace, health,
107 safety or welfare or is necessary to comply with a time
108 limitation established by this code or by a federal statute
109 or regulation or to prevent substantial harm to the
110 public interest.

**§29A-3A-16a. Disapproval of emergency rules by the
secretary of state; judicial review.**

1 (a) Upon the filing of an emergency rule by the board,
2 under the provisions of section sixteen of this article, the
3 secretary of state shall review such rule and, within
4 forty-two days of such filing, shall issue a decision as to
5 whether or not such emergency rule should be
6 disapproved.

7 (b) The secretary of state shall disapprove an emer-
8 gency rule if he determines:

9 (1) That the emergency rule or an amendment to the
10 emergency rule exceeds the scope of the law authorizing
11 or directing the promulgation thereof; or

12 (2) That an emergency does not exist justifying the
13 promulgation of the emergency rule or the filing of an
14 amendment to the emergency rule; or

15 (3) That the emergency rule or an amendment to the
16 emergency rule was not promulgated in compliance
17 with the provisions of section sixteen of this article.

18 (c) If the secretary of state determines, based upon the
19 contents of the rule or the supporting information filed
20 by the board, that the emergency rule should be
21 disapproved, he may disapprove such rule without
22 further investigation, notice or hearing. If, however, the
23 secretary of state concludes that the information
24 submitted by the board is insufficient to allow a proper

25 determination to be made as to whether the emergency
26 rule should be disapproved, he may make further
27 investigation, including, but not limited to, requiring
28 the board or other interested parties to submit addi-
29 tional information or comment or fixing a date, time and
30 place for the taking of evidence on the issues involved
31 in making a determination under the provisions of this
32 section.

33 (d) The determination of the secretary of state shall
34 be reviewable by the supreme court of appeals under its
35 original jurisdiction, based upon a petition for a writ of
36 mandamus, prohibition of certiorari, as appropriate.
37 Such proceeding may be instituted by:

38 (1) The board;

39 (2) A member of the Legislature; or

40 (3) Any person whose personal property interests will
41 be significantly affected by the approval or disapproval
42 of the emergency rule by the secretary of state.

CHAPTER 91

(S. B. 143—By Senators Manchin, Anderson, Grubb and Minard)

[Passed March 10, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the secretary of the department of administration to promulgate legislative rules relating to the use of domestic aluminum, glass or steel products in public works projects.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-7. Secretary of the department of administration.

1 (a) The legislative rules filed in the state register on
2 the twenty-sixth day of September, one thousand nine
3 hundred ninety, modified by the secretary of the
4 department of administration to meet the objections of
5 the legislative rule-making review committee and
6 refiled in the state register on the twenty-fourth day of
7 January, one thousand nine hundred ninety-one, relating
8 to the secretary of the department of administration
9 (plan of operation for the information and communica-
10 tion services division), are authorized.

11 (b) The legislative rules filed in the state register on
12 the twenty-sixth day of September, one thousand nine
13 hundred ninety, modified by the secretary of the
14 department of administration to meet the objections of
15 the legislative rule-making review committee and
16 refiled in the state register on the twenty-fourth day of
17 January, one thousand nine hundred ninety-one, relating
18 to the secretary of the department of administration
19 (parking), are authorized.

20 (c) The legislative rules filed in the state register on
21 the twenty-sixth day of September, one thousand nine
22 hundred ninety, modified by the secretary of the
23 department of administration to meet the objections of
24 the legislative rule-making review committee and
25 refiled in the state register on the twenty-fourth day of
26 January, one thousand nine hundred ninety-one, relating
27 to the secretary of the department of administration
28 (leasing space on behalf of state spending units), are
29 authorized.

30 (d) The legislative rules filed in the state register on
31 the nineteenth day of June, one thousand nine hundred
32 ninety-one, modified by the secretary of the department
33 of administration to meet the objections of the legislative
34 rule-making review committee and refiled in the state
35 register on the thirtieth day of August, one thousand
36 nine hundred ninety-one, relating to the secretary of the
37 department of administration (reporting of state assets
38 by financial institutions), are authorized.

39 (e) The legislative rules filed in the state register on

40 the sixth day of October, one thousand nine hundred
41 ninety-two, modified by the secretary of the department
42 of administration to meet the objections of the legislative
43 rule-making review committee and refiled in the state
44 register on the fourteenth day of July, one thousand nine
45 hundred ninety-three, relating to the secretary of the
46 department of administration (use of domestic alumi-
47 num, glass or steel products in public works projects),
48 are authorized.

CHAPTER 92

(S. B. 161—By Senators Manchin, Anderson, Grubb and Minard)

[Passed March 10, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article four, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the division of culture and history to promulgate legislative rules relating to standards and procedures for granting permits to excavate archaeological sites and unmarked graves.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. AUTHORIZATION FOR DEPARTMENT OF EDUCATION AND THE ARTS TO PROMULGATE LEGISLATIVE RULES.

§64-4-3. Division of culture and history.

1 (a) The legislative rules filed in the state register on
2 the eighth day of August, one thousand nine hundred
3 ninety, modified by the division of culture and history
4 to meet the objections of the legislative rule-making
5 review committee and refiled in the state register on the
6 sixteenth day of January, one thousand nine hundred
7 ninety-one, relating to the division of culture and history
8 (standards and procedures for granting permits to

9 excavate archaeological sites and unmarked graves), are
10 authorized.

11 (b) The legislative rules filed in the state register on
12 the sixteenth day of August, one thousand nine hundred
13 ninety-three, modified by the division of culture and
14 history to meet the objections of the legislative rule-
15 making review committee and refiled in the state
16 register on the first day of December, one thousand nine
17 hundred ninety-three, relating to the division of culture
18 and history (standards and procedures for granting
19 permits to excavate archaeological sites and unmarked
20 graves), are authorized.

CHAPTER 93

(S. B. 158—By Senators Manchin, Anderson, Grubb and Minard)

[Passed March 10, 1994: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the division of corrections to promulgate legislative rules relating to parole supervision.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.

§64-6-1. Division of corrections.

1 (a) The legislative rules filed in the state register on
2 the twentieth day of September, one thousand nine
3 hundred eighty-eight, modified by the commissioner of
4 the department of corrections to meet the objections of
5 the legislative rule-making review committee and
6 refiled in the state register on the thirteenth day of
7 January, one thousand nine hundred eighty-nine,

8 relating to the commissioner of the department of
9 corrections (parole supervision), are authorized.

10 (b) The legislative rules filed in the state register on
11 the twentieth day of September, one thousand nine
12 hundred eighty-eight, modified by the commissioner of
13 the department of corrections to meet the objections of
14 the legislative rule-making review committee and
15 refiled in the state register on the thirteenth day of
16 January, one thousand nine hundred eighty-nine,
17 relating to the commissioner of the department of
18 corrections (furlough programs for inmates under the
19 custody and control of the commissioner of the depart-
20 ment of corrections), are authorized.

21 (c) The legislative rules filed in the state register on
22 the sixteenth day of August, one thousand nine hundred
23 ninety-three, modified by the division of corrections to
24 meet the objections of the legislative rule-making review
25 committee and refiled in the state register on the
26 sixteenth day of November, one thousand nine hundred
27 ninety-three, relating to the division of corrections
28 (parole supervision), are authorized.

CHAPTER 94

(S. B. 186—By Senators Manchin, Anderson, Grubb and Minard)

[Passed March 12, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, five and six, article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the promulgation of administrative rules and regulations by the various executive or administrative agencies and the procedures relating 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 the insurance commissioner to promulgate legislative rules relating to insurance company reporting forms, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to substandard motor vehicle insurance notice requirements, as modified; 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 continuation of coverage under automobile liability policies, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to West Virginia life and health insurance guaranty association act notice requirements, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to group accident and sickness insurance minimum policy coverage standards, as modified and amended; authorizing the lottery commissioner to promulgate legislative rules relating to the state lottery, as modified; authorizing the racing commissioner to promulgate legislative rules relating to greyhound racing; authorizing the racing commissioner to promulgate legislative rules relating to thoroughbred racing; authorizing the division of tax to promulgate legislative rules relating to bingo; authorizing the division of tax to promulgate legislative rules relating to charitable raffle boards and games, as modified; authorizing the division of tax to promulgate legislative rules relating to business investment and jobs expansion tax credit, small business tax credit, corporate headquarters relocation tax credit; authorizing the division of tax to promulgate legislative rules relating to preneed cemetery companies, as modified and amended; and authorizing the division of tax to promulgate legislative rules relating to pollution control facilities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-2. Insurance commissioner.

§64-7-4. Lottery commission.

§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 amendment 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 amendment set forth below:

167 “On page two, subsection 3.2 by striking out the
168 period and inserting the following: ‘other than coverage
169 issued pursuant to the Public Employees Insurance Act,
170 as 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.

189 (w) The legislative rules filed in the state register on
190 the sixteenth day of August, one thousand nine hundred
191 ninety-three, modified by the insurance commissioner to
192 meet the objections of the legislative rule-making review
193 committee and refiled in the state register on the
194 twenty-ninth day of November, one thousand nine
195 hundred ninety-three, relating to the insurance commis-
196 sioner (insurance holding company systems reporting
197 forms), are authorized.

198 (x) The legislative rules filed in the state register on
199 the sixteenth day of August, one thousand nine hundred
200 ninety-three, modified by the insurance commissioner to
201 meet the objections of the legislative rule-making review
202 committee and refiled in the state register on the
203 twenty-ninth day of November, one thousand nine
204 hundred ninety-three, relating to the insurance commis-
205 sioner (substandard motor vehicle insurance notice
206 requirements), are authorized.

207 (y) The legislative rules filed in the state register on
208 the sixteenth day of August, one thousand nine hundred
209 ninety-three, modified by the insurance commissioner to
210 meet the objections of the legislative rule-making review
211 committee and refiled in the state register on the
212 twenty-ninth day of November, one thousand nine
213 hundred ninety-three, relating to the insurance commis-
214 sioner (filing fees for purchasing groups and for risk
215 retention groups not chartered in this state), are
216 authorized.

217 (z) The legislative rules filed in the state register on
218 the sixteenth day of August, one thousand nine hundred
219 ninety-three, modified by the insurance commissioner to
220 meet the objections of the legislative rule-making review
221 committee and refiled in the state register on the
222 twenty-ninth day of November, one thousand nine
223 hundred ninety-three, relating to the insurance commis-
224 sioner (continuation of coverage under automobile
225 liability policies), are authorized.

226 (aa) The legislative rules filed in the state register on

227 the sixteenth day of August, one thousand nine hundred
228 ninety-three, modified by the insurance commissioner to
229 meet the objections of the legislative rule-making review
230 committee and refiled in the state register on the
231 twenty-ninth day of November, one thousand nine
232 hundred ninety-three, relating to the insurance commis-
233 sioner (West Virginia life and health insurance gua-
234 ranty association act notice requirements), are
235 authorized.

236 (bb) The legislative rules filed in the state register on
237 the sixteenth day of August, one thousand nine hundred
238 ninety-three, modified by the insurance commissioner to
239 meet the objections of the legislative rule-making review
240 committee and refiled in the state register on the
241 twenty-ninth day of November, one thousand nine
242 hundred ninety-three, relating to the insurance commis-
243 sioner (group accident and sickness insurance minimum
244 policy coverage standards), are authorized with the
245 amendments set forth below:

246 On page two, section one, by inserting five new
247 subsections to read as follows:

248 "1.2.j. Coverage under a managed care program.

249 1.2.k. Bona Fide Associations.

250 1.2.l. Basic Hospital and Medical-Surgical Expense
251 Coverage.

252 1.2.m. Coverage under policies issued to groups of 61
253 or more under which the coverage is negotiated by the
254 policy holder.

255 1.2.n. Individual limited benefits policies subject to
256 the requirements of West Virginia Code §§ 33-16E-1, et.
257 seq."

258 And,

259 On page two, section two, by inserting two new
260 subsections, designated subsections 2.2 and 2.3, to read
261 as follows, and renumbering the remaining subsections:

262 "2.2 'Basic Hospital and Medical Surgical Expense
263 Coverage' means policies designed to provide coverage

264 for hospital and medical surgical expenses only incurred
265 as a result of a covered accident or sickness. Coverage
266 is provided for daily hospital room and board, miscel-
267 laneous hospital services, hospital out-patient services,
268 surgical services, anesthesia services, and in-hospital
269 medical services, subject to any limitations, deductibles
270 and copayment requirements set forth in the policy.
271 Coverage is not provided for unlimited hospital or
272 medical surgical expenses.

273 2.3 'Bona Fide Association' means plans with a
274 minimum of one hundred members which shall have
275 been organized in good faith for purposes other than
276 that of obtaining or providing insurance: *Provided,*
277 *however,* That the association shall also have been in
278 active existence for at least two years and shall have a
279 constitution and bylaws which provide that: (1) The
280 Association holds annual meetings to further purposes
281 of its members; (2) except in the case of credit unions,
282 the association collects dues or solicits contributions
283 from members; (3) the members have voting privileges
284 and representation on the governing board and commit-
285 tees that exist under the authority of the association.”;

286 And,

287 On page four, subsection 3.1, by deleting references
288 to “or certificate” and “or certificate holder” and by
289 adding to the end of the subsection the following:

290 “Certificates issued under a policy subject to this rule
291 and the terms used therein shall be consistent with this
292 section.”;

293 And,

294 On page nine, subsection 5.1, by deleting the following
295 “on certificates” and by adding the following at the end
296 thereof:

297 “The benefits described in a certificate issued under
298 a policy subject to this rule shall be consistent with the
299 benefits contained in the policy and shall be no less than
300 those required under this section.”;

301 And,

302 On page nine, subsection 5.1.b, by striking out
303 subsection 5.1.b in its entirety and inserting in lieu
304 thereof the following:

305 "5.1.b If an insurer terminates coverage under a
306 policy providing pregnancy coverage, such policy shall
307 provide for an extension of benefits as to pregnancy
308 commencing while the policy is in force and for which
309 benefits would have been payable had the policy
310 remained in force: *Provided*, That this subsection shall
311 not apply when termination of coverage is due to fraud,
312 nonpayment of premium or any breach of the terms of
313 the policy for which termination is authorized under
314 chapter thirty-three of the code.";

315 And,

316 On page ten, subsection 5.1.3, by adding at the end
317 of such subsection the following:

318 "provided such benefits may be limited to those
319 expenses directly relating to the organ donation.";

320 And,

321 On page ten, subsection 5.1.i, by striking said
322 subsection in its entirety and inserting in lieu thereof
323 the following:

324 "5.1.i. Termination of coverage under a policy shall be
325 without prejudice to any continuous loss which com-
326 menced while the policy was in force, but the extension
327 of benefits beyond the period the policy was in force may
328 be predicated upon the continuous disability of the
329 insured or limited to the duration of the policy benefit
330 period if any: *Provided*, That this subsection shall not
331 apply when termination of coverage is due to fraud,
332 nonpayment of premium or any breach of the terms of
333 the policy for which termination is authorized under
334 chapter thirty-three of the code.";

335 And,

336 On page nineteen, subsection 6.1, by deleting the
337 references to "or certificate" and "or certificate holder";

338 And,

339 On page twenty, subsection 6.9, by adding at the end
340 of the section the following:

341 "The notice shall also state that in the event the policy
342 holder exercises this right, the insurer shall not be
343 obligated to pay any benefits under the policy for claims
344 submitted to the insurer during such ten (10) day
345 period."

§64-7-4. Lottery commission.

1 (a) The legislative rules filed in the state register on
2 the twenty-first day of April, one thousand nine hundred
3 eighty-seven, modified by the state lottery commission
4 to meet the objections of the legislative rule-making
5 review committee and refiled in the state register on the
6 fourteenth day of August, one thousand nine hundred
7 eighty-seven, relating to the state lottery commission
8 (state lottery), are authorized.

9 (b) The legislative rules filed in the state register on
10 the twenty-seventh day of June, one thousand nine
11 hundred ninety, modified by the state lottery commis-
12 sion to meet the objections of the legislative rule-making
13 review committee and refiled in the state register on the
14 fifth day of September, one thousand nine hundred
15 ninety, relating to the state lottery commission (state
16 lottery), are authorized.

17 (c) The legislative rules filed in the state register on
18 the sixteenth day of August, one thousand nine hundred
19 ninety-three, modified by the lottery commission to meet
20 the objections of the legislative rule-making review
21 committee and refiled in the state register on the
22 nineteenth day of January, one thousand nine hundred
23 ninety-four, relating to the lottery commission (state
24 lottery), are authorized.

§64-7-5. Racing commission.

1 (a) The legislative rules filed in the state register on
2 the twenty-third day of April, one thousand nine
3 hundred eighty-two, relating to the West Virginia
4 racing commission (Rule 795), are authorized.

5 (b) The legislative rules filed in the state register on

6 the twenty-third day of April, one thousand nine
7 hundred eighty-two, relating to the West Virginia
8 racing commission (Rule 819), are authorized.

9 (c) The legislative rules filed in the state register on
10 the twenty-third day of April, one thousand nine
11 hundred eighty-two, relating to the West Virginia
12 racing commission (Rule 107), are authorized.

13 (d) The legislative rules filed with the legislative rule-
14 making review committee on the tenth day of January,
15 one thousand nine hundred eighty-three, relating to the
16 West Virginia racing commission (Rule 471), are
17 authorized.

18 (e) The legislative rules filed in the state register on
19 the tenth day of January, one thousand nine hundred
20 eighty-three, relating to the West Virginia racing
21 commission (Rule 526), are authorized.

22 (f) The legislative rules filed in the state register on
23 the twentieth day of September, one thousand nine
24 hundred eighty-three, relating to the West Virginia
25 racing commission (Rule 107) greyhound racing, are
26 authorized.

27 (g) The legislative rules filed in the state register on
28 the twentieth day of September, one thousand nine
29 hundred eighty-three, relating to the West Virginia
30 racing commission (Rule 108) greyhound racing, are
31 authorized with the amendment set forth below:

32 Following the word "Association" insert a period and
33 strike the remainder of the sentence.

34 (h) The legislative rules filed in the state register on
35 the twentieth day of September, one thousand nine
36 hundred eighty-three, relating to the West Virginia
37 racing commission (Rule 108) thoroughbred racing, are
38 authorized with the amendment set forth below:

39 Following the word "Association" insert a period and
40 strike the remainder of the sentence.

41 (i) The legislative rules filed in the state register on
42 the twentieth day of September, one thousand nine
43 hundred eighty-three, relating to the West Virginia

44 racing commission (Rule 392) greyhound racing, are
45 authorized.

46 (j) The legislative rules filed in the state register on
47 the twentieth day of September, one thousand nine
48 hundred eighty-three, relating to the West Virginia
49 racing commission (Rule 455) greyhound racing, are
50 authorized.

51 (k) The legislative rules filed in the state register on
52 the twentieth day of September, one thousand nine
53 hundred eighty-three, relating to the West Virginia
54 racing commission (Rule 609A) greyhound racing, are
55 authorized.

56 (l) The legislative rules filed in the state register on
57 the twentieth day of September, one thousand nine
58 hundred eighty-three, relating to the West Virginia
59 racing commission (Rule 627) greyhound racing, are
60 authorized.

61 (m) The legislative rules filed in the state register on
62 the twentieth day of September, one thousand nine
63 hundred eighty-three, relating to the West Virginia
64 racing commission (Rule 845) thoroughbred racing, are
65 authorized.

66 (n) The legislative rules filed in the state register on
67 the ninth day of November, one thousand nine hundred
68 eighty-four, relating to the West Virginia racing
69 commission (greyhound racing — Rule 628), are
70 authorized.

71 (o) The legislative rules filed in the state register on
72 the twenty-fifth day of September, one thousand nine
73 hundred eighty-four, relating to the West Virginia
74 racing commission (greyhound racing — Rule 672), are
75 authorized.

76 (p) The legislative rules filed in the state register on
77 the ninth day of November, one thousand nine hundred
78 eighty-four, relating to the West Virginia racing
79 commission (thoroughbred racing — Rule 808), are
80 authorized.

81 (q) The legislative rules filed in the state register on

82 the twenty-fifth day of September, one thousand nine
83 hundred eighty-four, relating to the West Virginia
84 racing commission (thoroughbred racing — Rule 843),
85 are authorized.

86 (r) The legislative rules filed in the state register on
87 the sixth day of August, one thousand nine hundred
88 eighty-four, relating to the West Virginia racing
89 commission (greyhound racing — Rule 845-I), are
90 authorized.

91 (s) The legislative rules filed in the state register on
92 the third day of September, one thousand nine hundred
93 eighty-seven, modified by the West Virginia racing
94 commission to meet the objections of the legislative rule-
95 making review committee and refiled in the state
96 register on the twenty-first day of December, one
97 thousand nine hundred eighty-seven, relating to the
98 West Virginia racing commission (greyhound racing),
99 are authorized.

100 (t) The legislative rules filed in the state register on
101 the thirty-first day of July, one thousand nine hundred
102 eighty-seven, modified by the West Virginia racing
103 commission to meet the objections of the legislative rule-
104 making review committee and refiled in the state
105 register on the eighteenth day of December, one
106 thousand nine hundred eighty-seven, relating to the
107 West Virginia racing commission (thoroughbred rac-
108 ing), are authorized with the 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,
180 section 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.

213 (ff) The legislative rules filed in the state register on
214 the thirteenth day of August, one thousand nine hundred
215 ninety-three, relating to the racing commission (grey-
216 hound racing), are authorized.

217 (gg) The legislative rules filed in the state register on
218 the thirteenth day of August, one thousand nine hundred
219 ninety-three, relating to the racing commission (tho-
220 roughbred 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 thereof the
43 following: "(\$1.00)."

44 On page 73, section 11.06(h) by striking the symbol
45 and figures "\$5.00" and inserting in lieu thereof the
46 following: "\$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 build-
228 ings and other improvements on the farmland shall be
229 valued by determining the replacement cost of the
230 building or structure by usual farm construction
231 practices, and farm labor standards and subtracting
232 therefrom depreciation.¹ Both of these determinations
233 shall be made in accordance with the tax department’s
234 real property appraisal manual² as filed in the state
235 register in accordance with chapter 29A of the code of
236 West 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
470 word "intellectual" by deleting the word "or" and
471 inserting in lieu thereof the words "physical and".

472 On page nine, Section 2.28.2, by deleting the words
473 "or 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
477 "or any portion of a school curriculum classified as
478 physical 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"
590 by 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
681 after the word “tax” by inserting the following “on the
682 full 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 commissions.”;

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;

712 And,

713 On page one hundred eight, section 38.1, after the
714 words "daily charge." by striking out the words "The
715 daily charge subject to the consumers sales and service
716 tax does not include complimentary items such as
717 shampoo, coffee and newspapers given to guests by
718 hotels and motels." and inserting in lieu thereof the
719 following:

720 "Notwithstanding the fact that persons engaged in the
721 rendering of a service are required to pay tax on their
722 purchases for use and/or consumption in rendering such
723 services, the purchase by hotels, motels, tourist homes
724 and rooming houses of complimentary items such as
725 shampoos, coffee and newspapers given to guests by
726 such hotels, motels, tourist homes and rooming houses
727 are not taxable."

728 (uu) The legislative rules filed in the state register on
729 the thirteenth day of August, one thousand nine hundred
730 ninety-three, relating to the division of tax (bingo), are
731 authorized.

732 (vv) The legislative rules filed in the state register on
733 the thirteenth day of August, one thousand nine hundred
734 ninety-three, modified by the division of tax to meet the
735 objections of the legislative rule-making review commit-
736 tee and refiled in the state register on the twelfth day
737 of January, one thousand nine hundred ninety-four,
738 relating to the division of tax (charitable raffle boards
739 and games), are authorized.

740 (ww) The legislative rules filed in the state register
741 on the sixteenth day of August, one thousand nine
742 hundred ninety-three, relating to the division of tax
743 (business investment and jobs expansion tax credit,
744 small business tax credit, corporate headquarters
745 relocation tax credit), are authorized with the amend-
746 ment set forth below:

747 On page thirty-nine, section 5.16.3.1, by striking
748 section 5.16.3.1 and inserting in lieu thereof the

749 following:

750 "This exception shall not be applicable if the taxpayer
751 failed to provide information requested by the Depart-
752 ment of Tax and Revenue, or its predecessor, the West
753 Virginia Tax Department, or if the taxpayer had
754 knowledge or should have had knowledge of information
755 necessary for the Department of Tax and Revenue to
756 make an informed analysis and determination pertain-
757 ing to the actual application of the credit but failed to
758 disclose such information to the Department."

759 (xx) The legislative rules filed in the state register on
760 the thirteenth day of August, one thousand nine hundred
761 ninety-three, modified by the division of tax to meet the
762 objections of the legislative rule-making review commit-
763 tee and refiled in the state register on the twelfth day
764 of January, one thousand nine hundred ninety-four,
765 relating to the division of tax (preneed cemetery
766 companies), are authorized with the amendment set
767 forth below:

768 "On page four, section 3.1, by striking out '\$400.00'
769 and inserting in lieu thereof '\$200.00'."

770 (yy) The legislative rules filed in the state register on
771 the sixteenth day of August, one thousand nine hundred
772 ninety-three, relating to the division of tax (pollution
773 control facilities), are authorized with the amendment
774 set forth below:

775 On page one, section 2.2 after the word "be" by
776 inserting the following: "The definition of facilities
777 eligible for salvage tax treatment shall be strictly
778 construed so as to include only such equipment and
779 devices as are installed primarily and immediately to
780 abate air or water pollution. These items of personal
781 property which may coincidentally comply with air or
782 water quality or effluent standards prescribed by or
783 promulgated under the laws of this state or the United
784 States, but which are primarily installed for plant
785 operations or are productive, or add to the economic
786 value of a business enterprise or have a market value
787 after installation in excess of salvage value, will not be
788 deemed eligible for salvage tax treatment."

CHAPTER 95

(Com. Sub. for S. B. 184—By Senators Manchin,
Anderson, Grubb and Minard)

[Passed March 10, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article eight, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the promulgation of administrative rules and regulations by the governmental agencies within the department of transportation; authorizing the division of highways and the division of motor vehicles to promulgate legislative rules with modifications presented to and recommended by the legislative rule-making review committee; authorizing the division of highways to promulgate legislative rules relating to traffic and safety rules and regulations, as modified; and authorizing the division of motor vehicles to promulgate legislative rules relating to motor vehicle alcohol test and lock program, as modified.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.

§64-8-1. Division of highways.

§64-8-2. Division of motor vehicles.

§64-8-1. Division of highways.

- 1 (a) The legislative rules filed in the state register on
- 2 the twenty-first day of October, one thousand nine
- 3 hundred eighty-three, relating to the commissioner of
- 4 highways (transportation of hazardous waste by high-
- 5 way transporters), are authorized with the amendments
- 6 set forth below:

7 Pages 3 and 7, after "40 CFR part 262" add the words
8 "as amended through March 8, 1986,".

9 Page 7, after "49 CFR parts 171-179" add the words
10 "as amended through March 8, 1986," and,

11 Page 11, after "49 CFR part 171.16" add the words
12 "as amended through March 8, 1986."

13 (b) The legislative rules filed in the state register on
14 the tenth day of August, one thousand nine hundred
15 eighty-four, relating to the commissioner of highways
16 (construction and reconstruction of state roads), are
17 authorized with the amendments set forth below:

18 Page 16, Sec. 8.08, line 21, (unnumbered), by inserting
19 after the word "all" the following language: "reasonable
20 and necessary" and after the word "project" inserting
21 the following language: "by the Railroad."

22 Page 16, Sec. 8.08, line 22, (unnumbered), after the
23 word "the" by striking the words "Railroad's Chief."

24 Page 19, Sec. 8.08, line 25, (unnumbered), by striking
25 "Railroad's Chief" and adding the following new
26 language:

27 "Any approval by the Department of any activity by
28 the Contractor upon the right-of-way or premises of any
29 Railroad which is provided for in this Section (8.08)
30 (including, but not limited to, approval of work,
31 methods, or procedures of work to be done, and the
32 condition of premises after completion of work by the
33 Contractor) shall in no way create any liability by the
34 Department to the Railroad except to the extent
35 provided otherwise by law and the Contractor shall,
36 during all periods of construction and thereafter,
37 indemnify and save harmless the department from any
38 and all liability to the Railroad or any third parties for
39 any damages as a result of the work of the Contractor,
40 the methods and procedures for performing work, the
41 failure of the Contractor to properly remove equipment,
42 surplus material and other debris upon the Railroad
43 premises, or the condition of the premises of the
44 Railroad during construction or after completion of
45 construction by the Contractor as approved by the

46 Department or otherwise.”

47 Page 18, Sec. 8.08, subdivision (a), line 22, (unnum-
48 bered), by striking the words “single limit” and
49 inserting in lieu thereof the following language: “per
50 occurrence.”

51 Page 19, Sec. 8.08, subdivision (b), line 8, (unnum-
52 bered), by striking the words “single limit” and
53 inserting in lieu thereof the following language: “per
54 occurrence.”

55 Page 19, Sec. 8.08, subdivision (c), line 18, (unnum-
56 bered), by inserting after the word “occurrence” the
57 following language: “of”; and after the word “injury”
58 insert a comma and strike the word “or.”

59 (c) The legislative rules filed in the state register on
60 the seventh day of September, one thousand nine
61 hundred eighty-four, modified by the commissioner of
62 highways to meet the objections of the legislative rule-
63 making review committee and refiled in the state
64 register on the fifth day of October, one thousand nine
65 hundred eighty-four, relating to the commissioner of
66 highways (transportation of hazardous waste), are
67 authorized with the amendment set forth below:

68 Page 5, amend §3.01 by adding thereto a new
69 subsection, designated subsection (4), to read as follows:
70 “(4) Before accepting hazardous waste from a rail
71 transporter, a highway transporter must sign and date
72 the manifest and provide a copy to the rail transporter.”

73 (d) The legislative rules filed in the state register on
74 the fourteenth day of August, one thousand nine
75 hundred eighty-four, modified by the commissioner of
76 highways to meet the objections of the legislative rule-
77 making review committee and refiled in the state
78 register on the fifth day of October, one thousand nine
79 hundred eighty-four, relating to the commissioner of
80 highways (disqualification and suspension of prequali-
81 fied contractors), are authorized.

82 (e) The legislative rules filed in the state register on
83 the twelfth day of December, one thousand nine hundred
84 eighty-five, relating to the commissioner of highways

85 (transportation of hazardous wastes by vehicle upon the
86 roads and highways of this state), are authorized with
87 the amendments set forth below:

88 On page 18, the first line of §3.03 shall read as follows:

89 "3.03. Transporters who only accept Hazardous Waste
90 from."

91 (f) The legislative rules filed in the state register on
92 the first day of December, one thousand nine hundred
93 eighty-seven, modified by the commissioner of highways
94 to meet the objections of the legislative rule-making
95 review committee and refiled in the state register on the
96 fourteenth day of January, one thousand nine hundred
97 eighty-eight, relating to the commissioner of highways
98 (traffic and safety rules and regulations), are authorized
99 with the amendment set forth below:

100 On page 8, section 7.2, line 9, (unnumbered), by
101 striking everything after the word "structures."

102 (g) The legislative rules filed in the state register on
103 the first day of December, one thousand nine hundred
104 eighty-seven, relating to the commissioner of highways
105 (construction and reconstruction of state roads), are
106 authorized.

107 (h) The legislative rules filed in the state register on
108 the twenty-fifth day of February, one thousand nine
109 hundred eighty-seven, modified by the commissioner of
110 highways to meet the objections of the legislative rule-
111 making review committee and refiled in the state
112 register on the twenty-third day of November, one
113 thousand nine hundred eighty-seven, relating to the
114 commissioner of highways (transportation of hazardous
115 wastes upon the roads and highways), are authorized.

116 (i) The legislative rules filed in the state register on
117 the fourteenth day of August, one thousand nine
118 hundred eighty-nine, modified by the division of
119 highways to meet the objections of the legislative rule-
120 making review committee and refiled in the state
121 register on the seventh day of December, one thousand
122 nine hundred eighty-nine, relating to the division of
123 highways (use of state road rights-of-way and areas

124 adjacent thereto), are authorized with the amendments
125 set forth below:

126 On Pages 14 and 15, Section 7.5, by deleting the
127 following language:

128 "Upon receipt of a permit application an application
129 number shall be assigned by the Division of Highways.
130 The applicant shall be notified of the temporary
131 application number and shall then be required to
132 publish a Class II legal advertisement in the newspap-
133 er(s) serving the area where the proposed outdoor
134 advertising sign, display or device is proposed to be
135 located. A copy of the certificate of publication shall be
136 provided to the Department within ten (10) days of the
137 final publication date.

138 As a minimum the advertisement shall include the
139 application number, the location (including ownership of
140 the property upon which the sign is to be placed) and
141 shall notify the public that comments will be received
142 by the Division of Highways, Highway Services Section,
143 until 10 days after the final publication. The advertise-
144 ment shall also state that all comments must include the
145 specific application number to which they refer.

146 Any person who claims to be affected by the proposed
147 sign may submit written comments to the Division of
148 Highways, Highway Services Section, and may request
149 a public hearing within ten days of the final publication.
150 Within ten working days of the close of the comment
151 period the Division shall determine whether to approve,
152 deny, or hold a public hearing for said permit.

153 When the Division determines that a public hearing
154 is required it shall notify the person(s) who requested
155 the hearing and the permit applicant. The Division shall
156 cause notice to be published and hold the hearing in
157 accordance with Administrative Regulations, Commis-
158 sioner of Highways, Chapter 17-2A, Series I (1982),
159 Section 3, Hearing Procedures (hereinafter WV Adm.
160 Reg. 17-2A).

161 The Division Administrator shall assess the Division's
162 costs of the hearing against the permit applicant or

163 against the party requesting the hearing if he finds that
164 either the application for the permit or the request for
165 hearing was filed in bad faith.

166 Any party adversely affected by the final decision of
167 the Division Administrator may apply for judicial
168 review through application for a writ of certiorari to the
169 Circuit Court of Kanawha County in accordance with W.
170 Va. Code §53-3-1 and W. Va. Code §14-2-2.

171 The regulations in the preceding six paragraphs
172 relating to publication of notice of an application,
173 comments on a pending application, notice of hearing,
174 hearing on permit, assessment of costs and judicial
175 review shall not apply to an application for a permit for
176 an advertising sign, display or device to be located
177 within the boundaries of an incorporated municipality
178 or of a county-zoned commercial or industrial area.”

179 (j) The legislative rules filed in the state register on
180 the tenth day of August, one thousand nine hundred
181 eighty-nine, modified by the division of highways to
182 meet the objections of the legislative rule-making review
183 committee and refiled in the state register on the
184 seventh day of November, one thousand nine hundred
185 eighty-nine, relating to the division of highways
186 (construction and reconstruction of state roads), are
187 authorized.

188 (k) The legislative rules filed in the state register on
189 the fourteenth day of August, one thousand nine
190 hundred eighty-nine, modified by the division of
191 highways to meet the objections of the legislative rule-
192 making review committee and refiled in the state
193 register on the seventh day of December, one thousand
194 nine hundred eighty-nine, relating to the division of
195 highways (acquisition, disposal, lease and management
196 of real property and appurtenant structures and
197 relocation assistance), are authorized.

198 (l) The legislative rules filed in the state register on
199 the seventh day of September, one thousand nine
200 hundred ninety, modified by the division of highways to
201 meet the objections of the legislative rule-making review
202 committee and refiled in the state register on the

203 eighteenth day of January, one thousand nine hundred
204 ninety-one, relating to the division of highways (traffic
205 and safety rules and regulations), are authorized.

206 (m) The legislative rules filed in the state register on
207 the sixteenth day of August, one thousand nine hundred
208 ninety-three, modified by the division of highways to
209 meet the objections of the legislative rule-making review
210 committee and refiled in the state register on the eighth
211 day of November, one thousand nine hundred ninety-
212 three, relating to the division of highways (traffic and
213 safety rules and regulations), are authorized.

§64-8-2. Division of motor vehicles.

1 (a) The legislative rules filed in the state register on
2 the second day of December, one thousand nine hundred
3 eighty-two, relating to the commissioner of motor
4 vehicles (denial of driving privileges), are authorized
5 with the amendments set forth below:

6 By inserting the words "licensed in the United States"
7 after the phrase "physician of the applicant's choice," on
8 page five, line two, and page seven, line one; and by
9 striking out the words "licensed vision specialist" and
10 inserting in lieu thereof the words "an optometrist or
11 ophthalmologist licensed in the United States," on page
12 five, line three, and on page seven, line two.

13 (b) The legislative rules filed in the state register on
14 the ninth day of November, one thousand nine hundred
15 eighty-three, relating to the commissioner of motor
16 vehicles (driving under the influence, 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.

124 (o) The legislative rules filed in the state register on
125 the twenty-third day of June, one thousand nine hundred
126 ninety-three, modified by the division of motor vehicles
127 to meet the objections of the legislative rule-making
128 review committee and refiled in the state register on the
129 tenth day of August, one thousand nine hundred ninety-
130 three, relating to the division of motor vehicles (motor
131 vehicle alcohol test and lock program), are authorized.

CHAPTER 96

(S. B. 145—By Senators Manchin, Anderson, Grubb and Minard)

[Passed March 10, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, three, twenty-four and twenty-nine, article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the promulgation of administrative rules and regulations by

the various executive or administrative agencies and the procedures relating 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 legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing the commissioner of agriculture to promulgate legislative rules relating to animal disease control, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to auctioneers, as modified; authorizing the attorney general to promulgate legislative rules relating to the West Virginia consumer goods rental protection act, as modified; authorizing the secretary of state to promulgate legislative rules relating to official election forms and vender authorization, as modified; and authorizing the board of accountancy to promulgate legislative rules relating to board rules and rules of professional conduct, as modified.

Be it enacted by the Legislature of West Virginia:

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

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

§64-9-1. Commissioner of agriculture.

§64-9-3. Attorney general.

§64-9-24. Secretary of state.

§64-9-29. Board of accountancy.

§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 (avoirdupois) 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
265 W. 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 subdivision 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 subdivision 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 subdivision 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 ground
438 to a minimum depth of six feet, containing a minimum

439 capacity of 150 cubic feet, covered with a minimum of
440 12 inches of dirt, and provided with one or more
441 openings for the introduction of poultry. The openings
442 shall be a minimum size of eight inches square and
443 equipped with tight lids. A disposal pit shall be located
444 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
494 of the above, the water depth in the holes shall be
495 adjusted to the level of the nail. The number of minutes
496 it takes for this six inches of water (all the water) to be
497 absorbed into the soil shall be accurately determined.
498 This time in minutes, divided by six, gives the rate of
499 fall per inch. The average rate of fall must be between
500 five minutes 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
543 14.1 and inserting in lieu thereof a new subsection 14.1
544 to 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.

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

589 (rr) The legislative rules filed in the state register on
590 the third day of August, one thousand nine hundred
591 ninety-three, modified by the commissioner of agricul-
592 ture to meet the objections of the legislative rule-making
593 review committee and refiled in the state register on the

594 eighth day of October, one thousand nine hundred
595 ninety-three, relating to the commissioner of agriculture
596 (auctioneers), are authorized.

§64-9-3. Attorney general.

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

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

10 (c) The legislative rules filed in the state register on
11 the nineteenth day of September, one thousand nine
12 hundred eighty-six, modified by the attorney general to
13 meet the objections of the legislative rule-making review
14 committee and refiled in the state register on the first
15 day of December, one thousand nine hundred eighty-six,
16 relating to the attorney general (prevention of unfair or
17 deceptive acts or practices in home improvement and
18 home construction transactions), are authorized. These
19 rules were proposed by the attorney general pursuant
20 to section one hundred three, article six and section one
21 hundred two, article seven of chapter forty-six-a of this
22 code with the following amendments:

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

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

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

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

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

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

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

52 Page 3, section 2.6, on line two thereof, after the
53 second comma by inserting the word “replacement.”

54 Page 3, section 3, by striking the words “and home
55 construction” from the section heading.

56 Page 3, section 3.1, lines one and two, by striking the
57 words “or home construction.”

58 Page 4, section 3.1.4, on lines one and two thereof, by
59 striking the words “or home construction.”

60 Page 4, section 3.1.8, on line two thereof, by striking
61 the words “or home construction.”

62 Page 4, section 3.1.9, on lines two and three thereof,
63 by striking the words “or home construction.”

64 Page 5, section 3.1.12, on lines one and two thereof,
65 by striking the words “or home construction.”

66 Page 6, section 3.1.26, by striking all of section 3.1.26
67 and renumbering the subsequent subsections.

68 Page 7, section 3.1.29, on lines one and two thereof,
69 by striking the words “or home construction.”

70 Page 7, section 3.1.29, on line six thereof, following

71 the word "contract" by inserting a period and striking
72 the remainder of the section.

73 Page 7, following section 3.1.29 by adding a new
74 section to be designated section 3.1.29, to read as follows:

75 "failed to file a certificate in the office of the Clerk of
76 the County Commission in the county in which the
77 principal place of business of the seller is located, setting
78 forth the assumed name in or by which the business is
79 being conducted in conformity with the provisions of
80 Chapter 47, Article 8, Section 2 of the Code of West
81 Virginia, 1931, as amended."

82 Page 7, section 3.2, on lines two and three thereof, by
83 striking the words, "or home solicitation sale of home
84 construction" and the comma on line three.

85 Page 9, section 4.1, on line eight thereof, by deleting
86 the period and inserting the following:

87 'to the extent permitted by statute'.

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

90 'to the extent permitted by statute'.

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

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

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

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

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

120 And,

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

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

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

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

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

153 (j) The legislative rules filed in the state register on
154 the tenth day of August, one thousand nine hundred
155 ninety, modified by the attorney general to meet the
156 objections of the legislative rule-making review commit-
157 tee and refiled in the state register on the twentieth day
158 of November, one thousand nine hundred ninety,
159 relating to the attorney general (limitation of action and
160 recovery of investigative costs and a reasonable attor-
161 ney's fee by the attorney general in an enforcement
162 action), are authorized.

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

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

181 (m) The legislative rules filed in the state register on
182 the sixteenth day of August, one thousand nine hundred
183 ninety-three, modified by the attorney general to meet
184 the objections of the legislative rule-making review
185 committee and refiled in the state register on the
186 twenty-fourth day of January, one thousand nine

187 hundred ninety-four, relating to the attorney general
188 (West Virginia consumer goods rental protection act),
189 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
55 authorized.

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

§64-9-29. Board of accountancy.

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

9 (b) The legislative rules filed in the state register on

10 the twelfth day of August, one thousand nine hundred
11 ninety-three, modified by the board of accountancy to
12 meet the objections of the legislative rule-making review
13 committee and refiled in the state register on the
14 twenty-seventh day of October, one thousand nine
15 hundred ninety-three, relating to the board of accoun-
16 tancy (board rules and rules of professional conduct), are
17 authorized.

CHAPTER 97

(S. B. 159—By Senators Manchin, Anderson, Grubb and Minard)

[Passed March 12, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight, ten, eleven, sixteen, eighteen, nineteen and thirty-one, article nine, 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 six new sections, designated sections thirty-six, thirty-seven, thirty-eight, thirty-nine, forty and forty-one, 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 the board of examiners to promulgate legislative rules relating to the board of examiners in counseling, licensing, as modified; authorizing the board of dental examiners to promulgate legislative rules relating to the West Virginia board of dental examiners, as modified; authorizing the board of

embalmers and funeral directors to promulgate legislative rules relating to the West Virginia board of embalmers and funeral directors, as modified; authorizing the board of medicine to promulgate legislative rules relating to licensing, disciplinary and complaint procedures, physicians, podiatrists, as modified; authorizing the board of examiners for registered professional nurses to promulgate legislative rules relating to disciplinary action, as modified; authorizing the board of examiners for registered professional nurses to promulgate legislative rules relating to standards for professional nursing practice, as modified; authorizing the nursing home administrators licensing board to promulgate legislative rules relating to rules and regulations of the nursing home administrators licensing board, as modified; authorizing the real estate appraiser licensing and certification board to promulgate legislative rules relating to requirements for licensure and certification, as modified; authorizing the board of osteopathy to promulgate legislative rules relating to osteopathic physician assistants, as amended; authorizing the board of osteopathy to promulgate legislative rules relating to the licensing, disciplinary and complaint procedures for osteopathic physicians, as modified; authorizing the board of physical therapy to promulgate legislative rules relating to general provisions, as modified; authorizing the board of examiners for speech-language pathology and audiology to promulgate legislative rules relating to the licensure of speech-language pathology and audiology, as modified; authorizing the board of examiners for speech-language pathology and audiology to promulgate legislative rules relating to licensure of speech-language pathology and audiology assistants, as modified; authorizing the commercial hazardous waste management facility siting board to promulgate legislative rules relating to the commercial hazardous waste management facility siting board certification requirements, as modified; authorizing the family protection services board to promulgate legislative rules relating to operation of the family protection services board and licensure and funding of domestic violence programs, as modified and amended;

authorizing the board of investments to promulgate legislative rules relating to the rules for the administration of the consolidated pension fund, as modified; and authorizing the board of investments to promulgate legislative rules relating to the administration of the consolidated fund of the state board of investments.

Be it enacted by the Legislature of West Virginia:

That sections eight, ten, eleven, sixteen, eighteen, nineteen and thirty-one, article nine, 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 six new sections, designated sections thirty-six, thirty-seven, thirty-eight, thirty-nine, forty and forty-one, all to read as follows:

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

- §64-9-8. West Virginia board of examiners in counseling.
- §64-9-10. West Virginia board of dental examiners.
- §64-9-11. Board of embalmers and funeral directors.
- §64-9-16. Board of medicine.
- §64-9-18. Board of examiners for registered professional nurses.
- §64-9-19. Nursing home administrators licensing board.
- §64-9-31. Real estate appraiser licensing and certification board.
- §64-9-36. Board of osteopathy.
- §64-9-37. Board of physical therapy.
- §64-9-38. Board of examiners for speech-language pathology and audiology.
- §64-9-39. Commercial hazardous waste management facility siting board.
- §64-9-40. Family protection services board.
- §64-9-41. Board of investments.

§64-9-8. West Virginia board of examiners in counseling.

1 (a) The legislative rules filed in the state register on
 2 the twentieth day of March, one thousand nine hundred
 3 eighty-nine, modified by the West Virginia board of
 4 examiners in counseling to meet the objections of the
 5 legislative rule-making review committee and refiled in
 6 the state register on the twelfth day of September, one
 7 thousand nine hundred eighty-nine, relating to the West
 8 Virginia board of examiners in counseling (licensing),
 9 are authorized.

10 (b) The legislative rules filed in the state register on

11 the eighteenth day of July, one thousand nine hundred
12 ninety-one, modified by the board of examiners in
13 counseling to meet the objections of the legislative rule-
14 making review committee and refiled in the state
15 register on the sixth day of December, one thousand
16 nine hundred ninety-one, relating to the board of
17 examiners in counseling (licensing), are authorized.

18 (c) The legislative rules filed in the state register on
19 the sixteenth day of August, one thousand nine hundred
20 ninety-three, modified by the board of examiners in
21 counseling to meet the objections of the legislative rule-
22 making review committee and refiled in the state
23 register on the twenty-fifth day of January, one
24 thousand nine hundred ninety-four, relating to the board
25 of examiners in counseling (licensing), are authorized.

§64-9-10. West Virginia board of dental examiners.

1 (a) The legislative rules filed in the state register on
2 the eighth day of August, one thousand nine hundred
3 eighty-nine, modified by the West Virginia board of
4 dental examiners to meet the objections of the legislative
5 rule-making review committee and refiled in the state
6 register on the twenty-third day of October, one
7 thousand nine hundred eighty-nine, relating to the West
8 Virginia board of dental examiners (rules and regula-
9 tions of the West Virginia board of dental examiners),
10 are authorized.

11 (b) The legislative rules filed in the state register on
12 the twenty-seventh day of July, one thousand nine
13 hundred ninety, modified by the West Virginia board of
14 dental examiners to meet the objections of the legislative
15 rule-making review committee and refiled in the state
16 register on the twenty-seventh day of August, one
17 thousand nine hundred ninety, relating to the West
18 Virginia board of dental examiners (rules and regula-
19 tions of the West Virginia board of dental examiners),
20 are authorized.

21 (c) The legislative rules filed in the state register on
22 the twenty-third day of August, one thousand nine
23 hundred ninety-three, modified by the board of dental
24 examiners to meet the objections of the legislative rule-

25 making review committee and refiled in the state
26 register on the twelfth day of October, one thousand nine
27 hundred ninety-three, relating to the board of dental
28 examiners (rules and regulations of the West Virginia
29 board of dental examiners), are authorized.

§64-9-11. Board of embalmers and funeral directors.

1 (a) The legislative rules filed in the state register on
2 the twenty-seventh day of July, one thousand nine
3 hundred eighty-four, modified by the board of em-
4 balmers and funeral directors to meet the objections of
5 the legislative rule-making review committee and
6 refiled in the state register on the ninth day of January,
7 one thousand nine hundred eighty-five, relating to the
8 board of embalmers and funeral directors (apprentice-
9 ship), are authorized.

10 (b) The legislative rules filed in the state register on
11 the sixteenth day of October, one thousand nine hundred
12 eighty-five, modified by the board of embalmers and
13 funeral directors to meet the objections of the legislative
14 rule-making review committee and refiled in the state
15 register on the eighteenth day of July, one thousand nine
16 hundred eighty-six, relating to the board of embalmers
17 and funeral directors (governing the board of em-
18 balmers and funeral directors), are authorized.

19 (c) The legislative rules filed in the state register on
20 the sixth day of May, one thousand nine hundred ninety-
21 three, modified by the board of embalmers and funeral
22 directors to meet the objections of the legislative rule-
23 making review committee and refiled in the state
24 register on the fifteenth day of November, one thousand
25 nine hundred ninety-three, relating to the board of
26 embalmers and funeral directors (rules of the West
27 Virginia board of embalmers and funeral directors), are
28 authorized.

§64-9-16. Board of medicine.

1 (a) The legislative rules filed in the state register on
2 the twelfth day of May, one thousand nine hundred
3 eighty-three, relating to the board of medicine (licens-
4 ing, disciplinary and complaint procedures; podiatry;

5 physicians assistants), are authorized with the modifica-
6 tions set forth below:

7 "§24.12.

8 (b) It shall be the responsibility of the supervising
9 physician to obtain consent in writing from the patient
10 before Type A physician assistants employed in a
11 satellite clinic may render general medical or surgical
12 services, except in emergencies.

13 §24.16.

14 (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".

135 (l) The legislative rules filed in the state register on
136 the sixteenth day of August, one thousand nine hundred
137 ninety-three, modified by the board of medicine to meet
138 the objections of the legislative rule-making review
139 committee and refiled in the state register on the
140 twentieth day of October, one thousand nine hundred
141 ninety-three, relating to the board of medicine (licens-
142 ing, disciplinary and complaint procedures, physicians;
143 podiatrists), are authorized.

§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.

28 (d) The legislative rules filed in the state register on
29 the sixteenth day of August, one thousand nine hundred
30 ninety-three, modified by the board of examiners for
31 registered professional nurses to meet the objections of
32 the legislative rule-making review committee and
33 refiled in the state register on the eleventh day of
34 January, one thousand nine hundred ninety-four,
35 relating to the board of examiners for registered
36 professional nurses (disciplinary action), are authorized.

37 (e) The legislative rules filed in the state register on
38 the sixteenth day of August, one thousand nine hundred
39 ninety-three, modified by the board of examiners for
40 registered professional nurses to meet the objections of
41 the legislative rule-making review committee and
42 refiled in the state register on the eleventh day of
43 January, one thousand nine hundred ninety-four,
44 relating to the board of examiners for registered
45 professional nurses (standards for professional nursing
46 practice), are authorized.

§64-9-19. Nursing home administrators licensing board.

1 (a) The legislative rules filed in the state register on
2 the eighteenth day of October, one thousand nine
3 hundred eighty-five, modified by the nursing home
4 administrators licensing board to meet the objections of
5 the legislative rule-making review committee and
6 refiled in the state register on the twenty-eighth day of
7 January, one thousand nine hundred eighty-six, relating
8 to the nursing home administrators licensing board
9 (governing nursing home administrators), are

10 authorized.

11 (b) The legislative rules filed in the state register on
12 the sixteenth day of August, one thousand nine hundred
13 ninety-three, modified by the nursing home administra-
14 tors licensing board to meet the objections of the
15 legislative rule-making review committee and refiled in
16 the state register on the twenty-third day of November,
17 one thousand nine hundred ninety-three, relating to the
18 nursing home administrators licensing board (rules and
19 regulations of the nursing home administrators licens-
20 ing board), are authorized.

**§64-9-31. Real estate appraiser licensing and certifica-
tion 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.

42 (e) The legislative rules filed in the state register on
43 the twenty-eighth day of May, one thousand nine
44 hundred ninety-three, modified by the real estate
45 appraiser licensing and certification board to meet the
46 objections of the legislative rule-making review commit-
47 tee and refiled in the state register on the seventh day
48 of July, one thousand nine hundred ninety-three,
49 relating to the real estate appraiser licensing and
50 certification board (requirements for licensure and
51 certification), are authorized.

§64-9-36. Board of osteopathy.

1 (a) The legislative rules filed in the state register on
2 the sixth day of August, one thousand nine hundred
3 ninety-three, relating to the board of osteopathy
4 (osteopathic physician assistants), are authorized with
5 amendment set forth below:

6 On page one by striking out the entire rule and
7 inserting in lieu thereof the following:

§11-1B-1. General.

9 1.1. Scope. — W. Va. Code §30-14A-1 requires the
10 Board of Osteopathy to adopt rules governing the extent
11 to which osteopathic physician assistants may function
12 in this State.

13 1.2. Authority. — W. Va. Code §30-14A-1.

14 1.3. Filing Date. —

15 1.4. Effective Date. —

16 **§11-1B-2. Rules for Osteopathic Physician Assistants.**

17 2.1. For purposes of this section, the following
18 definitions are in effect:

19 2.1.1. Licensure. — The approval of individuals by the
20 Board to serve as osteopathic physician assistants. It also
21 means the approval of programs by the Board for the
22 training and education of osteopathic physician
23 assistants.

24 2.1.2. Crimes involving moral turpitude. — Those
25 crimes which have dishonesty as a fundamental and
26 necessary element; including, but not limited to, crimes
27 involving theft, embezzlement, false swearing perjury,
28 fraud or misrepresentation.

29 2.1.3. NCCPA. — The National Commission on the
30 Certification of Physician Assistants.

31 2.1.4. Protocol. — Written treatment instructions
32 prepared by a supervising osteopathic physician for use
33 by an osteopathic physician assistant. Such instructions
34 should be flexible, in accordance with the setting where
35 the osteopathic physician assistant is employed.

36 2.1.5. Satellite operation. — An office or clinic
37 separate and apart from the office of the supervising
38 osteopathic physician, established by the osteopathic
39 physician and manned in part by an osteopathic
40 physician assistant.

41 2.1.6. Supervision. — The opportunity or ability of the
42 osteopathic physician to provide or exercise control and
43 direction over the services of osteopathic physician
44 assistants. Constant physical presence of the supervising
45 osteopathic physician of an osteopathic physician
46 assistant certified by the NCCPA is not required so long
47 as the supervising osteopathic physician and the
48 osteopathic physician assistant are or can easily be in
49 contact with each other by radio, telephone or telecom-
50 munication. Supervision requires the availability of the
51 supervising osteopathic physician. An appropriate

52 degree of supervision includes:

53 a. Personal supervision by the osteopathic physician
54 of a minimum of twenty-five percent of the weekly hours
55 worded by each osteopathic physician assistant;

56 b. The active and continuing overview of the osteopa-
57 thic physician assistant's activities to determine that the
58 supervising osteopathic physician's directions are being
59 implemented;

60 c. The availability of the supervising osteopathic
61 physician to the osteopathic physician assistant for all
62 necessary consultations;

63 d. Personal and regular (at least monthly) review by
64 the supervising osteopathic physician of selected patient
65 records upon which entries are made by the osteopathic
66 physician assistant. Patient records shall be selected for
67 review on the basis of written criteria established by the
68 supervising osteopathic physician and the osteopathic
69 physician assistant and shall be of sufficient number to
70 assure adequate review of the osteopathic physician
71 assistant's scope of practice, and;

72 e. Periodic (at least monthly) education and review
73 sessions discussing specific conditions, protocols, proce-
74 dures and specific patients, held by the supervising
75 osteopathic physician for the osteopathic physician
76 assistant under his or her supervision.

77 In the case of an osteopathic physician assistant who
78 has not been certified by the NCCPA, the presence of
79 the supervising osteopathic physician or alternate
80 supervising osteopathic physician is required on the
81 premises where the noncertified osteopathic physician
82 assistant performs delegated medical tasks.

83 2.2. Employment of osteopathic physician assistants
84 by licensed osteopathic physician; services that may be
85 performed by osteopathic physician assistants.

86 2.2.1. An osteopathic physician fully licensed under
87 W. Va. Code §30-14-1 et seq. may submit a job descrip-
88 tion to the Board to employ an osteopathic physician
89 assistant.

90 2.2.2. The delegation of certain acts to an osteopathic
91 physician assistant shall be stated on the job description
92 in a manner consistent with sound medical practice and
93 with the protection of the health and safety of the
94 patient in mind. The services shall be limited to those
95 which are educational, diagnostic, therapeutic or
96 preventive in nature and may, according to the stand-
97 ards set by his or her supervising osteopathic physician,
98 allow the osteopathic physician assistant to formulate a
99 provisional diagnosis and treatment plan which may be
100 set by standard protocols of his or her supervising
101 osteopathic physician and are under his or her direction.

102 2.3. Submission of application; job description. — An
103 application completed by the applicant and a job
104 description written and signed by the supervising
105 osteopathic physician listing in numerical order the
106 duties which will be performed by the assistant must be
107 in the office of the Board of Osteopathy, thirty (30) days
108 prior to a Board meeting. The filing of an application
109 and job description does not entitle an osteopathic
110 physician assistant to licensure. The only legal authority
111 for such approval must be given by the Board.

112 2.4. Biennial report of osteopathic physician assist-
113 ant's performance; biennial report of the Board. —
114 Osteopathic physician assistants and their supervising
115 osteopathic physicians must submit biennial signed
116 reports either individually or combined, on the profes-
117 sional conduct, capabilities and performance of the
118 osteopathic physician assistant. The report must accom-
119 pany each application for licensure and must be
120 submitted to the office of the Board by April 1. In
121 addition thereto, the Board shall compile and publish a
122 biennial report that includes a list of currently licensed
123 osteopathic physician assistants, their employers and
124 location in the state and a list of approved programs in
125 West Virginia, the number of graduates per year of the
126 approved programs and the number of osteopathic
127 physician assistants from other states' approved pro-
128 grams practicing in West Virginia.

129 2.5. Supervision and control of osteopathic physician
130 assistant. — The osteopathic physician assistant,

131 whether employed by a health care facility or the
132 supervising osteopathic physician, shall perform only
133 under the supervision and control of the supervising
134 osteopathic physician. Supervision and control of an
135 osteopathic physician assistant certified by the NCCPA
136 requires the availability of an osteopathic physician for
137 consultation and direction of the actions of the assistant,
138 but does not necessarily require the personal presence
139 of the supervising osteopathic physician at the place or
140 places where services are rendered, if the osteopathic
141 physician assistant certified by the NCCPA is perform-
142 ing (specified) duties at the direction of the supervising
143 osteopathic physician. In the case of an osteopathic
144 physician assistant who has not been certified by the
145 NCCPA, the presence of the supervising osteopathic
146 physician or alternate supervising osteopathic physician
147 on the premises where the noncertified assistant
148 performs delegated medical tasks is required. The
149 osteopathic physician assistant may function in any
150 setting within which the supervising osteopathic
151 physician routinely practices, but in no instance shall a
152 separate place of work for the osteopathic physician
153 assistant be established. The supervising osteopathic
154 physician shall be an osteopathic physician permanently
155 licensed in this State.

156 2.6. Limitations on employment and scope of duties of
157 osteopathic physician assistants.

158 2.6.1. A supervising osteopathic physician shall not
159 employ at any one time more than two (2) osteopathic
160 physician assistants.

161 2.6.2. An osteopathic physician assistant shall not sign
162 prescriptions except in the case of certain osteopathic
163 physician assistants authorized to do so by the Board in
164 accordance with the provisions of 2.13 of this rule.

165 2.6.3. An osteopathic physician assistant shall not
166 perform any services which his or her supervising
167 osteopathic physician is not qualified to perform.

168 2.6.4. An osteopathic physician assistant may sign
169 orders to be countersigned later by his or her supervis-
170 ing osteopathic physician: *Provided*, That they are not

171 in conflict with hospital regulations.

172 2.6.5. An osteopathic physician assistant shall not
173 perform any services which are not included in his or
174 her job description and approved by the Board.

175 2.6.6. No osteopathic physician assistant shall be
176 supervised by and work for more than three supervising
177 osteopathic physicians at one time.

178 2.7. Identification of osteopathic physician assistant.
179 — When functioning as a osteopathic physician assis-
180 tant, the osteopathic physician assistant shall wear a
181 name tag which identifies the osteopathic physician
182 assistant as an osteopathic physician assistant.

183 2.8. Supervising osteopathic physician; responsi-
184 bilities.

185 2.8.1. The supervising osteopathic physician is respon-
186 sible for observing, directing and evaluating the work,
187 records and practices performed by the osteopathic
188 physician assistant.

189 2.8.2. The supervising osteopathic physician shall
190 notify the Board in writing of any termination of the
191 employment of his or her osteopathic physician assistant
192 within ten (10) days of the termination.

193 2.8.3. The legal responsibility for any osteopathic
194 physician assistant remains that of his or her supervis-
195 ing osteopathic physician at all times, except in
196 temporary situations not to exceed twenty one days, in
197 cases when a licensed and fully qualified osteopathic
198 physician assistant is substituting for another licensed
199 osteopathic physician assistant, the acts and omissions
200 of the substituting osteopathic physician assistant are
201 the legal responsibility of the absent osteopathic
202 physician assistant's designated supervising osteopathic
203 physician. The temporary change in supervisory respon-
204 sibility shall be provided to the Board in writing, within
205 ten (10) days of the effective date of the substitution,
206 signed by the affected supervising osteopathic physi-
207 cians and osteopathic physician assistants, and clearly
208 specifying the dates of substitution.

209 2.9. The license of an osteopathic physician assistant
210 shall be restricted, suspended or revoked by the Board
211 in accordance with all the alternatives set out at W. Va.
212 Code §30-14A-1 when, after due notice and a hearing in
213 accordance with the manner and form prescribed by the
214 contested case hearing procedure, W. Va. Code §29A-5-
215 1 et seq. and regulations of the Board set out at 24 CSR
216 1 if it is found:

217 2.9.1. That the assistant has held himself or herself
218 out or permitted another person to represent him or her
219 as a licensed osteopathic physician;

220 2.9.2. That the assistant has in fact performed other
221 than at the direction and under the supervision of a
222 supervising osteopathic physician licensed by the Board;

223 2.9.3. That the assistant has been delegated and
224 performed a task or tasks beyond his or her competence
225 and not in accordance with his or her job description as
226 approved by the Board;

227 2.9.4. That the assistant is a habitual user of intox-
228 icants or drugs to such an extent that he or she is unable
229 to safely perform as an assistant to the osteopathic
230 physician;

231 2.9.5. That the assistant has been convicted in any
232 court, state or federal, of any felony or other criminal
233 offense involving moral turpitude;

234 2.9.6. That the assistant has been adjudicated a
235 mental incompetent or his or her mental condition
236 renders him or her unable to safely perform as an
237 assistant to an osteopathic physician;

238 2.9.7. That the assistant has failed to comply with any
239 of the provisions of this rule or W. Va. Code §30-14-1
240 et seq.; and

241 2.9.8. That the assistant is guilty of unprofessional
242 conduct which includes, but is not limited to, the
243 following:

244 a. Misrepresentation or concealment of any material
245 fact in obtaining any certificate or license or a reinstatement
246 thereof;

247 b. The commission of an offense against any provision
248 of state law related to the practice of osteopathic
249 physician assistants, or any rule or regulation promul-
250 gated thereunder;

251 c. The commission of any act involving moral turpi-
252 tude, dishonesty or corruption, when the act directly or
253 indirectly affects the health, welfare or safety of citizens
254 of this State. If the act constitutes a crime, conviction
255 thereof in a criminal proceeding is not a condition
256 precedent to disciplinary action;

257 d. Conviction of a felony, as defined under the laws
258 of this State or under the laws of any other state,
259 territory or country;

260 e. Misconduct in his or her practice as an osteopathic
261 physician assistant or performing tasks fraudulently,
262 beyond his or her authorized scope, with incompetence
263 or with negligence on a particular occasion or negli-
264 gence on repeated occasions;

265 f. Performing tasks as an osteopathic physician
266 assistant while the ability to do so is impaired by
267 alcohol, drugs, physical disability or mental instability;

268 g. Impersonation of a licensed osteopathic physician
269 or another certified or licensed osteopathic physician
270 assistant;

271 h. Offering, undertaking or agreeing to cure or treat
272 disease by a secret method, procedure, treatment or
273 medicine; treating or prescribing for any human
274 condition by a method, means or procedure which the
275 osteopathic physician assistant refuses to divulge upon
276 demand of the Board; or using such methods or
277 treatment processes not accepted by a reasonable
278 segment of the medical profession;

279 i. Prescribing a prescription drug, including any
280 controlled substance under state or federal law, other
281 than in good faith and a therapeutic manner in
282 accordance with accepted medical standards;

283 j. Prescribing a controlled substance under state or
284 federal law, to or for himself or herself, or to or for any

285 member of his or her immediate family; and

286 k. Prescribing a prescription drug, including any
287 controlled substance under state or federal law, which
288 is not included in the approved job description for that
289 osteopathic physician assistant or which is not included
290 in the approved state formulary for osteopathic physi-
291 cian assistants.

292 2.10. Denial of licensure of osteopathic physician
293 assistant. Whenever the Board determines that an
294 applicant has failed to satisfy the Board that he or she
295 should be licensed, the Board shall immediately notify
296 the applicant of its decision and indicate in what respect
297 the applicant has failed to satisfy the Board. The
298 applicant shall be given a formal hearing before the
299 Board upon request of the applicant filed with or mailed
300 by registered or certified mail to the Secretary of the
301 Board, which request must be filed within thirty (30)
302 days after receipt of the Board's decision, stating the
303 reasons for the request. The Board shall within twenty
304 (20) days of receipt of the request, notify the applicant
305 of the time and place of a public hearing, which shall
306 be held within a reasonable time. The burden of
307 satisfying the Board of his or her qualifications for
308 licensure is upon the applicant. Following the hearing,
309 the Board shall determine on the basis of this rule
310 whether the applicant is qualified to be licensed, and
311 this decision of the Board is final as to that application.

312 2.11. Disciplinary procedures. — The disciplinary
313 process and procedures set forth in the contested case
314 hearing procedure, W. Va. Code §29A-5-1 et seq. and in
315 regulations of the Board set out at 24 CSR 1 also apply
316 to disciplinary actions instituted against osteopathic
317 physician assistants with the same provisions regarding
318 the appeal of decisions made to circuit courts.

319 2.12. Osteopathic physician assistant utilization.

320 2.12.1. The osteopathic physician assistant shall,
321 under appropriate direction and supervision by an
322 osteopathic physician, augment the osteopathic physi-
323 cian's data gathering abilities in order to assist the
324 supervising osteopathic physician in reaching decisions

325 and instituting care plans for the osteopathic physician's
326 patients. An osteopathic physician assistant shall have,
327 as a minimum, the knowledge and competency to
328 perform the following functions and may under appropriate
329 supervision perform them; this list is not intended
330 to be specific or all-inclusive:

331 a. Screen patients to determine the need for medical
332 attention;

333 b. Review patient records to determine health status;

334 c. Take a patient history;

335 d. Perform a physical examination;

336 e. Perform development screening examinations on
337 children;

338 f. Record pertinent patient data;

339 g. Make decisions regarding data gathering and
340 appropriate management and treatment of patients
341 being seen for the initial evaluation of a problem or the
342 follow-up evaluation of a previously diagnosed and
343 stabilized condition;

344 h. Prepare patient summaries;

345 i. Initiate requests for commonly performed initial
346 laboratory studies;

347 j. Collect specimens for and carry out commonly
348 performed blood, urine and stool analyses and cultures;

349 k. Identify normal and abnormal findings in history
350 physical examination and commonly performed labora-
351 tory studies;

352 l. Initiate appropriate evaluation and emergency
353 management for emergency situations; for example,
354 cardiac arrest, respiratory distress, injuries, burns and
355 hemorrhage;

356 m. Perform clinical procedures such as:

357 A. Venipuncture;

358 B. Electrocardiogram;

- 359 C. Care and suturing of minor lacerations;
- 360 D. Casting and splinting;
- 361 E. Control of external hemorrhage;
- 362 F. Application of dressings and bandages;
- 363 G. Removal of superficial foreign bodies;
- 364 H. Cardiopulmonary resuscitation;
- 365 I. Audiometry screening;
- 366 J. Visual screening; and
- 367 K. Aseptic and isolation techniques; and
- 368 n. Provide counseling and instruction regarding
- 369 common patient problems.

370 2.12.2. The tasks an osteopathic physician assistant
371 may perform are those which require technical skill,
372 execution of standing orders, routine patient care tasks
373 and such diagnostic and therapeutic procedures as the
374 supervising osteopathic physician may wish to delegate
375 to the osteopathic physician assistant after the supervis-
376 ing osteopathic physician has satisfied himself or herself
377 as to the ability and competence of the osteopathic
378 physician assistant. The supervising osteopathic physi-
379 cian may, with due regard for the safety of the patient
380 and in keeping with sound medical practice, delegate to
381 the osteopathic physician assistant such medical proce-
382 dures and other tasks as are usually performed within
383 the normal scope of the supervising osteopathic physi-
384 cian's practice, subject to the limitations set forth in this
385 section and W. Va. Code §30-14-1 et seq., and the
386 training and expertise of the osteopathic physician
387 assistant.

388 2.12.3. A supervising osteopathic physician shall not
389 permit an osteopathic physician assistant to independ-
390 ently practice medicine. Supervision must be main-
391 tained at all times.

392 2.12.4. An osteopathic physician assistant shall not:

393 a. Maintain or manage an office separate and apart
394 from the supervising osteopathic physician's primary

395 office for treating patients, unless the Board has granted
396 the supervising osteopathic physician specific permis-
397 sion to establish a satellite operation;

398 b. Independently bill patients for services provided;

399 c. Independently delegate a task assigned to him or
400 her by his or her supervising osteopathic physician to
401 another individual;

402 d. Perform acupuncture in any form; or

403 e. Pronounce a patient dead, except in a setting where
404 state or federal government regulations permit a
405 registered nurse or an osteopathic physician assistant to
406 do so.

407 2.12.5. The supervising osteopathic physician shall
408 monitor and supervise the activities of the osteopathic
409 physician assistant and require documentation, includ-
410 ing organized medical records with symptoms, pertinent
411 physical findings, impressions and treatment plans
412 indicated. The supervising osteopathic physician may
413 also provide written protocols for the use of the
414 osteopathic physician assistant in the performance of
415 delegated tasks. The established protocols shall be
416 available for public inspection upon request and may be
417 reviewed by the Board as required.

418 2.12.6. If the supervising osteopathic physician
419 absents himself or herself in such a manner or to such
420 an extent that he or she is unavailable to aid the
421 osteopathic physician assistant when required, the
422 supervising osteopathic physician shall not delegate
423 patient care to his or her osteopathic physician assistant
424 unless he or she has made appropriate arrangements for
425 an alternate supervising osteopathic physician. The
426 legal responsibility for the acts and omissions of the
427 osteopathic physician assistant remains with the super-
428 vising osteopathic physician at all times.

429 2.12.7. It is the responsibility of the supervising
430 osteopathic physician to ensure that supervision is
431 maintained in his or her absence.

432 2.12.8. No osteopathic physician assistant may be

433 utilized in an office or clinic separate and apart from
434 the supervising osteopathic physician's primary place
435 for meeting patients unless the supervising osteopathic
436 physician has obtained specific approval from the
437 Board. A supervising osteopathic physician may super-
438 vise only two (2) satellite operations. The criteria for
439 granting approval is that the supervising osteopathic
440 physician demonstrate the following to the satisfaction
441 of the Board:

442 a. That the osteopathic physician assistant will be
443 utilized in a designated manpower shortage area or an
444 area of medical need as defined by the Board;

445 b. That there is adequate provision for direct com-
446 munication between the osteopathic physician assistant
447 and the supervising osteopathic physician and that the
448 distance between the main office and the satellite
449 operation is not so great as to prohibit or impede
450 appropriate emergency services;

451 c. That provision is made for the supervising osteo-
452 pathic physician to see each regular patient periodically;
453 for example, every third visit; and

454 d. That the supervising osteopathic physician visit the
455 remote office at least once every fourteen days and
456 demonstrate that he or she spends enough time on site
457 to provide supervision and personal and regular review
458 of the selected records upon which entries are made by
459 the osteopathic physician assistant. Patient records shall
460 be selected on the basis of written criteria established
461 by the supervising osteopathic physician and the
462 osteopathic physician assistant and shall be of sufficient
463 number to assure adequate review of the osteopathic
464 physician assistant's scope of practice.

465 2.12.9. Appropriate records of supervisory contact
466 must be maintained and made available for Board
467 review if required. Failure to maintain the standards
468 required for such an operation may result in the loss of
469 the privilege to maintain a satellite operation.

470 2.12.10. Designated representatives of the Board will
471 be authorized to make on-site visits to the offices of

472 supervising osteopathic physicians and medical care
473 facilities utilizing osteopathic physician assistants to
474 review the following:

- 475 a. The supervision of osteopathic physician assistants;
- 476 b. The maintenance of and compliance with, any
477 protocols;
- 478 c. Utilization in conformity with the provisions of this
479 section;
- 480 d. Identification of osteopathic physician assistants;
481 and
- 482 e. Compliance with licensure and registration
483 requirements.

484 2.12.11. The Board reserves the right to review
485 osteopathic physician assistant utilization without prior
486 notice to either the osteopathic physician assistant or the
487 supervising osteopathic physician. It is a violation of this
488 rule for a supervising osteopathic physician or an
489 osteopathic physician assistant to refuse to undergo a
490 review by the Board.

491 2.12.12. The provisions of this section shall not be
492 construed to require medical care facilities to accept
493 osteopathic physician assistants or to use them within
494 their premises. It is appropriate for the osteopathic
495 physician assistant to provide services to the hospital-
496 ized patients of his or her supervising osteopathic
497 physician under the supervision of the osteopathic
498 physician, if the medical care facility permits it.

499 2.12.13. Osteopathic physician assistants employed
500 directly by medical care facilities shall perform services
501 only under the supervision of a clearly identified
502 supervising osteopathic physician, and the osteopathic
503 physician shall supervise no more than two (2) osteopa-
504 thic physician assistants, except that a supervising
505 osteopathic physician may supervise up to four (4)
506 hospital employed osteopathic physician assistants.

507 2.12.14. So long as the facility permits, an osteopathic
508 physician assistant may:

509 a. Assess and record the patient's progress within the
510 parameters of an established protocol or regimen and
511 report the patient's progress to the supervising osteopa-
512 thic physician; and

513 b. Make entries in medical records and patient charts
514 so long as an appropriate mechanism is established for
515 authentication by the supervising osteopathic physician
516 through countersignature.

517 2.12.15. An osteopathic physician assistant may
518 provide medical care or services in an emergency
519 department so long as he or she has training in
520 emergency medicine, functions under specific protocols
521 which govern his or her performance and is under the
522 supervision of an osteopathic physician with whom he
523 or she has ready contact and who is willing to assume
524 full responsibility for the osteopathic physician assist-
525 ant's performance.

526 2.12.16. No osteopathic physician assistant shall
527 render nonemergency outpatient medical services until
528 the patient has been informed that the individual
529 providing care is an osteopathic physician assistant.

530 2.12.17. It is the supervising osteopathic physician's
531 responsibility to be alert to patient complaints concern-
532 ing the type or quality of services provided by the
533 osteopathic physician assistant.

534 2.12.18. In the supervising osteopathic physician's
535 office and any satellite operation, a notice plainly visible
536 to all patients shall be posted in a prominent place
537 explaining the meaning of the term "Osteopathic
538 physician Assistant". The osteopathic physician assist-
539 ant's license must be prominently displayed in the office
540 and any satellite operation in which he or she may
541 function. Duplicate licenses may be obtained from the
542 Board if required.

543 2.12.19. The osteopathic physician assistant is re-
544 quired to notify the Board of changes in his or her
545 employment within thirty (30) days. The osteopathic
546 physician assistant must provide the Board with his or
547 her new address and telephone number of residence,

548 address and telephone number of employment and name
549 of supervising osteopathic physician.

550 2.12.20. The supervising osteopathic physician is
551 required to notify the Board of any changes in his or
552 her supervision of an osteopathic physician assistant
553 within ten (10) days.

554 2.13. Limited prescriptive privileges for osteopathic
555 physician assistants.

556 2.13.1. An osteopathic physician assistant may be
557 authorized by the Board to issue written or oral
558 prescriptions for certain medicinal drugs at the direc-
559 tion of his or her supervising osteopathic physician if all
560 of the following conditions are met:

561 a. The osteopathic physician assistant has performed
562 patient care services for a minimum of two (2) years
563 immediately preceding the submission to the Board of
564 the job description requesting limited prescriptive
565 privileges;

566 b. The osteopathic physician assistant has successfully
567 completed an accredited course of instruction in clinical
568 pharmacology approved by the Board of not less than
569 four (4) semester hours;

570 c. The osteopathic physician assistant obtains Board
571 approval of his or her job description which includes the
572 categories of drugs the osteopathic physician assistant
573 proposes to prescribe at the direction of his or her
574 supervising osteopathic physician.

575 d. The osteopathic physician assistant continues to
576 maintain national certification as a osteopathic physi-
577 cian assistant, and in meeting such national certification
578 requirements, completes a minimum of ten (10) hours
579 of continuing education in rational drug therapy in each
580 certification period.

581 2.13.2. Evidence of completion of all conditions for the
582 granting of limited prescriptive privileges shall be
583 included with the osteopathic physician assistant's
584 biennial renewal application and report to the Board.

585 2.13.3. The Board shall approve a formulary classify-

586 ing pharmacologic categories of all drugs which may be
587 prescribed by an osteopathic physician assistant autho-
588 rized by the Board to prescribe drugs. The formulary
589 shall exclude Schedules I and II of the Uniform
590 Controlled Substances Act, anticoagulants, antineoplas-
591 tics, radiopharmaceuticals, general anesthetics and
592 radiographic contrast materials. The formulary may be
593 revised annually, and shall include the following
594 designated sections:

595 a. Section a. — A choice of drugs commonly used in
596 primary care outpatient settings to be prescribable by
597 osteopathic physician assistants who have completed an
598 additional accredited course of study in clinical pharma-
599 cology approved by the Board of not less than four (4)
600 semester hours; and

601 b. Section b. — Additional drugs used less commonly
602 in primary care outpatient settings to be prescribable
603 by osteopathic physician assistants who have satisfied
604 the requirements set forth under Section 2.13.3.a of this
605 rule. In addition, Section b. drugs may be prescribed by
606 osteopathic physician assistants only under the following
607 limited situations:

608 A. On a direct order from the supervising osteopathic
609 physician to the osteopathic physician assistant during
610 consultation at the time of the patient's examination by
611 the osteopathic physician assistant, and specifically
612 noted in the patient's chart; or

613 B. On a refill prescription for a previously diagnosed
614 and stable patient whose prescription was initiated by
615 the supervising osteopathic physician.

616 2.13.4. A prescription drug not included in the
617 approved formulary shall not be contained in the job
618 description of any osteopathic physician assistant.

619 2.13.5. Prescriptions issued by an osteopathic physi-
620 cian assistant shall be issued consistent with the
621 supervising osteopathic physician's directions or treat-
622 ment protocol provided to his or her osteopathic
623 physician assistant. The maximum dosage shall be
624 indicated in the protocol and in no case may the dosage

625 exceed the manufacturer's recommended average
626 therapeutic dose for that drug.

627 2.13.6. Each prescription and subsequent refills given
628 by the osteopathic physician assistant shall be entered
629 on the patient's chart.

630 2.13.7. The prescription form utilized by an osteopa-
631 thic physician assistant approved for limited prescrip-
632 tive privileges shall be imprinted with the name of the
633 supervising osteopathic physician, the name of the
634 approved osteopathic physician assistant, the address of
635 the health care facility, the telephone number of the
636 health care facility, the categories of drugs or drugs
637 within a category which the assistant may prescribe and
638 the statement, "Osteopathic physician Assistant Pres-
639 cription -it is a violation of state law to dispense drugs
640 not imprinted on this prescription." The osteopathic
641 physician assistant shall write the name of the patient,
642 the patient's address and the date on each prescription
643 form. The osteopathic physician assistant shall sign his
644 or her name to each prescription followed by the letters
645 "PA-C." The supervising osteopathic physician must
646 provide the Board with a copy of the prescription form
647 utilized by his or her osteopathic physician assistant
648 prior to its use. A copy of this prescription form shall
649 be provided by the osteopathic physician assistant to
650 area pharmacies where the osteopathic physician
651 assistant may issue a prescription by word of mouth,
652 telephone or other means of communication in his or her
653 name at the direction of the supervising osteopathic
654 physician.

655 2.13.8. Osteopathic physician assistants authorized to
656 issue prescriptions for Schedules III through V con-
657 trolled substances shall write on the prescription form
658 the Federal Drug Enforcement Administration number
659 issued to that osteopathic physician assistant. Prescrip-
660 tions written for Schedule III drugs shall be limited to
661 a seventy-two (72) hour supply and may not authorize
662 a refill. The maximum amount of Schedule IV or
663 Schedule V drugs shall be no more than ninety (90)
664 dosage units or a thirty (30) day supply, whichever is
665 less.

666 2.13.9. Other prescription drugs shall not be pres-
667 cribed or refillable for a period exceeding six (6)
668 months.

669 2.13.10. The Board of Osteopathy shall provide the
670 Board of Pharmacy with a list of osteopathic physician
671 assistants with limited prescriptive privileges and shall
672 update the list within ten (10) days after additions or
673 deletions are made.

674 2.13.11. Nothing in this rule shall be construed to
675 permit any osteopathic physician assistant to independ-
676 ently prescribe or dispense drugs.

677 2.14. Continuing Education.

678 2.14.1. Each osteopathic physician assistant, as a
679 condition of biennial renewal of osteopathic physician
680 assistant license, shall provide written documentation of
681 participation in and successful completion during the
682 preceding two (2) year period of a minimum of twenty
683 (20) hours of continuing education in courses approved
684 by the Board for the purposes of continuing education
685 of osteopathic physician assistants.

686 2.14.2. All written documentation must be submitted
687 to and received by the Board, with the completed
688 biennial renewal form, prior to the first day of April of
689 the year of renewal of the osteopathic physician assistant
690 license.

691 2.14.3. Failure to timely submit written documenta-
692 tion as set forth in subsection 2.14.3 of this rule shall
693 result in the automatic suspension of the license of an
694 osteopathic physician assistant until such time as the
695 written documentation is submitted to and approved by
696 the Board.

697 **§11-2B-3. Severability.**

698 If any provision of these rules or the application
699 thereof to any person or circumstance is held invalid, the
700 invalidity shall not affect the provisions or application
701 of this rules which can be given effect without the
702 invalid provisions or application and to this end the
703 provisions of this rule are declared to be severable.

704 (b) The legislative rules filed in the state register on
705 the sixth day of August, one thousand nine hundred
706 ninety-three, modified by the board of osteopathy to
707 meet the objections of the legislative rule-making review
708 committee and refiled in the state register on the
709 twenty-fifth day of January, one thousand nine hundred
710 ninety-four, relating to the board of osteopathy (licens-
711 ing, disciplinary and complaint procedures for osteopa-
712 thic physicians), are authorized.

§64-9-37. Board of physical therapy.

1 The legislative rules filed in the state register on the
2 nineteenth day of July, one thousand nine hundred
3 ninety-three, modified by the board of physical therapy
4 to meet the objections of the legislative rule-making
5 review committee and refiled in the state register on the
6 twenty-seventh day of October, one thousand nine
7 hundred ninety-three, relating to the board of physical
8 therapy (general provisions), are authorized.

§64-9-38. Board of examiners for speech-language pathology and audiology.

1 (a) The legislative rules filed in the state register on
2 the fourteenth day of July, one thousand nine hundred
3 ninety-three, modified by the board of examiners for
4 speech-language pathology and audiology to meet the
5 objections of the legislative rule-making review commit-
6 tee and refiled in the state register on the first day of
7 September, one thousand nine hundred ninety-three,
8 relating to the board of examiners for speech-language
9 pathology and audiology (licensure of speech-language
10 pathology and audiology), are authorized.

11 (b) The legislative rules filed in the state register on
12 the fourteenth day of July, one thousand nine hundred
13 ninety-three, modified by the board of examiners for
14 speech-language pathology and audiology to meet the
15 objections of the legislative rule-making review commit-
16 tee and refiled in the state register on the first day of
17 September, one thousand nine hundred ninety-three,
18 relating to the board of examiners for speech-language
19 pathology and audiology (licensure of speech-language
20 pathology and audiology assistants), are authorized.

§64-9-39. Commercial hazardous waste management facility siting board.

1 The legislative rules filed in the state register on the
2 sixteenth day of August, one thousand nine hundred
3 ninety-three, modified by the commercial hazardous
4 waste management facility siting board to meet the
5 objections of the legislative rule-making review commit-
6 tee and refiled in the state register on the twenty-first
7 day of January, one thousand nine hundred ninety-four,
8 relating to the commercial hazardous waste manage-
9 ment facility siting board (commercial hazardous waste
10 management facility siting board certification require-
11 ments), are authorized.

§64-9-40. Family protection services board.

1 The legislative rules filed in the state register on the
2 thirteenth day of August, one thousand nine hundred
3 ninety-three, modified by the family protection services
4 board to meet the objections of the legislative rule-
5 making review committee and refiled in the state
6 register on the eighth day of October, one thousand nine
7 hundred ninety-three, relating to the family protection
8 services board (operation of the family protection
9 services board and licensure and funding of domestic
10 violence programs), are authorized with the amendment
11 set forth below:

12 On page twelve, section 5.5.3, after the word "sus-
13 pended" by striking out the word "or" and inserting in
14 lieu thereof the following words "but the board shall
15 provide funds to a shelter/program".

§64-9-41. Board of investments.

1 (a) The legislative rules filed in the state register on
2 the sixteenth day of August, one thousand nine hundred
3 ninety-three, modified by the board of investments to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the
6 eighteenth day of January, one thousand nine hundred
7 ninety-four, relating to the board of investments
8 (administration of the consolidated pension fund), are
9 authorized.

10 (b) The legislative rules filed in the state register on

11 the sixteenth day of August, one thousand nine hundred
12 ninety-three, relating to the board of investments
13 (administration of the consolidated fund by the West
14 Virginia state board of investments), are authorized.

CHAPTER 98

(H. B. 4163—By Mr. Speaker, Mr. Chambers)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article two, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the duties of the legislative auditor; allowing the legislative auditor to charge the costs of conducting a post audit to the agency being audited; use of funds received; and filing copies of audit.

Be it enacted by the Legislature of West Virginia:

That section four, article two, 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 2. LEGISLATIVE AUDITOR; POWERS; FUNCTIONS; DUTIES; COMPENSATION.

§4-2-4. Duties of auditor; filing reports.

1 (a) It is the duty of the legislative auditor to compile
2 fiscal information for the Senate and the House of
3 Delegates, to make a continuous audit and analysis of
4 the state budget, revenues and expenditures, during and
5 between sessions of the Legislature, to make post audits
6 of the revenues and expenditures of the spending units
7 of the state government, at least once every two years,
8 if practicable, to report any misapplication of state
9 funds or erroneous, extravagant or unlawful expendi-
10 tures by any spending unit, to ascertain facts and to
11 make recommendations to the Legislature concerning
12 post-audit findings, the revenues and expenditures of
13 the state and of the organization and functions of the
14 state and its spending units.

15 (b) The legislative auditor may collect, and the
16 department, agency or board shall pay, any or all of the
17 costs associated with conducting the post audits from the
18 department, agency or board being audited, when
19 necessary and desirable. The legislative auditor shall
20 render to the department, agency or board liable for the
21 costs a statement of the costs as soon after the costs were
22 incurred as practicable, and it is the duty of the
23 department, agency or board to pay promptly in the
24 manner that other claims and accounts are paid. All
25 money received by the legislative auditor from this
26 source shall be expended only for the purpose of
27 covering the costs associated with such services, unless
28 otherwise directed by the Legislature.

29 (c) A copy of each report of audit when completed and
30 certified shall be filed in the office of the department
31 of finance and administration as a public record and a
32 copy shall be filed with the attorney general for any
33 action he or she may consider necessary.

CHAPTER 99

(Com. Sub. for H. B. 4031—By Mr. Speaker, Mr. Chambers, and Delegate Burk)

[By Request of the Executive]

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section nine, article two-a, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three, four, five, six, seven and eight of said article; to amend and reenact sections two and two-a, article seven, chapter six of said code; to amend and reenact section ten-a, article one, chapter fifty-one of said code; to amend and reenact section thirteen, article two of said chapter; and to amend and reenact section four, article nine of said chapter, all generally relating to the salaries of elected or appointed state officers; increasing the basic compensation and expense reimbursement for members of the Legislature; increasing the daily allowance for members during sessions and during the

interim; providing for additional compensation for presiding officers and specified committee chairs, as well as certain other members to be designated by the presiding officers; increasing the salaries of state constitutional officers; changing the salaries of certain state administrators; updating the provisions related to state administrators' salaries; increasing the salary for circuit court judges; increasing the salaries of justices of the supreme court of appeals; and increasing required contributions to retirement system for judges of courts of record.

Be it enacted by the Legislature of West Virginia:

That section nine, article two-a, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections two, three, four, five, six, seven and eight of said article be amended and reenacted; that sections two and two-a, article seven, chapter six be amended and reenacted; that section ten-a, article one, chapter fifty-one be amended and reenacted; that section thirteen, article two of said chapter be amended and reenacted; and that section four, article nine of said chapter fifty-one be amended and reenacted, all to read as follows:

Chapter

- 4. The Legislature.**
- 6. General Provisions Respecting Officers.**
- 51. Courts and Their Officers.**

CHAPTER 4. THE LEGISLATURE.

ARTICLE 2A. COMPENSATION FOR AND EXPENSES OF MEMBERS OF THE LEGISLATURE.

- §4-2A-2. Basic compensation for services; proration.
- §4-2A-3. Compensation for members of the Legislature during any extension of regular session or during extraordinary session.
- §4-2A-4. Additional compensation for president of Senate, speaker of House of Delegates, majority leaders, minority leaders, certain committee chairs and selected members of both houses.
- §4-2A-5. Interim compensation for members.
- §4-2A-6. Travel expenses.
- §4-2A-7. Reimbursement for expenses incurred during any session or interim assignment.
- §4-2A-8. Out-of-state expenses.

PART II. COMPENSATION.

§4-2A-2. Basic compensation for services; proration.

1 (a) Each member of the Legislature shall receive as
2 basic compensation for his or her services the sum of six
3 thousand five hundred dollars per calendar year.
4 Beginning in the calendar year one thousand nine
5 hundred ninety-five, and for each calendar year thereaf-
6 ter, each member of the Legislature shall receive as
7 basic compensation for his or her services the sum of
8 fifteen thousand dollars. In addition to such basic
9 compensation, members shall receive the additional
10 compensations as are expressly provided for in sections
11 three, four and five of this article. The increased basic
12 compensation as set forth in this subsection and all other
13 increased amounts or new amounts in respect to the
14 compensation or expenses of members of the Legisla-
15 ture, set forth in the resolution of the citizens legislative
16 compensation commission, dated the third day of March,
17 one thousand nine hundred ninety-four, and imple-
18 mented in sections two through eight of this article
19 providing for new amounts or amounts increased to new
20 amounts greater than those in force and effect on the
21 first day of January, one thousand nine hundred ninety-
22 four, shall all become effective only for calendar year
23 one thousand nine hundred ninety-five, and each
24 calendar year thereafter.

25 (b) The basic compensation shall be payable twice a
26 month during each regular session of the Legislature,
27 without regard to any extension of such regular session.
28 In the event of the death, resignation or removal of a
29 member of the Legislature during a regular session of
30 the Legislature and the appointment and qualification
31 of his or her successor during any such regular session,
32 the basic compensation provided for in this section shall
33 be prorated between the original member and his or her
34 successor on the basis of the number of days served
35 (including Saturdays and Sundays) as a member of the
36 Legislature by each during such regular session of sixty
37 calendar days.

38 (c) In the event of the death, resignation or removal

39 of a member of the Legislature and the appointment and
40 qualification of his or her successor subsequent to the
41 regular session of the Legislature held in the calendar
42 year in which such successor was appointed and
43 qualified, none of the basic compensation provided for
44 in this section shall be paid to such successor.

§4-2A-3. Compensation for members of the Legislature during any extension of regular session or during extraordinary session.

1 Each member of the Legislature shall receive, in
2 addition to the basic compensation provided for in
3 section two of this article, additional compensation of
4 one hundred dollars per day for each day of attendance
5 in person upon any business of the Senate or House of
6 Delegates, as the case may be, on each day upon which
7 said Senate or House of Delegates is actually called to
8 order during each extension of regular session or during
9 extraordinary session of the Legislature. Such addi-
10 tional compensation shall be paid from time to time
11 during any such extended session or extraordinary
12 session, as may be prescribed by rules established by the
13 legislative auditor.

§4-2A-4. Additional compensation for president of Senate, speaker of House of Delegates, majority leaders, minority leaders, certain committee chairs and selected members of both houses.

1 (a) In addition to the basic and additional compensa-
2 tion provided for in sections two and three of this article,
3 the president of the Senate and the speaker of the House
4 of Delegates shall each receive additional compensation
5 of:

6 (1) Fifty dollars per day for each day actually served
7 during any regular, extension of regular or extraordi-
8 nary session as presiding officer, including Saturdays
9 and Sundays; and

10 (2) One hundred dollars per day up to a maximum of
11 eighty such days per calendar year for attending to
12 legislative business in their offices in the capitol
13 building when the Legislature is not in regular,

14 extension of regular or extraordinary session and
15 interim committees are not meeting.

16 (b) In addition to the basic and additional compensa-
17 tion provided for in sections two and three of this article,
18 the majority leaders and minority leaders of the Senate
19 and of the House of Delegates shall each receive
20 additional compensation of twenty-five dollars per day
21 for each day actually served during any regular,
22 extension of regular or during extraordinary session,
23 including Saturdays and Sundays, as the selected
24 legislative leaders of their respective political parties.

25 (c) Such presiding officer and majority and minority
26 leader compensation shall be paid from time to time
27 during any such session or interim period, as the case
28 may be, as may be prescribed by rules established by
29 the legislative auditor.

30 (d) In addition to the basic and additional compensa-
31 tion provided for in sections two and three of this article,
32 the chairpersons of the committees on finance and
33 committees on the judiciary of the respective houses and
34 up to four additional persons from each house, to be
35 named by the presiding officer, shall each receive an
36 additional compensation of one hundred dollars per day
37 up to a maximum of thirty days for attending to
38 legislative business in their offices in the capitol
39 building when the Legislature is not in regular,
40 extended or extraordinary session and interim commit-
41 tees are not meeting.

§4-2A-5. Interim compensation for members.

1 In addition to the basic and any additional compen-
2 sation provided for in sections two, three and four of this
3 article, each member shall receive interim compensation
4 of one hundred dollars per day for each day actually
5 engaged in the performance of interim duties as a
6 member of any interim committee between regular
7 sessions of the Legislature: *Provided*, That the total
8 additional interim compensation payable to any member
9 and his replacement, if any, on a committee or commis-
10 sion under the provisions of this section shall not exceed
11 the sum of three thousand dollars per calendar year.

PART III. EXPENSES.

§4-2A-6. Travel expenses.

1 Each member of the Legislature shall be entitled to
2 be reimbursed, upon submission of an expense voucher,
3 for expenses incurred incident to travel in the perfor-
4 mance of his or her duties as a member of the Legis-
5 lature or any committee of the Legislature, whether
6 such committee is operating under general law or
7 resolution, including, but not limited to, attendance at
8 party caucuses held in advance of the date of the
9 assembly of the Legislature in regular session in odd-
10 numbered years for the purpose of selecting candidates
11 for officers of the two houses, at a rate equal to that paid
12 by the travel management office of the department of
13 administration for the most direct usually traveled
14 route, if travel is by private automobile, or for actual
15 transportation costs for direct route travel, if travel is
16 by public carrier, or for any combination of such means
17 of transportation actually used, plus the cost of neces-
18 sary taxi or limousine service, tolls and parking fees in
19 connection therewith, but during any regular, extension
20 of regular or extraordinary session, travel expenses
21 shall not be paid to any member for more than one
22 round trip to and from the seat of government and to
23 and from his or her place of residence for each week of
24 any such session.

25 In addition to the above travel expense, the president
26 of the Senate and the speaker of the House of Delegates
27 shall be entitled to be reimbursed as provided above,
28 upon submission of an expense voucher, for expenses
29 incurred incident to travel for up to a maximum of
30 eighty days per calendar year in connection with their
31 visits to the capitol building for business which is
32 related to their duties as presiding officers of the
33 respective houses of the Legislature, but which takes
34 place when the Legislature is not in regular, extension
35 of regular or extraordinary session and interim commit-
36 tees are not meeting.

37 The rate paid for mileage pursuant to this section may
38 change from time to time in accordance with changes

39 in the reimbursement rates established by the travel
40 management office, or its successor agency.

**§4-2A-7. Reimbursement for expenses incurred during
any session or interim assignment.**

1 (a) Each member of the Legislature who does not
2 commute daily shall receive the sum of eighty-five
3 dollars per day as per diem allowance in connection with
4 any regular, extended, extraordinary session, interim
5 assignment or for any member so authorized by the
6 presiding officer. Any member of the Legislature who
7 does commute daily shall receive the sum of forty-five
8 dollars per day as said per diem allowance and, in
9 addition to such allowance, shall be reimbursed for
10 overnight commuting expenses at the mileage rate equal
11 to the amount paid by the travel management office of
12 the department of administration for the most direct
13 usually traveled route, if travel is by private automobile,
14 or for actual transportation costs for direct route travel,
15 if travel is by public carrier, or for any combination of
16 such means of transportation actually used, plus the
17 costs of necessary taxi or limousine service, tolls and
18 parking fees in connection therewith: *Provided*, That the
19 total of this per diem allowance plus travel expense for
20 a daily commuting member shall not exceed eighty-five
21 dollars per day. The amount for mileage paid pursuant
22 to this paragraph may change from time to time in
23 accordance with changes in the level of reimbursement
24 by the said travel management office.

25 (b) The president of the Senate and the speaker of the
26 House of Delegates, the chairman of the house commit-
27 tee on finance, the chairman of the senate committee on
28 finance, the chairman of the house committee on the
29 judiciary, the chairman of the senate committee on the
30 judiciary, and up to four additional persons from each
31 house designated by the presiding officer pursuant to
32 section four of this article, shall be reimbursed for travel
33 at the rate established in subsection (a) above, and shall
34 further receive the per diem allowance established in
35 said subsection in connection with their visits to the
36 capitol for business which is related to their duties as
37 such officers at the times when the Legislature is not

38 in regular, extended or extraordinary session, and
39 interim committees are not meeting.

§4-2A-8. Out-of-state expenses.

1 In addition to reimbursement for travel expenses as
2 authorized in section six of this article, each member of
3 the Legislature traveling from West Virginia to an out-
4 of-state point or points and returning incident to the
5 performance of his or her duties as a member of the
6 Legislature or any committee of the Legislature,
7 whether such committee is operating under general law
8 or resolution, which travel has been duly authorized,
9 shall be entitled to be reimbursed, upon submission of
10 an expense voucher therefor, for all reasonable and
11 necessary expenses actually incurred incident thereto,
12 but the total of any and all such reimbursed expenses,
13 exclusive of reimbursement for such travel expenses,
14 shall not under any circumstances exceed the actual cost
15 of housing at the least expensive available single rate
16 and meal and miscellaneous expenses of forty-five
17 dollars per day. A receipt for the amount paid for
18 housing and for travel by any public transportation to
19 and from West Virginia shall be submitted with the
20 expense voucher, but a receipt shall not be required to
21 be submitted with any such expense voucher for meal
22 and miscellaneous expenses.

**CHAPTER 6. GENERAL PROVISIONS
RESPECTING OFFICERS.**

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2. Salaries of certain state officers.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifica-
tions; powers and salaries of such officers.

§6-7-2. Salaries of certain state officers.

1 The salaries for each of the state constitutional
2 officers shall be as follows:

3 (a) The salary of the governor shall be ninety thousand
4 dollars per year;

5 (b) The salary of the attorney general shall be seventy-
6 five thousand dollars per year;

7 (c) The salary of the auditor shall be seventy thousand
8 dollars per year;

9 (d) The salary of the secretary of state shall be sixty-
10 five thousand dollars per year;

11 (e) The salary of the commissioner of agriculture shall
12 be seventy thousand dollars per year; and

13 (f) The salary of the state treasurer shall be sixty-five
14 thousand dollars per year.

**§6-7-2a. Terms of certain appointive state officers;
appointment; qualifications; powers and
salaries of such officers.**

1 (a) Notwithstanding any other provision of this code
2 to the contrary enacted prior to the first day of January,
3 one thousand nine hundred ninety-four, each of the
4 following appointive state officers named in this
5 subsection shall be appointed by the governor, by and
6 with the advice and consent of the Senate. Each of such
7 appointive state officers shall serve at the will and
8 pleasure of the governor for the term for which the
9 governor was elected and until the respective state
10 officers' successors have been appointed and qualified.
11 Each of such appointive state officers shall hereafter be
12 subject to the existing qualifications for holding each
13 such respective office and each shall have and is hereby
14 granted all of the powers and authority and shall
15 perform all of the functions and services heretofore
16 vested in and performed by virtue of existing law
17 respecting each such office.

18 Beginning on the first day of July, one thousand nine
19 hundred ninety-four, the annual salary of each such
20 named appointive state officer shall be as follows:

21 Administrator, division of highways, sixty-five thou-
22 sand dollars; administrator, division of health, fifty-
23 seven thousand two hundred dollars; administrator,
24 division of human services, forty-seven thousand eight
25 hundred dollars; administrator, state tax division, forty-
26 nine thousand nine hundred dollars; administrator,
27 division of energy, sixty-five thousand dollars; adminis-
28 trator, division of corrections, fifty-five thousand dollars;

29 administrator, division of natural resources, sixty-five
30 thousand dollars; administrator, division of public
31 safety, sixty thousand dollars; administrator, lottery
32 division, sixty thousand dollars; director, public em-
33 ployees insurance agency, fifty-five thousand dollars;
34 administrator, division of banking, fifty-five thousand
35 dollars; administrator, division of insurance, fifty-five
36 thousand dollars; administrator, division of culture and
37 history, fifty thousand dollars; administrator, alcohol
38 beverage control commission, sixty thousand dollars;
39 administrator, division of motor vehicles, fifty-five
40 thousand dollars; director, division of personnel, fifty
41 thousand dollars; adjutant general, fifty thousand
42 dollars; chairman, health care cost review authority,
43 fifty-five thousand dollars; members, health care cost
44 review authority, fifty-one thousand two hundred
45 dollars; director, human rights commission, forty
46 thousand dollars; administrator, division of labor, fifty-
47 five thousand dollars; administrator, division of veterans
48 affairs, forty thousand dollars; administrator, division of
49 emergency services, forty thousand dollars; members,
50 board of parole, forty thousand dollars; members,
51 employment security review board, seventeen thousand
52 dollars; members, workers' compensation appeal board,
53 seventeen thousand eight hundred dollars.

54 Prior to the first day of July, one thousand nine
55 hundred ninety-four, each of the aforesaid officers shall
56 continue to receive the annual salaries they were
57 receiving as of the last day of December, one thousand
58 nine hundred ninety-three.

59 (b) Notwithstanding any other provisions of this code
60 to the contrary enacted prior to the first day of January,
61 one thousand nine hundred ninety-four, each of the state
62 officers named in this subsection shall continue to be
63 appointed in the manner prescribed in this code, and,
64 prior to the first day of July, one thousand nine hundred
65 ninety-four, each of the state officers named in this
66 subsection shall continue to receive the annual salaries
67 they were receiving as of the last day of December, one
68 thousand nine hundred ninety-three, and shall thereaf-
69 ter be paid an annual salary as follows: State superin-

70 tendent of schools, seventy-five thousand dollars;
71 administrator, division of risk and insurance manage-
72 ment, fifty thousand dollars; director, division of
73 rehabilitation services, fifty-five thousand dollars;
74 executive director, educational broadcasting authority,
75 forty-seven thousand five hundred dollars; secretary,
76 library commission, forty-seven thousand five hundred
77 dollars; director, geologic and economic survey, forty-
78 seven thousand five hundred dollars; executive director,
79 water development authority, fifty-four thousand two
80 hundred dollars; executive director, public defender
81 services, fifty-five thousand dollars; director, commis-
82 sion on aging, forty thousand dollars; commissioner, oil
83 and gas conservation commission, forty thousand
84 dollars; director, farm management commission, thirty-
85 two thousand five hundred dollars; director, railroad
86 maintenance authority, fifty thousand dollars; executive
87 secretary, women's commission, thirty thousand one
88 hundred dollars; director, regional jail authority, fifty-
89 five thousand dollars; director, hospital finance author-
90 ity, twenty-five thousand eight hundred dollars.

91 (c) No increase in the salary of any appointive state
92 officer pursuant to this section shall be paid until and
93 unless such appointive state officer shall have first filed
94 with the state auditor and the legislative auditor a
95 sworn statement, on a form to be prescribed by the
96 attorney general, certifying that his or her spending
97 unit is in compliance with any general law providing for
98 a salary increase for his or her employees. The attorney
99 general shall prepare and distribute such form to the
100 affected spending units: *Provided*, That no decrease in
101 salary shall be effective for any current appointive state
102 officer appointed prior to the first day of January, one
103 thousand nine hundred eighty-nine: *Provided, however*,
104 That such decreases shall take effect at such time as any
105 appointive office is vacated: *Provided further*, That the
106 increase provided for the state superintendent of schools
107 enacted during the regular session, one thousand nine
108 hundred ninety-four, should not become effective until
109 the first day of January, one thousand nine hundred
110 ninety-seven.

CHAPTER 51. COURTS AND THEIR OFFICERS.**Article**

1. **Supreme Court of Appeals.**
2. **Circuit Courts; Circuit Judges.**
9. **Retirement System for Judges of Courts of Record.**

ARTICLE 1. SUPREME COURT OF APPEALS.**§51-1-10a. Salary of justices.**

- 1 The salary of each of the justices of the supreme court
- 2 of appeals shall be seventy-two thousand dollars per
- 3 year: *Provided*, That beginning the first day of January,
- 4 one thousand nine hundred ninety-five, the salary of
- 5 each of the justices of the supreme court shall be eighty-
- 6 five thousand dollars per year.

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.**§51-2-13. Salaries of judges of circuit courts.**

- 1 The salaries of the judges of the various circuit courts
- 2 shall be paid solely out of the state treasury. No county,
- 3 county commission, board of commissioners or other
- 4 political subdivision shall supplement or add to such
- 5 salaries.

- 6 The annual salary of all circuit judges shall be sixty-
- 7 five thousand dollars per year: *Provided*, That beginning
- 8 the first day of January, one thousand nine hundred
- 9 ninety-five, the annual salary of all circuit judges shall
- 10 be eighty thousand dollars per year.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

- *§51-9-4. Required percentage contributions from salaries; any termination of required contributions prior to actual retirement disallowed; military service credit and maximum allowable; qualifiable prosecutorial service.**

- 1 (a) Every person who is now serving or shall hereafter
- 2 serve as a judge of any court of record of this state shall
- 3 pay into the judges' retirement fund six percent of the
- 4 salary received by such person out of the state treasury:

* Clerk's Note: This section was also amended by H. B. 4063 (Chapter 33), which passed subsequent to this act.

5 *Provided*, That when a judge becomes eligible to receive
6 benefits from such trust fund by actual retirement, no
7 further payment by him or her shall be required, since
8 such employee contribution, in an equal treatment sense,
9 ceases to be required in the other retirement systems of
10 the state, also, only after actual retirement: *Provided*,
11 *however*, That on and after the first day of January, one
12 thousand nine hundred ninety-five, every person who is
13 then serving or shall thereafter serve as a judge of any
14 court of record in this state shall pay into the judges'
15 retirement fund nine percent of the salary received by
16 that person. Any prior occurrence or practice to the
17 contrary, in any way allowing discontinuance of re-
18 quired employee contributions prior to actual retire-
19 ment under this retirement system, is rejected as
20 erroneous and contrary to legislative intent and as
21 violative of required equal treatment and is hereby
22 nullified and discontinued fully, with the state auditor
23 to require such contribution in every instance hereafter,
24 except where no contributions are required to be made
25 under any of the provisions of this article.

26 In drawing warrants for the salary checks of judges,
27 the state auditor shall deduct from the amount of each
28 such salary check six percent thereof, which amount so
29 deducted shall be credited by the state treasurer to the
30 trust fund.

31 Any judge seeking to qualify military service to be
32 claimed as credited service, in allowable aggregate
33 maximum amount up to five years, shall be entitled to
34 be awarded the same without any required payment in
35 respect thereof to the judges' retirement fund. Any
36 judge holding office as such on the effective date of the
37 amendments to this article adopted by the Legislature
38 at its regular session in the year one thousand nine
39 hundred eighty-seven, who seeks to qualify service as a
40 prosecuting attorney as credited service, which service
41 credit must have been earned prior to the year one
42 thousand nine hundred eighty-seven, shall be required
43 to pay into the judges' retirement fund six percent of
44 the annual salary which was actually received by such
45 person as prosecuting attorney during the time such

46 prosecutorial service was rendered prior to the year one
47 thousand nine hundred eighty-seven, and for which
48 credited service is being sought, together with applica-
49 ble interest. No judge whose term of office shall
50 commence after the effective date of such amendments
51 to this article shall be eligible to claim any credit for
52 service rendered as a prosecuting attorney as eligible
53 service for retirement benefits under this article, nor
54 shall any time served as a prosecutor after the year one
55 thousand nine hundred eighty-eight be considered as
56 eligible service for any purposes of this article.

57 (b) The Legislature finds that any increase in salary
58 for judges of courts of record directly affects the
59 actuarial soundness of the retirement system for judges
60 of courts of record and therefore, an increase in the
61 required percentage contributions of members of that
62 retirement system is the same subject for purposes of
63 determining the single object of this bill.

CHAPTER 100

(Com. Sub. for S. B. 289—By Senators Sharpe, Ross and Helmick)

[Passed March 9, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six-a, article two, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to mechanics' liens; granting a mechanic's lien to surveyors for materials furnished, work done or services provided; and providing for the perfection and preservation of certain mechanics' liens.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. MECHANICS' LIENS.

§38-2-6a. **Lien of architect, surveyor, engineer or landscape architect.**

1 An architect, surveyor, engineer or landscape archi-
2 tect shall have a lien for his or her compensation as
3 provided for in sections one through six, inclusive, of
4 this article for all materials furnished and all work
5 done, or all services provided by such architect,
6 surveyor, engineer and landscape architect as a contrac-
7 tor, subcontractor, materialman, mechanic or laborer,
8 as the case may be. The lien shall be perfected and
9 preserved in accordance with, and shall otherwise be
10 subject to, the provisions of this article governing liens
11 for contractors, subcontractors, materialmen, mechanics
12 or laborers, as the case may be.

CHAPTER 101

(H. B. 4666—By Delegates P. White, Doyle, Leach,
S. Cook, Petersen, H. White and McKinley)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section three, article four-a, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two-a of said article, relating to authorization to use moneys from the medical services trust fund to make the required state match payment for the medicaid disproportionate share hospital program.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. MEDICAID UNCOMPENSATED CARE FUND.

§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 (3) Payment of the required state match for medicaid
40 disproportionate share payments in order to receive
41 federal financial participation in the disproportionate
42 share hospital program.

43 (d) Expenditures from the fund solely for the purposes

44 set forth in subsection (c) of this section shall be
45 authorized in writing by the governor, who shall
46 determine in his or her discretion whether any expen-
47 diture shall be made, based on the best interests of the
48 state as a whole and its citizens, and shall designate the
49 purpose of the expenditure. Upon authorization signed
50 by the governor, funds may be transferred to the
51 medical services fund: *Provided*, That all expenditures
52 from the medical services trust fund shall be reported
53 forthwith to the joint committee on government and
54 finance.

55 (e) Notwithstanding the provision of section two,
56 article two, chapter twelve of this code, moneys within
57 the medical services trust fund may not be redesignated
58 for any purpose other than those set forth in subsection
59 (c) of this section, except that, upon elimination of the
60 medicaid program in conjunction with federal health
61 care reform, moneys within the fund may be redesi-
62 gnated for the purpose of providing health care coverage
63 or services in coordination with federal reform.

CHAPTER 102

(H. B. 4482—By Delegates Whitman, Collins, Preece,
Dempsey, Hendricks, Browning and Staton)

[Passed March 12, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixty-three, article two, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to underground mines; miners' health, safety and training; increasing the fee to operator for certificate of approval and permit; entities performing construction or services at mine deemed operators; exceptions; and procedure for obtaining certificate or permit.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. UNDERGROUND MINES.

§22A-2-63. No mine to be opened or reopened without prior approval of the director of the office of miners' health, safety and training; certificate of approval; approval fees; extension of certificate of approval; certificates of approval not transferable; section to be printed on certificates of approval.

1 (a) After the first day of July, one thousand nine
2 hundred seventy-one, no mine shall be opened or
3 reopened unless prior approval has been obtained from
4 the director of the office of miners' health, safety and
5 training, which approval shall not be unreasonably
6 withheld. The operator shall pay for such approval a fee
7 of one hundred dollars, which payment shall be tendered
8 with the application for such approval: *Provided*, That
9 mines producing coal solely for the operator's use shall
10 be issued a permit without charge if coal production will
11 be less than fifty tons a year.

12 Within thirty days after the first day of January of
13 each year, the holder of such permit to open a mine shall
14 apply for the extension of such permit for an additional
15 year. Such permit, evidenced by a document issued by
16 the director, shall be granted as a matter of right for
17 a fee of one hundred dollars if, at the time such
18 application is made, the permit holder is in compliance
19 with the provisions of section seventy-seven of this
20 article and has paid or otherwise appealed all coal mine
21 assessments issued to the mine if operated by the permit
22 holder and imposed under article one of this chapter.
23 Applications for extension of such permits not submitted
24 within the time required shall be processed as an
25 application to open or reopen a mine and shall be
26 accompanied by a fee of one hundred dollars.

27 (b) Permits issued pursuant to this section shall not
28 be transferable.

29 (c) If the operator of a mine is not the permit holder
30 as defined in subsection (a) above, then such operator
31 must apply for and obtain a certificate of approval to
32 operate the mine on which the permit is held prior to

33 commencing operations. An operator who is not the
34 permit holder operating such mine on the tenth day of
35 April, one thousand nine hundred ninety-three, must
36 apply for a certificate of approval on or before the first
37 day of July, one thousand nine hundred ninety-three.
38 The operator shall pay a fee of one hundred dollars,
39 which payment shall be tendered with the application
40 for approval. Such approval, evidenced by a certificate
41 issued by the director, shall be granted if, at the time
42 such application is made, the applicant is in compliance
43 with the provisions of section seventy-seven of this
44 article and has paid or otherwise appealed all coal mine
45 assessments imposed on such applicant for the certifi-
46 cate of approval under article one of this chapter.

47 (d) In addition to the authority to file a petition for
48 enforcement under subdivision (4), subsection (a),
49 section twenty-one, article one of this chapter, if an
50 operator holding a certificate of approval issued
51 pursuant to subsection (c) of this section, against whom
52 a civil penalty is assessed in accordance with section
53 twenty-one, article one of this chapter, and implement-
54 ing regulations, and which has become final, fails to pay
55 the penalty within the time prescribed in such order, the
56 director or the authorized representative of the director,
57 by certified mail, return receipt requested, shall send a
58 notice to such operator advising the operator of the
59 unpaid penalty. If the penalty is not paid in full within
60 sixty days from the issuance of the notice of delinquency
61 by the director, then the director may revoke such
62 operator's certificate of approval: *Provided*, That such
63 operator to whom the delinquency notice is issued shall
64 have thirty days from receipt thereof to request, by
65 certified mail, return receipt requested, a public
66 hearing held in accordance with the procedures of
67 section seventeen, article one of this chapter, and
68 implementing rules, including application for tempor-
69 ary relief. Once such operator's certificate of approval
70 is revoked pursuant to this subsection, such operator
71 shall be prohibited from obtaining any certificate of
72 approval under the provisions of this section to operate
73 any other mine until such time as that operator pays the
74 delinquent penalties that have become final.

75 (e) Every firm, corporation, partnership or individual
76 that contracts to perform services or construction at a
77 coal mine shall be deemed to be an operator and
78 beginning the first day of January, one thousand nine
79 hundred ninety-five, must apply for and obtain a
80 certificate of approval prior to commencing operations:
81 *Provided*, That such persons shall only be required to
82 obtain one certificate annually: *Provided, however*, That
83 persons such as, but not limited to, consultants, mine
84 vendors, office equipment suppliers, and maintenance
85 and delivery personnel are excluded from this require-
86 ment. Any such operator shall pay a fee of one hundred
87 dollars which shall be tendered with the application for
88 approval. Such approval, evidenced by a certificate
89 issued by the director, shall be granted if, at the time
90 such application is made, the applicant has paid or
91 otherwise appealed all coal mine assessments imposed
92 on such applicant under article one of this chapter.

93 Within thirty days after the first day of January of
94 each year, the holder of such certificate of approval shall
95 apply for the extension of such approval for an addi-
96 tional year. Applications for extension must be accom-
97 panied by a fee of one hundred dollars. An extension
98 shall be granted if, at the time such application is made,
99 the applicant has paid or otherwise appealed all coal
100 mine assessments imposed on such applicant under
101 article one of this chapter. All delinquent assessments
102 which have been imposed upon a certificate of approval
103 holder or applicants under this section shall not be
104 imposed upon any permit holder or certificate of
105 approval holder or any applicant pursuant to subsection
106 (a) or (c) of section sixty-three.

107 (f) The provisions of this section shall be printed on
108 the reverse side of every permit issued under subsection
109 (a) and certificate of approval issued under subsection
110 (d) herein.

111 (g) The district mine inspector shall be contacted for
112 a pre-inspection of the area proposed for underground
113 mining prior to issuance of any new opening permit
114 approval.

CHAPTER 103

(Com. Sub. for H. B. 4465—By Delegates L. White, Beane, Houvouras,
Faircloth, Rowe, Gallagher and Kiss)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certificates of registration for motor vehicles; privilege tax on effecting certificate of title; requirements; exceptions for certain classes of vehicles; eliminating privilege tax on leased vehicles; imposing a privilege tax upon the monthly payments for leased vehicles; payments to the division of motor vehicles; additional charges; duration of certificate of title; exceptions for certain types of vehicles; affidavits; criminal penalties for false affidavits; and exceptions for military personnel.

Be it enacted by the Legislature of West Virginia:

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

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

**§17A-3-4. Application for certificate of title; tax for
privilege of certification of title; exceptions;
privilege tax on payments for leased vehi-
cles; revenue allocations; transfers; penalty
for false swearing.**

- 1 (a) Certificates of registration of any vehicle or
- 2 registration plates therefor, whether original issues or
- 3 duplicates, shall not be issued or furnished by the
- 4 division of motor vehicles or any other officer charged
- 5 with the duty, unless the applicant therefor already has
- 6 received, or at the same time makes application for and
- 7 is granted, an official certificate of title of the vehicle.
- 8 The application shall be upon a blank form to be

9 furnished by the division of motor vehicles and shall
10 contain a full description of the vehicle, which descrip-
11 tion shall contain a manufacturer's serial or identifica-
12 tion number or other number as determined by the
13 commissioner and any distinguishing marks, together
14 with a statement of the applicant's title and of any liens
15 or encumbrances upon the vehicle, the names and
16 addresses of the holders of the liens and any other
17 information as the division of motor vehicles may
18 require. The application shall be signed and sworn to
19 by the applicant.

20 (b) A tax is hereby imposed upon the privilege of
21 effecting the certification of title of each vehicle in the
22 amount equal to five percent of the value of the motor
23 vehicle at the time of the certification, to be assessed as
24 follows:

25 (1) If the vehicle is new, the actual purchase price or
26 consideration to the purchaser thereof is the value of the
27 vehicle; if the vehicle is a used or secondhand vehicle,
28 the present market value at time of transfer or purchase
29 is the value thereof for the purposes of this section:
30 *Provided*, That so much of the purchase price or
31 consideration as is represented by the exchange of other
32 vehicles on which the tax imposed by this section has
33 been paid by the purchaser shall be deducted from the
34 total actual price or consideration paid for the vehicle,
35 whether the same be new or secondhand; if the vehicle
36 is acquired through gift, or by any manner whatsoever,
37 unless specifically exempted in this section, the present
38 market value of the vehicle at the time of the gift or
39 transfer is the value thereof for the purposes of this
40 section.

41 (2) No certificate of title for any vehicle shall be
42 issued to any applicant unless the applicant has paid to
43 the division of motor vehicles the tax imposed by this
44 section which is five percent of the true and actual value
45 of the vehicle whether the vehicle is acquired through
46 purchase, by gift or by any other manner whatsoever
47 except gifts between husband and wife or between
48 parents and children: *Provided*, That the husband or

49 wife, or the parents or children previously have paid the
50 tax on the vehicles transferred to the state of West
51 Virginia.

52 (3) The division of motor vehicles may issue a
53 certificate of registration and title to an applicant if the
54 applicant provides sufficient proof to the division of
55 motor vehicles that the applicant has paid the taxes and
56 fees required by this section to a motor vehicle dealer-
57 ship that has gone out of business or has filed bank-
58 ruptcy proceedings in the United States bankruptcy
59 court and the taxes and fees so required to be paid by
60 the applicant have not been sent to the division by the
61 motor vehicle dealership or have been impounded due
62 to the bankruptcy proceedings: *Provided*, That the
63 applicant makes an affidavit of the same and assigns all
64 rights to claims for money the applicant may have
65 against the motor vehicle dealership to the division of
66 motor vehicles.

67 (4) The division of motor vehicles shall issue a
68 certificate of registration and title to an applicant
69 without payment of the tax imposed by this section if
70 the applicant is a corporation, partnership or limited
71 liability company transferring the vehicle to another
72 corporation, partnership or limited liability company
73 when the entities involved in the transfer are members
74 of the same controlled group and the transferring entity
75 has previously paid the tax on the vehicle transferred.
76 For the purposes of this section, control means owner-
77 ship, directly or indirectly, of stock or equity interests
78 possessing fifty percent or more of the total combined
79 voting power of all classes of the stock of a corporation
80 or equity interests of a partnership or limited liability
81 company entitled to vote or ownership, directly or
82 indirectly, of stock or equity interests possessing fifty
83 percent or more of the value of the corporation,
84 partnership or limited liability company.

85 (5) The tax imposed by this section does not apply to
86 vehicles to be registered as Class H vehicles, or Class
87 S vehicles, as defined in section one, article ten of this
88 chapter, which are used or to be used in interstate

89 commerce. Nor does the tax imposed by this section
90 apply to the titling of Class B, Class K or Class E
91 vehicles registered at a gross weight of fifty-five
92 thousand pounds or more, or to the titling of Class C or
93 Class L semitrailers, full trailers, pole trailers and
94 converter gear: *Provided*, That if an owner of a vehicle
95 has previously titled the vehicle at a declared gross
96 weight of fifty-five thousand pounds or more and the
97 title was issued without the payment of the tax imposed
98 by this section, then before the owner may obtain
99 registration for the vehicle at a gross weight less than
100 fifty-five thousand pounds, the owner must surrender to
101 the commissioner the exempted registration, the exemp-
102 ted certificate of title, and pay the tax imposed by this
103 section based upon the current market value of the
104 vehicle: *Provided, however*, That notwithstanding the
105 provisions of section nine, article fifteen, chapter eleven
106 of this code, the exemption from tax under this section
107 for Class B, Class K or Class E vehicles in excess of fifty-
108 five thousand pounds and Class C or Class L semitrail-
109 ers, full trailers, pole trailers and converter gear shall
110 not subject the sale or purchase of the vehicles to the
111 consumers sales tax.

112 (6) The tax imposed by this section does not apply to
113 titling of vehicles leased by residents of West Virginia.
114 A tax is hereby imposed upon the monthly payments for
115 the lease of any motor vehicle leased by a resident of
116 West Virginia, which tax is equal to five percent of the
117 amount of the monthly payment, applied to each
118 payment, and continuing for the entire term of the
119 initial lease period. The tax shall be remitted to the
120 division of motor vehicles on a monthly basis by the
121 lessor of the vehicle.

122 (7) The tax imposed by this section does not apply to
123 titling of vehicles by a registered dealer of this state for
124 resale only, nor does the tax imposed by this section
125 apply to titling of vehicles by this state or any political
126 subdivision thereof, or by any volunteer fire department
127 or duly chartered rescue or ambulance squad organized
128 and incorporated under the laws of the state of West
129 Virginia as a nonprofit corporation for protection of life

130 or property. The total amount of revenue collected by
131 reason of this tax shall be paid into the state road fund
132 and expended by the commissioner of highways for
133 matching federal funds allocated for West Virginia. In
134 addition to the tax, there is a charge of five dollars for
135 each original certificate of title or duplicate certificate
136 of title so issued: *Provided*, That this state or any
137 political subdivision thereof, or any volunteer fire
138 department, or duly chartered rescue squad, is exempt
139 from payment of the charge.

140 (8) The certificate is good for the life of the vehicle,
141 so long as the same is owned or held by the original
142 holder of the certificate, and need not be renewed
143 annually, or any other time, except as provided in this
144 section.

145 (9) If, by will or direct inheritance, a person becomes
146 the owner of a motor vehicle and the tax imposed by this
147 section previously has been paid, to the division of motor
148 vehicles, on that vehicle, he or she is not required to pay
149 the tax.

150 (10) A person who has paid the tax imposed by this
151 section is not required to pay the tax a second time for
152 the same motor vehicle, but is required to pay a charge
153 of five dollars for the certificate of retitling of that motor
154 vehicle, except that the tax shall be paid by the person
155 when the title to the vehicle has been transferred either
156 in this or another state from such person to another
157 person and transferred back to such person.

158 (c) Notwithstanding any provisions of this code to the
159 contrary, the owners of trailers, semitrailers, recrea-
160 tional vehicles and other vehicles not subject to the
161 certificate of title tax prior to the enactment of this
162 chapter are subject to the privilege tax imposed by this
163 section: *Provided*, That the certification of title of any
164 recreational vehicle owned by the applicant on the
165 thirtieth day of June, one thousand nine hundred eighty-
166 nine, is not subject to the tax imposed by this section:
167 *Provided, however*, That mobile homes, house trailers,
168 modular homes and similar nonmotive propelled vehi-

169 cles, except recreational vehicles, susceptible of being
170 moved upon the highways but primarily designed for
171 habitation and occupancy, rather than for transporting
172 persons or property, or any vehicle operated on a
173 nonprofit basis and used exclusively for the transporta-
174 tion of mentally retarded or physically handicapped
175 children when the application for certificate of registra-
176 tion for the vehicle is accompanied by an affidavit
177 stating that the vehicle will be operated on a nonprofit
178 basis and used exclusively for the transportation of
179 mentally retarded and physically handicapped children,
180 are not subject to the tax imposed by this section, but
181 are taxable under the provisions of articles fifteen and
182 fifteen-a, chapter eleven of this code.

183 (d) Any person making any affidavit required under
184 any provision of this section, who knowingly swears
185 falsely, or any person who counsels, advises, aids or
186 abets another in the commission of false swearing, is on
187 the first offense guilty of a misdemeanor, and, upon
188 conviction thereof, shall be fined not more than five
189 hundred dollars or be imprisoned in the county jail for
190 a period not to exceed six months, or, in the discretion
191 of the court, both fined and imprisoned. For a second
192 or any subsequent conviction within five years, that
193 person is guilty of a felony, and, upon conviction thereof,
194 shall be fined not more than five thousand dollars or be
195 imprisoned in the penitentiary for not less than one year
196 nor more than five years or, in the discretion of the
197 court, fined and imprisoned.

198 (e) Notwithstanding any other provisions of this
199 section, any person in the military stationed outside
200 West Virginia, or his or her dependents who possess a
201 motor vehicle with valid registration, are exempt from
202 the provisions of this article for a period of nine months
203 from the date that that person returns to this state or
204 the date his or her dependent returns to this state,
205 whichever is later.

CHAPTER 104

(H. B. 4383—By Delegates Warner, Michael, Johnson,
Overington, Houvouras and Beane)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section fourteen, article ten of said chapter, all relating to special registration plates and fees; requirements for design of license plates; permitting special plates for certain individuals, officials and judges, national guardsmen, various classes of veterans, nonprofit charitable or educational organizations and emergency personnel; vanity plates; special ten-year registration for exempted persons and antique automobiles; plates for amateur radio station operators; and fees and rules to be promulgated by the commissioner.

Be it enacted by the Legislature of West Virginia:

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

Article

- 3. Original and Renewal of Registration; Issuance of Certificates of Title.
- 10. Fees for Registration, Licensing, Etc.

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

§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

- 1 (a) The division upon registering a vehicle shall issue
- 2 to the owner one registration plate for a motorcycle,
- 3 trailer, semitrailer or other motor vehicle.

4 (b) Registration plates issued by the division shall
5 meet the following requirements:

6 (1) Every registration plate shall be of reflectorized
7 material and have displayed upon it the registration
8 number assigned to the vehicle for which it is issued;
9 the name of this state, which may be abbreviated; and
10 the year number for which it is issued or the date of
11 expiration of the plate.

12 (2) Every registration plate and the required letters
13 and numerals on the plate shall be of sufficient size to
14 be plainly readable from a distance of one hundred feet
15 during daylight: *Provided*, That the requirements of this
16 subdivision shall not apply to the year number for which
17 the plate is issued or the date of expiration.

18 (3) Registration numbering for registration plates
19 shall begin with number two.

20 (c) The division shall not issue, permit to be issued,
21 or distribute any special registration plates except as
22 follows:

23 (1) The governor shall be issued two registration
24 plates, on one of which shall be imprinted the numeral
25 one and on the other the word one.

26 (2) State officials and judges may be issued special
27 registration plates as follows:

28 (A) Upon appropriate application, there shall be
29 issued to the secretary of state, state superintendent of
30 free schools, auditor, treasurer, commissioner of agricul-
31 ture, and the attorney general, the members of both
32 houses of the Legislature, including the elected officials
33 thereof, the justices of the supreme court of appeals of
34 West Virginia, the representatives and senators of the
35 state in the Congress of the United States, the judges
36 of the United States district courts for the state of West
37 Virginia and the judges of the United States court of
38 appeals for the fourth circuit, if any of the judges are
39 residents of West Virginia, a special registration plate
40 for a Class A motor vehicle owned by the official or his
41 or her spouse: *Provided*, That the division shall not issue
42 more than two plates for each official.

43 (B) Each plate issued pursuant to this subdivision
44 shall bear any combination of letters and numbers not
45 to exceed an amount determined by the commissioner,
46 and a designation of the office. Each plate shall
47 supersede the regular numbered plate assigned to the
48 official or his or her spouse during the official's term
49 of office and while the motor vehicle is owned by the
50 official or his or her spouse.

51 (C) An annual fee of fifteen dollars shall be charged
52 for every registration plate issued pursuant to this
53 subdivision, which is in addition to all other fees
54 required by this chapter.

55 (3) Members of the national guard forces may be
56 issued special registration plates as follows:

57 (A) Upon receipt of an application on a form pres-
58 cribed by the division and receipt of written evidence
59 from the chief executive officer of the army national
60 guard or air national guard, as appropriate, or the
61 commanding officer of any United States Armed Forces
62 Reserve Unit that the applicant is a member thereof, the
63 division shall issue to any member of the national guard
64 of this state or a member of any reserve unit of the
65 United States Armed Forces a special registration plate
66 designed by the commissioner for any number of Class
67 A motor vehicles owned by the member.

68 (B) An initial application fee of ten dollars shall be
69 charged for each special registration plate issued
70 pursuant to this subdivision, which is in addition to all
71 other fees required by this chapter. All initial applica-
72 tion fees collected by the division shall be deposited into
73 a special revolving fund to be used in the administration
74 of this section.

75 (4) Specially arranged registration plates may be
76 issued as follows:

77 (A) Upon appropriate application, any owner of a
78 motor vehicle subject to Class A registration, or a
79 motorcycle subject to Class G registration, as defined by
80 this article, may request that the division issue a
81 registration plate bearing specially arranged letters or

82 numbers with the maximum number of letters or
83 numbers to be determined by the commissioner. The
84 division shall attempt to comply with the request
85 wherever possible.

86 (B) The commissioner shall promulgate rules in
87 accordance with the provisions of chapter twenty-nine-
88 a of this code regarding the orderly distribution of the
89 plates: *Provided*, That for purposes of this subdivision,
90 the registration plates requested and issued shall
91 include all plates bearing the numbers two through two
92 thousand.

93 (C) An annual fee of fifteen dollars shall be charged
94 for each special registration plate issued pursuant to
95 this subdivision, which is in addition to all other fees
96 required by this chapter.

97 (5) Honorably discharged veterans may be issued
98 special registration plates as follows:

99 (A) Upon appropriate application, there shall be
100 issued to any honorably discharged veteran, of any
101 branch of the armed services of the United States, a
102 special registration plate for any number of vehicles
103 titled in the name of the qualified applicant with an
104 insignia designed by the commissioner of the division of
105 motor vehicles.

106 (B) A special initial application fee of ten dollars shall
107 be charged in addition to all other fees required by law.
108 This special fee is to compensate the division of motor
109 vehicles for additional costs and services required in the
110 issuing of the special registration and shall be collected
111 by the division and deposited in a special revolving fund
112 to be used for the administration of this section:
113 *Provided*, That nothing in this section shall be construed
114 to exempt any veteran from any other provision of this
115 chapter.

116 (C) Special registration plates issued pursuant to this
117 subdivision are not transferable to any other person.
118 Any special registration issued under this subdivision
119 terminates upon the death of the registered owner of the
120 special registration plate.

121 (6) Disabled veterans may be issued special registra-
122 tion plates as follows:

123 (A) Upon appropriate application, there shall be
124 issued to any disabled veteran, who is exempt from the
125 payment of registration fees under the provisions of this
126 chapter, a registration plate for a vehicle titled in the
127 name of the qualified applicant which bears the letters
128 "DV" in red, and also the regular identification
129 numerals in red.

130 (B) Special registration plates issued pursuant to this
131 subdivision are not transferable to any other person.
132 Any special registration issued under this subdivision
133 terminates upon the death of the registered owner of the
134 special registration plate.

135 (7) Recipients of the distinguished purple heart medal
136 may be issued special registration plates as follows:

137 (A) Upon appropriate application, there shall be
138 issued to any armed service person holding the distin-
139 guished purple heart medal for persons wounded in
140 combat a registration plate for a vehicle titled in the
141 name of the qualified applicant bearing letters or
142 numbers. The registration plate shall be designed by the
143 commissioner of motor vehicles and shall denote that
144 those individuals who are granted this special registra-
145 tion plate are recipients of the purple heart. All
146 letterings shall be in purple where practical.

147 (B) Registration plates issued pursuant to this
148 subdivision are exempt from all registration fees
149 otherwise required by the provisions of this chapter.

150 (C) Special registration plates issued pursuant to this
151 subdivision are not transferable to any other person.
152 Any special registration issued under this subdivision
153 terminates upon the death of the registered owner of the
154 special registration plate.

155 (8) Survivors of the attack on Pearl Harbor may be
156 issued special registration plates as follows:

157 (A) Upon appropriate application, the owner of a
158 motor vehicle who was enlisted in any branch of the

159 armed services that participated in and survived the
160 attack on Pearl Harbor on the seventh day of December,
161 one thousand nine hundred forty-one, shall be issued a
162 special registration plate for a vehicle titled in the name
163 of the qualified applicant. The registration plate shall
164 be designed by the commissioner of motor vehicles.

165 (B) Registration plates issued pursuant to this
166 subdivision are exempt from the payment of all regis-
167 tration fees otherwise required by the provisions of this
168 chapter.

169 (C) Special registration plates issued pursuant to this
170 subdivision are not transferable to any other person.
171 Any special registration issued under this subdivision
172 terminates upon the death of the registered owner of the
173 special registration plate.

174 (9) Nonprofit charitable and educational organiza-
175 tions may be issued special registration plates as follows:

176 (A) Nonprofit charitable and educational organiza-
177 tions may design a logo or emblem for inclusion on a
178 special registration plate and submit the logo or emblem
179 to the commissioner for approval and authorization.
180 Upon the approval and authorization, the nonprofit
181 charitable and educational organizations may market
182 the special registration plate to organization members
183 and the general public.

184 (B) Approved nonprofit charitable and educational
185 organizations may accept and collect applications for
186 special registration plates from owners of Class A motor
187 vehicles together with a special annual fee of fifteen
188 dollars, which is in addition to all other fees required
189 by this chapter. The applications and fees shall be
190 submitted to the division of motor vehicles with the
191 request that the division issue a registration plate
192 bearing a combination of letters or numbers with the
193 organizations' logo or emblem, with the maximum
194 number of letters or numbers to be determined by the
195 commissioner.

196 (C) The commissioner shall promulgate rules in
197 accordance with the provisions of chapter twenty-nine-

198 a of this code regarding the procedures for and approval
199 of special registration plates issued pursuant to this
200 subdivision.

201 (D) The commissioner shall set an appropriate fee to
202 defray the administrative costs associated with design-
203 ing and manufacturing special registration plates for a
204 nonprofit charitable or educational organization. The
205 nonprofit charitable or educational organization shall
206 collect this fee and forward it to the division for deposit
207 in a special revolving fund to pay the administrative
208 costs. The nonprofit charitable or educational organiza-
209 tion may also collect a fee for marketing the special
210 registration plates.

211 (10) Specified emergency or volunteer registration
212 plates may be issued as follows:

213 (A) Any owner of a motor vehicle who is a resident
214 of the state of West Virginia, and who is a certified
215 paramedic or emergency medical technician, a member
216 of a volunteer fire company or a paid fire department,
217 a member of the state fire commission, the state fire
218 marshal, the state fire marshal's assistants, the state fire
219 administrator and voluntary rescue squad members
220 may apply for a special license plate for any number of
221 Class A vehicles titled in the name of the qualified
222 applicant which bears the insignia of the profession,
223 group or commission. Any insignia shall be designed by
224 the commissioner. License plates issued pursuant to this
225 subdivision shall bear the requested insignia in addition
226 to the registration number issued to the applicant
227 pursuant to the provisions of this article.

228 (B) Each application submitted pursuant to this
229 subdivision shall be accompanied by an affidavit signed
230 by the fire chief or department head of the applicant,
231 stating that the applicant is justified in having a
232 registration with the requested insignia; proof of
233 compliance with all laws of this state regarding
234 registration and licensure of motor vehicles; and
235 payment of all required fees.

236 (C) Each application submitted pursuant to this
237 subdivision shall be accompanied by payment of a

238 special initial application fee of ten dollars, which is in
239 addition to any other registration or license fee required
240 by this chapter. All special fees shall be collected by the
241 division and deposited into a special revolving fund to
242 be used for the purpose of compensating the division of
243 motor vehicles for additional costs and services required
244 in the issuing of such special registration and for the
245 administration of this section.

246 (d) The commissioner shall promulgate rules in
247 accordance with the provisions of chapter twenty-nine-
248 a of this code regarding the proper forms to be used in
249 making application for the special license plates
250 authorized by this section.

251 (e) Nothing in this section shall be construed to
252 require a charge for a free prisoner of war license plate
253 or a free recipient of the congressional medal of honor
254 license plate for a vehicle titled in the name of the
255 qualified applicant as authorized by other provisions of
256 this code: *Provided*, That the registration plates are not
257 transferable to any person, and the registration plates
258 terminate upon the death of the registered owner of the
259 special registration plate.

260 (f) Special ten-year registration plates may be issued
261 as follows:

262 (1) The commissioner may issue or renew for a period
263 of no more than ten years any registration plate
264 exempted from registration fees pursuant to any
265 provision of this code or any restricted use antique
266 motor vehicle license plate authorized by section three-
267 a, article ten of this chapter: *Provided*, That the
268 provisions of this subsection shall not apply to any
269 person who has had a special registration suspended for
270 failure to maintain motor vehicle liability insurance as
271 required by section three, article two-a, chapter
272 seventeen-d of this code or failure to pay personal
273 property taxes as required by section three-a of this
274 article.

275 (2) An initial nonrefundable fee shall be charged for
276 each special registration plate issued pursuant to this
277 subsection, which is the total amount of fees required

278 by section fifteen, article ten of this chapter, section
279 three, article three of this chapter, or section three-a,
280 article ten of this chapter for the period requested.

281 (3) Special registration plates issued pursuant to this
282 subsection are not transferable to any other person. Any
283 special registration issued under this subsection termi-
284 nates upon the death of the registered owner of the
285 special registration plate.

286 (g) The provisions of this section shall not be
287 construed to exempt any registrant from maintaining
288 motor vehicle liability insurance as required by section
289 three, article two-a, chapter seventeen-d of this code or
290 from paying personal property taxes on any motor
291 vehicle as required by section three-a of this article.

292 (h) The commissioner may, in his or her discretion,
293 issue a registration plate of reflectorized material
294 suitable for permanent use on motor vehicles, trailers
295 and semitrailers, together with appropriate devices to
296 be attached thereto to indicate the year for which the
297 vehicles have been properly registered or the date of
298 expiration of the registration. The design and expiration
299 of the plates shall be determined by the commissioner.

300 (i) Any license plate issued or renewed pursuant to
301 this chapter, which is paid for by a check that is
302 returned for nonsufficient funds, shall be void without
303 further notice to the applicant. The applicant may not
304 reinstate the registration until the returned check is
305 paid by the applicant in cash, money order or certified
306 check and all applicable fees assessed as a result thereof
307 have been paid.

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-14. Registration plate for amateur radio station operators; fees; rules and forms.

1 (a) Any owner of a motor vehicle who is a resident
2 of the state of West Virginia, and who holds an
3 unrevoked and unexpired official amateur radio station
4 license and/or amateur class operators' license issued by
5 the federal communications commission, may apply for
6 a special registration plate for a Class A motor vehicle

7 which, in lieu of the registration numbers required by
8 this article, shall be inscribed with the official amateur
9 radio call letters of the applicant as assigned by the
10 federal communications commission.

11 (b) Each application shall be accompanied by proof of
12 ownership of the amateur radio station license; proof of
13 compliance with the motor vehicle laws of the state
14 relative to registration and licensing of motor vehicles;
15 payment of the registration, license and other fees
16 required by law; and payment of a special initial
17 application fee in the amount of ten dollars, which is in
18 addition to all other fees required by law. This special
19 fee shall be collected by the division and deposited into
20 a special revolving fund to be used for the purpose of
21 compensating the division of motor vehicles for addi-
22 tional costs and services required in the issuing of the
23 licenses.

24 (c) The commissioner shall promulgate rules in
25 accordance with the provisions of chapter twenty-nine-
26 a of this code regarding proper forms to be used in
27 making application for the special license plates
28 authorized by this section.

CHAPTER 105

(Com. Sub. for H. B. 4328—By Delegates Warner and Campbell)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-four, relating to motor vehicle registration; waiver of any permits, authorities or licenses required to operate a motor vehicle in this state during times of declared emergencies; conditions and requirements; statement of purpose; and length of emergency waiver period.

Be it enacted by the Legislature of West Virginia:

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

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

§17A-3-24. Emergency waiver of registration and licensing requirements; conditions and limitations; statement of purpose; length of emergency waiver period; promulgation of rules.

1 (a) The governor may authorize the commissioner of
2 motor vehicles or his or her designee to waive temporarily any requirements under the provisions of this
3 chapter, or any other provision of this code relating to
4 any permits, authorizations or licenses required to
5 operate a motor vehicle in this state: *Provided*, That
6 such temporary waiver shall be for the sole purpose of
7 facilitating the response of motor carriers providing
8 humanitarian relief during time of emergency officially
9 declared by the president of the United States, the
10 governor of this state or the chief executive of any other
11 state or jurisdiction: *Provided, however*, That the
12 following conditions are satisfied:
13

14 (1) The driver of any such vehicle shall be properly
15 licensed in his state of residency;

16 (2) The motor vehicle to be operated is properly
17 licensed and registered in this or any other state; and

18 (3) The motor vehicle to be operated satisfies all motor
19 vehicle insurance requirements or provisions of its state
20 of registration.

21 (b) Proof of the insurance required by subdivision (3),
22 subsection (a) of this section shall be carried in the cab
23 of the motor vehicle.

24 (c) Any motor vehicle operating pursuant to this
25 section shall be issued a statement from the person or
26 entity authorizing the transport of such goods or
27 materials certifying that the motor carrier is providing
28 humanitarian relief without compensation on a volunteer

29 basis and including a description of materials or goods
30 being transported during the time of declared emer-
31 gency while it is in this state. Such statement shall be
32 carried in the cab of the motor vehicle and be made
33 available for inspection upon request of the commis-
34 sioner, any of his or her designees, or any law-enforce-
35 ment officer.

36 (d) The commissioner of motor vehicles shall deter-
37 mine at the time the temporary waiver is issued the
38 length of time such waiver shall be in effect: *Provided*,
39 That all temporary waivers issued pursuant to this
40 section shall become void upon the termination of the
41 time of emergency as determined by the president of the
42 United States, the governor of this state or the chief
43 executive of any other state or jurisdiction.

CHAPTER 106

(Com. Sub. for H. B. 4106—By Delegate Bennett)

[Passed March 9, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article four, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certificates of title for salvaged or reconstructed vehicles; surrender of certificate of title for salvaged vehicles; inspection requirements; fees; deleting the exception permitting unmarked certificates of title for certain reconstructed vehicles; and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

§17A-4-10. Salvage certificates for certain wrecked or damaged vehicles; fee; penalty.

1 (a) In the event a motor vehicle is determined to be
2 a total loss or otherwise designated as "totaled" by any

3 insurance company or insurer, and upon payment of an
4 agreed price as a claim settlement to any insured or
5 claimant owner for the purchase of the vehicle, the
6 insurance company or the insurer shall receive the
7 certificate of title and the vehicle. The insurance
8 company or insurer shall within ten days surrender the
9 certificate of title and a copy of the claim settlement to
10 the division of motor vehicles. The division shall issue
11 a "salvage certificate," on a form prescribed by the
12 commissioner, in the name of the insurance company or
13 the insurer. Such certificate shall contain on the reverse
14 thereof spaces for one successive assignment before a
15 new certificate at an additional fee is required. Upon the
16 sale of the vehicle the insurance company or insurer
17 shall endorse the assignment of ownership on the
18 salvage certificate and deliver it to the purchaser. The
19 vehicle shall not be titled or registered for operation on
20 the streets or highways of this state unless there is
21 compliance with subsection (c) of this section. In the
22 event a motor vehicle is determined to be damaged in
23 excess of seventy-five percent of its retail price as
24 described in the national automobile dealers association
25 official used car guide, a junk card will be issued in lieu
26 of a salvage certificate.

27 (b) Any owner, who scraps, compresses, dismantles or
28 destroys a vehicle for which a certificate of title or
29 salvage certificate has been issued, shall, within twenty
30 days, surrender the certificate of title or salvage
31 certificate to the division for cancellation. Any person
32 who purchases or acquires a vehicle as salvage or scrap,
33 to be dismantled, compressed or destroyed, shall within
34 twenty days surrender the certificate to the division.
35 Should a vehicle less than eight years old be determined
36 to be a complete loss as a result of fire, flood or a basket,
37 a photograph of the vehicle shall accompany the
38 surrendered certificate: *Provided*, That the term
39 "basket" means a vehicle which has been damaged more
40 than seventy-five percent of the retail price as described
41 in the national automobile dealers association official
42 used car guide. If the vehicle is to be reconstructed, the
43 owner must obtain a salvage certificate and comply with
44 the provisions of subsection (c) of this section.

45 (c) If the motor vehicle is a "reconstructed vehicle" as

46 defined in section one, article one of this chapter, it may
47 not be titled or registered for operation until it has been
48 inspected by an official state inspection station and by
49 a representative of the division of motor vehicles who
50 has been designated by the commissioner as an inves-
51 tigator. Following an approved inspection, an applica-
52 tion for a new certificate of title may be submitted to
53 the division; however, the applicant shall be required to
54 retain all receipts for component parts, equipment and
55 materials used in the reconstruction. The salvage
56 certificate must also be surrendered to the division
57 before a certificate of title may be issued.

58 (d) The division shall charge a fee of fifteen dollars
59 for the issuance of each salvage certificate but shall not
60 require the payment of the five percent privilege tax.
61 However, upon application for a certificate of title for
62 a reconstructed vehicle, the division shall collect the five
63 percent privilege tax on the fair market value of the
64 vehicle as determined by the commissioner unless the
65 applicant is otherwise exempt from the payment of such
66 privilege tax. A wrecker/dismantler/rebuilder is ex-
67 empt from the five percent privilege tax upon titling a
68 reconstructed vehicle. The division shall collect a fee of
69 thirty-five dollars per vehicle for inspections of recon-
70 structed vehicles. These fees shall be deposited in a
71 special fund created in the state treasurer's office and
72 may be expended by the division to carry out the
73 provisions of this article. Licensed wreckers/dismantlers/
74 rebuilders may charge a fee not to exceed twenty-five
75 dollars for all vehicles owned by private rebuilders
76 which are inspected at the place of business of a
77 wrecker/dismantler/rebuilder.

78 (e) A certificate of title issued by the division for a
79 reconstructed vehicle shall contain markings in bold
80 print on the face of the title that it is for a reconstructed
81 or salvaged vehicle.

82 Any person who violates the provisions of this section
83 shall be guilty of a misdemeanor, and, upon conviction
84 thereof, shall be fined not less than five hundred dollars
85 nor more than one thousand dollars, or imprisoned in
86 the county jail for not more than one year, or both fined
87 and imprisoned.

CHAPTER 107

(S. B. 516—By Senators Wooton, Minard, Ross, Yoder, Dittmar,
Wagner, Humphreys, Wiedebusch and Dalton)

[Passed March 9, 1994: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article six-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibited practices of automobile manufacturers and distributors.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS, WHOLESALEERS AND MANUFACTURERS.

§17A-6A-10. Prohibited practices.

- 1 (1) A manufacturer or distributor shall not require
2 any new motor vehicle dealer in this state to do any of
3 the following:
 - 4 (a) Order or accept delivery of any new motor vehicle,
5 part or accessory thereof, equipment or any other
6 commodity not required by law which was not voluntar-
7 ily ordered by the new motor vehicle dealer. This section
8 shall not be construed to prevent the manufacturer or
9 distributor from requiring that new motor vehicle
10 dealers carry a reasonable inventory of models offered
11 for sale by the manufacturer or distributor.
 - 12 (b) Order or accept delivery of any new motor vehicle
13 with special features, accessories or equipment not
14 included in the list price of the new motor vehicle as
15 publicly advertised by the manufacturer or distributor.
 - 16 (c) Participate monetarily in any advertising cam-
17 paign or contest, or purchase any promotional materials,
18 display devices or display decorations or materials at the
19 expense of the new motor vehicle dealer.

20 (d) Enter into any agreement with the manufacturer
21 or distributor or do any other act prejudicial to the new
22 motor vehicle dealer by threatening to terminate a
23 dealer agreement or any contractual agreement or
24 understanding existing between the dealer and the
25 manufacturer or distributor. Notice in good faith to any
26 dealer of the dealer's violation of any terms or provisions
27 of the dealer agreement shall not constitute a violation
28 of this article.

29 (e) Change the capital structure of the new motor
30 vehicle dealership or the means by or through which the
31 dealer finances the operation of the dealership if the
32 dealership at all times meets any reasonable capital
33 standards determined by the manufacturer in accor-
34 dance with uniformly applied criteria.

35 (f) Refrain from participation in the management of,
36 investment in, or the acquisition of any other line of new
37 motor vehicle or related products: *Provided*, That the
38 dealer maintains a reasonable line of credit for each
39 make or line of vehicle, remains in compliance with
40 reasonable facilities requirements, and makes no change
41 in the principal management of the dealer.

42 (g) Change the location of the new motor vehicle
43 dealership or make any substantial alterations to the
44 dealership premises, where to do so would be
45 unreasonable.

46 (h) Prospectively assent to a release, assignment,
47 novation, waiver or estoppel which would relieve any
48 person from liability imposed by this article or require
49 any controversy between a new motor vehicle dealer and
50 a manufacturer or distributor to be referred to a person
51 other than the duly constituted courts of the state or the
52 United States, if the referral would be binding upon the
53 new motor vehicle dealer.

54 (2) A manufacturer or distributor shall not do any of
55 the following:

56 (a) Fail to deliver new motor vehicles or new motor
57 vehicle parts or accessories within a reasonable time and
58 in reasonable quantities relative to the new motor
59 vehicle dealer's market area and facilities, unless the

60 failure is caused by acts or occurrences beyond the
61 control of the manufacturer or distributor, or unless the
62 failure results from an order by the new motor vehicle
63 dealer in excess of quantities reasonably and fairly
64 allocated by the manufacturer or distributor.

65 (b) Refuse to disclose to a new motor vehicle dealer
66 the method and manner of distribution of new motor
67 vehicles by the manufacturer or distributor.

68 (c) Refuse to disclose to a new motor vehicle dealer
69 the total number of new motor vehicles of a given model,
70 which the manufacturer or distributor has sold during
71 the current model year within the dealer's marketing
72 district, zone or region, whichever geographical area is
73 the smallest.

74 (d) Increase prices of new motor vehicles which the
75 new motor vehicle dealer had ordered and then eventu-
76 ally delivered to, the same retail consumer for whom the
77 vehicle was ordered if the order was made prior to the
78 dealer's receipt of the written official price increase
79 notification. A sales contract signed by a private retail
80 consumer and binding on the dealer shall constitute
81 evidence of each order. In the event of manufacturer or
82 distributor price reductions or cash rebates, the amount
83 of any reduction or rebate received by a dealer shall be
84 passed on to the private retail consumer by the dealer.
85 Any price reduction in excess of five dollars shall apply
86 to all vehicles in the dealer's inventory which were
87 subject to the price reduction. A price difference
88 applicable to new model or series motor vehicles at the
89 time of the introduction of the new models or the series
90 shall not be considered a price increase or price
91 decrease. This subdivision shall not apply to price
92 changes caused by the following:

93 (i) The addition to a motor vehicle of required or
94 optional equipment pursuant to state or federal law.

95 (ii) In the case of foreign made vehicles or compo-
96 nents, revaluation of the United States dollar.

97 (iii) Any increase in transportation charges due to an
98 increase in rates charged by a common carrier and
99 transporters.

100 (e) Offer any refunds or other types of inducements
101 to any dealer for the purchase of new motor vehicles of
102 a certain line make to be sold to this state or any
103 political subdivision of this state without making the
104 same offer available upon request to all other new motor
105 vehicle dealers of the same line make.

106 (f) Release to an outside party, except under subpoena
107 or in an administrative or judicial proceeding to which
108 the new motor vehicle dealer or the manufacturer or
109 distributor are parties, any business, financial or
110 personal information which has been provided by the
111 dealer to the manufacturer or distributor, unless the
112 new motor vehicle dealer gives his or her written
113 consent.

114 (g) Deny a new motor vehicle dealer the right to
115 associate with another new motor vehicle dealer for any
116 lawful purpose.

117 (h) Establish a dealership which would unfairly
118 compete with a new motor vehicle dealer of the same
119 line make operating under a dealer agreement with the
120 manufacturer or distributor in the relevant market
121 area. A manufacturer or distributor shall not be
122 considered to be unfairly competing if the manufacturer
123 or distributor is:

124 (i) Operating a dealership temporarily for a reasona-
125 ble period.

126 (ii) Operating a dealership which is for sale at a
127 reasonable price.

128 (iii) Operating a dealership with another person who
129 has made a significant investment in the dealership and
130 who will acquire full ownership of the dealership under
131 reasonable terms and conditions.

132 (i) Unreasonably withhold consent to the sale, transfer
133 or exchange of the dealership to a qualified buyer
134 capable of being licensed as a new motor vehicle dealer
135 in this state.

136 (j) Fail to respond in writing to a request for consent
137 to a sale, transfer or exchange of a dealership within
138 sixty days after receipt of a written application from the
139 new motor vehicle dealer on the forms generally utilized

140 by the manufacturer or distributor for such purpose and
141 containing the information required therein. Failure to
142 respond to the request within the sixty days shall be
143 deemed to be consent.

144 (k) Unfairly prevent a new motor vehicle dealer from
145 receiving reasonable compensation for the value of the
146 new motor vehicle dealership.

147 (l) Audit any motor vehicle dealer in this state for
148 warranty parts or warranty service compensation,
149 service compensation, service incentives, rebates or
150 other forms of sales incentive compensation more than
151 two years after the claim for payment or reimbursement
152 has been made by the automobile dealer: *Provided*, That
153 the provisions of this subsection shall not apply where
154 a claim is fraudulent.

155 (3) A manufacturer or distributor, either directly or
156 through any subsidiary, shall not terminate, cancel, fail
157 to renew or discontinue any lease of the new motor
158 vehicle dealer's established place of business except for
159 a material breach of the lease.

CHAPTER 108

(Com. Sub. for H. B. 4295—By Delegates Stalon, Huntwork, Pino,
Whitman, Kessel, Trump and L. White)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section seventeen, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six, article eight, chapter seventeen-a of said code; to amend and reenact section nine-a, article one, chapter fifty of said code; to amend and reenact section one, article two of said chapter; to amend and reenact sections eight, twelve and thirteen, article five of said chapter; to amend and reenact sections thirteen, twenty-four, twenty-four-a, twenty-seven, thirty-four and thirty-nine, article three, chapter sixty-one of said code; and to amend and reenact section three, article three-a of

said chapter, all relating to jurisdiction of magistrate courts and circuit courts; defining the offenses of injury or tampering with a vehicle or special mobile equipment and providing penalties therefor; providing that offenses involving special mobile equipment may be either a misdemeanor or felony, depending on the dollar amount of any injury, damage, or breakage or removal of parts; increasing the number of magistrate court deputy clerks; prescribing the civil jurisdiction of magistrate courts and increasing the amount in controversy which defines the civil jurisdiction of magistrate courts; providing for election or demand for trial by jury in magistrate court or trial to the court without a jury; providing for appeals in civil cases from magistrate court to circuit court; time periods, bonds, and fees for such appeals; electronic recording of jury trials; preparing and designating records for appeal; circuit court discretion to schedule oral argument, receive memoranda of law, and take evidence; time frame for circuit court review of magistrate proceedings; appeals in criminal cases; time frames, bonds, and stays for such appeals; electronic recording of jury trials, designation of records, and preparation of transcripts of magistrate proceedings; discretion of circuit court to hear oral argument and receive evidence; defining the felony and misdemeanor offenses of grand and petit larceny and establishing penalties therefor; defining the offenses of obtaining money, property, and services by false pretenses, disposing of property to defraud creditors, and theft of services and establishing penalties therefor; defining the misdemeanor and felony offenses of false pretenses and establishing penalties therefor; preserving existing rights, liabilities, and remedies for such offenses; defining offenses involving the attempted or fraudulent use, possession, forgery, and traffic of credit cards and possession and transfer of credit cards and credit card making equipment and establishing penalties therefor; defining the offense of false or fraudulent use of telephonic services and establishing penalties therefor; defining terminology related to credit card offenses; defining the misdemeanor and felony offenses involving the attempted or fraudulent use, possession,

forgery, and traffic of credit cards and establishing penalties therefor; defining the offenses of malicious killing of animals by poison or otherwise and establishing penalties therefor; defining the misdemeanor and felony offenses involving taking or carrying away or injuring or destroying fruit, vegetables, grain or grass and establishing penalties therefor; defining misdemeanor and felony offenses of obtaining property in return for worthless checks and establishing penalties therefor; defining the misdemeanor and felony offenses of shoplifting and establishing penalties therefor; and authorizing home detention as an alternative sentence for felony shoplifting.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.**
- 50. Magistrate Courts.**
- 61. Crimes and Their Punishment.**

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

ARTICLE 8. SPECIAL ANTITHEFT LAWS.

- §17A-8-6. Injuring or tampering with vehicle or special mobile equipment.**

1 (a) Any person who either individually or in associ-
2 ation with one or more persons willfully injures or
3 tampers with any vehicle or breaks or removes any part
4 or parts of or from a vehicle without the consent of the
5 owner is guilty of a misdemeanor.

6 Any person who with intent to commit any malicious
7 mischief, injury, or other crime climbs into or upon a
8 vehicle whether it is in motion or at rest or with like
9 intent attempts to manipulate any of the levers, starting
10 mechanism, brakes, or other mechanism or device of a
11 vehicle while the same is at rest and unattended or with
12 like intent sets in motion any vehicle while the same is
13 at rest and unattended is guilty of a misdemeanor.

14 (b) Any person, either individually or in association
15 with one or more persons, who shall willfully injure or
16 damage any item of special mobile equipment or break
17 or remove any parts from an item of special mobile
18 equipment, without the consent of the owner, which
19 injury, damage, or breakage or removal of parts shall
20 be of an amount of one thousand dollars or more, is
21 guilty of a felony. If the injury, damage, or breakage or
22 removal of parts shall be of an amount which is less than
23 one thousand dollars, such person is guilty of a misde-
24 meanor.

CHAPTER 50. MAGISTRATE COURTS.

Article

1. Courts and Officers.
2. Jurisdiction and Authority.
5. Trials, Hearings and Appeals.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-9a. Magistrate court deputy clerks; salary; duties.

1 Whenever required by workload and upon the recom-
2 mendation of the judge of the circuit court, or the chief
3 judge thereof if there is more than one judge of the
4 circuit court, the supreme court of appeals may by rule
5 provide for the appointment of magistrate court deputy
6 clerks, not to exceed fifty-four in number. Such
7 magistrate court deputy clerks shall be appointed by the
8 judge of the circuit court, or the chief judge thereof if

9 there is more than one judge of the circuit court, with
10 such appointee to serve at his will and pleasure under
11 the immediate supervision of the magistrate court clerk.
12 Such magistrate court deputy clerk shall have such
13 duties, clerical or otherwise, as may be assigned by the
14 magistrate court clerk and as may be prescribed by the
15 rules of the supreme court of appeals or the judge of the
16 circuit court, or the chief judge thereof if there is more
17 than one judge of the circuit court. Such magistrate
18 court deputy clerks shall also have authority to exercise
19 the power and perform the duties of the magistrate
20 court clerk as may be delegated or assigned by such
21 magistrate court clerk.

22 Such magistrate court deputy clerk shall not be a
23 member of the immediate family of any magistrate,
24 magistrate court clerk, magistrate assistant or circuit
25 court judge within the same county, shall not have been
26 convicted of a felony or any misdemeanor involving
27 moral turpitude and shall reside in the state of West
28 Virginia. For the purpose of this section, "immediate
29 family" shall mean the relationships of mother, father,
30 sister, brother, child or spouse.

31 Magistrate court deputy clerks shall be paid a
32 monthly salary by the state. Such salary shall be paid
33 on the same basis and in the same applicable amounts
34 as for magistrate assistants in each county as provided
35 in section nine of this article.

ARTICLE 2. JURISDICTION AND AUTHORITY.

§50-2-1. Civil jurisdiction.

1 Except as limited herein and in addition to jurisdic-
2 tion granted elsewhere to magistrate courts, such courts
3 shall have jurisdiction of all civil actions wherein the
4 value or amount in controversy or the value of property
5 sought, exclusive of interest and cost, is not more than
6 five thousand dollars. Magistrate courts shall have
7 jurisdiction of all matters involving unlawful entry or
8 detainer of real property or involving wrongful occupa-
9 tion of residential rental property, so long as the title
10 to such property is not in dispute. Except as the same
11 may be in conflict with the provisions of this chapter,

12 the provisions of article three, chapter fifty-five of this
13 code, regarding unlawful entry and detainer, shall apply
14 to such actions in magistrate court. Magistrate courts
15 shall have jurisdiction of actions on bonds given
16 pursuant to the provisions of this chapter. Magistrate
17 courts shall have continuing jurisdiction to entertain
18 motions in regard to post-judgment process issued from
19 magistrate court and decisions thereon may be appealed
20 in the same manner as judgments.

21 Magistrate courts shall not have jurisdiction of actions
22 in equity, of matters in eminent domain, of matters in
23 which the title to real estate is in issue, of proceedings
24 seeking satisfaction of liens through the sale of real
25 estate, of actions for false imprisonment, of actions for
26 malicious prosecution or of actions for slander or libel
27 or of any of the extraordinary remedies set forth in
28 chapter fifty-three of this code.

29 Magistrates, magistrate court clerks, magistrate
30 court deputy clerks, and magistrate assistants shall have
31 the authority to administer any oath or affirmation, to
32 take any affidavit or deposition, unless otherwise
33 expressly provided by law, and to take, under such
34 regulations as are prescribed by law, the acknowledg-
35 ment of deeds and other writings.

ARTICLE 5. TRIALS, HEARINGS AND APPEALS.

§50-5-8. Trial by jury; trial to the court.

§50-5-12. Appeals in civil cases.

§50-5-13. Appeals in criminal cases.

§50-5-8. Trial by jury; trial to the court.

1 (a) A party to a civil action in magistrate court has
2 the right to elect that the matter be tried with a jury
3 when the amount in controversy exceeds twenty dollars
4 or involves possession of real estate. The election must
5 be made in writing at any time after the commencement
6 of the action and not later than twenty days after the
7 service of any first timely filed answer to the complaint.
8 Failure to elect within such time constitutes a waiver
9 of the right to trial by jury.

10 (b) A defendant in any criminal trial for a misdemea-

11 nor offense triable before a magistrate has the right to
12 demand that the matter be tried with a jury, and the
13 defendant shall be advised of the right to trial by jury
14 in writing. A demand by the defendant for a jury trial
15 must be made in writing not later than twenty days
16 after the defendant's initial appearance before the
17 magistrate: *Provided*, That in the case of an indigent for
18 whom counsel is to be appointed, the twenty-day period
19 shall not commence to run until counsel is appointed.
20 Failure to demand within such time constitutes a waiver
21 of the right to trial by jury.

22 (c) If a jury trial is elected or demanded to determine
23 the issues of fact, the election or demand may not be
24 withdrawn over the objection of any party appearing at
25 the trial, and the magistrate shall cause a jury to be
26 selected, empaneled and sworn which will hear the
27 parties and their evidence, receive the instructions of the
28 court relative to the law involved, and, after delibera-
29 tion, deliver a verdict: *Provided*, That in a criminal
30 proceeding, any such verdict must be unanimous.

31 (d) A magistrate court jury shall consist of six
32 persons, to be selected from a panel of ten persons. The
33 selection and summoning of jurors shall be conducted in
34 accordance with the provisions of article one, chapter
35 fifty-two of this code and the supervisory rules of the
36 supreme court of appeals. Jurors shall be paid by the
37 state in accordance with such rules.

38 (e) For purposes of appeal, when a jury trial is had
39 in magistrate court, the magistrate court shall be a
40 court of limited record. Trials before a magistrate when
41 a jury is empaneled shall be recorded electronically. A
42 magnetic tape or other electronic recording medium on
43 which a trial is recorded shall be indexed and securely
44 preserved by the magistrate court clerk. When re-
45 quested by either of the parties in a civil action, by the
46 state or the defendant in a criminal proceeding, or by
47 any interested person, the magistrate court clerk shall
48 provide a duplicate copy of the tape or other electronic
49 recording medium of each trial held. For evidentiary
50 purposes, a duplicate of such electronic recording
51 prepared by the magistrate court clerk shall be a

52 “writing” or “recording” as those terms are defined in
53 rule 1001 of the West Virginia rules of evidence, and
54 unless the duplicate is shown not to reflect the contents
55 accurately, it shall be treated as an original in the same
56 manner that data stored in a computer or similar data
57 is regarded as an “original” under such rule. Unless a
58 party requesting the copy has been permitted to proceed
59 in a civil action without prepayment in accordance with
60 the provisions of section one, article two, chapter fifty-
61 nine of this code, or in a criminal proceeding as an
62 indigent, the party shall pay to the magistrate court an
63 amount equal to the actual cost of the tape or other
64 medium or the sum of five dollars, whichever is greater.

65 (f) If neither party to a civil action demands a jury
66 trial, or if the defendant in a criminal proceeding waives
67 the right to trial by jury, the matter shall be tried by
68 the magistrate sitting without a jury. For purposes of
69 appeal, when a nonjury trial is had in magistrate court,
70 the magistrate court shall not be a court of limited
71 record and the magistrate shall not electronically record
72 the action or proceeding.

73 (g) The designation in this section of magistrate courts
74 as “courts of limited record” shall not be construed to
75 give standing or eligibility to magistrates to participate
76 or be included in the retirement system for judges of
77 courts of record established under the provisions of
78 article nine, chapter fifty-one of this code.

§50-5-12. Appeals in civil cases.

1 (a) Any person may appeal the judgment of a
2 magistrate court to the circuit court as a matter of right
3 by requesting such appeal not later than twenty days
4 after such judgment is rendered or not later than twenty
5 days after a decision is rendered upon a motion to set
6 aside such judgment. Such person shall be required to
7 post a bond with good security in a reasonable amount
8 not less than the reasonable court costs of the appeal nor
9 more than the sum of the judgment and the reasonable
10 court costs of the appeal, upon the condition that such
11 person will satisfy the judgment and any court costs
12 which may be rendered against him on any such appeal.

13 The bond and the circuit court filing fee shall be
14 collected by the magistrate court clerk or deputy clerk
15 at the time the appeal is filed, and be forwarded to the
16 clerk of the circuit court along with other appropriate
17 documents regarding the appeal. No bond shall be
18 required of any governmental agency or authority or of
19 a person who has been permitted to proceed without
20 prepayment in accordance with the provisions of section
21 one, article two, chapter fifty-nine of this code. If an
22 appeal is not perfected within such twenty-day period,
23 the circuit court of the county may, not later than ninety
24 days after the date of judgment, grant an appeal upon
25 a showing of good cause why such appeal was not
26 perfected within such twenty-day period. The filing or
27 granting of an appeal shall automatically stay further
28 proceedings to enforce the judgment.

29 (b) In the case of an appeal of a civil action tried
30 before a jury, the hearing on the appeal before the
31 circuit court shall be a hearing on the record. In the case
32 of an appeal of a civil action tried before the magistrate
33 without a jury, the hearing on the appeal before the
34 circuit court shall be a trial de novo, triable to the court,
35 without a jury.

36 (c) In the case of an appeal of a civil action tried
37 before a jury, the following provisions shall apply:

38 (1) To prepare the record for appeal, the party seeking
39 the appeal shall file with the circuit court a petition
40 setting forth the grounds relied upon, and designating
41 those portions of the testimony or other matters
42 reflected in the recording, if any, which he or she will
43 rely upon in prosecuting the appeal. The responding
44 party or parties may designate additional portions of the
45 recording. Unless otherwise ordered by the circuit
46 court, the preparation of a transcript of the designated
47 portions of the recording and the payment of the cost
48 thereof shall be the responsibility of the party request-
49 ing the transcript: *Provided*, That a party may be
50 permitted to proceed without prepayment in accordance
51 with the provisions of section one, article two, chapter
52 fifty-nine of this code. The circuit court may, by general
53 order or by order entered in a specific case, dispense

54 with preparation of a transcript and review the
55 designated portions of the recording aurally.

56 (2) The designated portions of the recording or the
57 transcript thereof, as the case may be, and the exhibits,
58 together with all papers and requests filed in the
59 proceeding, constitute the exclusive record for appeal
60 and shall be made available to the parties.

61 (3) After the record for appeal is filed in the office
62 of the circuit clerk, the court may, in its discretion,
63 schedule the matter for oral argument or require the
64 parties to submit written memoranda of law. The circuit
65 court shall consider whether the judgment or order of
66 the magistrate is:

67 (A) Arbitrary, capricious, an abuse of discretion or
68 otherwise not in conformance with the law;

69 (B) Contrary to constitutional right, power, privilege
70 or immunity;

71 (C) In excess of statutory jurisdiction, authority or
72 limitations or short of statutory right;

73 (D) Without observance of procedure required by law;

74 (E) Unsupported by substantial evidence; or

75 (F) Unwarranted by the facts.

76 (4) The circuit court may take any of the following
77 actions which may be necessary to dispose of the
78 questions presented on appeal, with justice to the
79 parties:

80 (A) Dismiss the appeal;

81 (B) Reverse, affirm, or modify the judgment or order
82 being appealed;

83 (C) Remand the case for further proceedings, with
84 instructions to the magistrate;

85 (D) Finally dispose of the action by entering judgment
86 on appeal; or

87 (E) Retain the matter and retry the issues of fact, or
88 some part or portions thereof, as may be required by the

89 provisions of subdivision (5) of this subsection.

90 (5) If the circuit court finds that a record for appeal
91 is deficient as to matters which might be affected by
92 evidence not considered or inadequately developed, the
93 court may proceed to take such evidence and make
94 independent findings of fact to the extent that questions
95 of fact and law may merge in determining whether the
96 evidence was such, as a matter of law, as to require a
97 particular finding. If the party appealing the judgment
98 is also a party who elected to try the action before a jury
99 in the magistrate court, and if the circuit court finds
100 that the proceedings below were subject to error to the
101 extent that the party was effectively denied a jury trial,
102 the circuit court may, upon motion of the party, empanel
103 a jury to re-examine the issues of fact, or some part or
104 portions thereof.

105 (6) The review by the court and a decision on the
106 appeal shall be completed within ninety days after the
107 appeal is regularly placed upon the docket of the circuit
108 court.

109 (d) In the case of an appeal of a civil action tried
110 without a jury, the following provisions shall apply:

111 (1) The party seeking the appeal shall file with the
112 circuit court a petition for appeal and trial de novo. The
113 exhibits, together with all papers and requests filed in
114 the proceeding, constitute the exclusive record for
115 appeal and shall be made available to the parties.

116 (2) If, after the appeal is regularly placed upon the
117 docket of the circuit court, neither party brings the
118 matter on to hearing before the end of the second term
119 thereafter at which it is called for trial, unless good
120 cause for a continuance is shown, the appeal shall be
121 considered as abandoned and shall be dismissed at the
122 cost of the appellant unless sufficient cause is shown for
123 a further continuance and the judgment of the magis-
124 trate court shall stand. No appeal which shall have been
125 so dismissed by the circuit court shall be reinstated after
126 the close of the next regular term after such dismissal.

§50-5-13. Appeals in criminal cases.

1 (a) Any person convicted of an offense in a magistrate
2 court may appeal such conviction to circuit court as a
3 matter of right by requesting such appeal within twenty
4 days after the sentencing for such conviction. The
5 magistrate may require the posting of bond with good
6 security conditioned upon the appearance of the defend-
7 ant as required in circuit court, but such bond may not
8 exceed the maximum amount of any fine which could
9 be imposed for the offense. The bond may be upon the
10 defendant's own recognizance. If no appeal is perfected
11 within such twenty-day period, the circuit court may,
12 not later than ninety days after the sentencing, grant an
13 appeal upon a showing of good cause why such appeal
14 was not filed within the twenty-day period. The filing
15 or granting of an appeal shall automatically stay the
16 sentence of the magistrate.

17 (b) In the case of an appeal of a criminal proceeding
18 tried before a jury, the hearing on the appeal before the
19 circuit court shall be a hearing on the record. In the case
20 of an appeal of a criminal proceeding tried before the
21 magistrate without a jury, the hearing on the appeal
22 before the circuit court shall be a trial de novo, triable
23 to the court, without a jury.

24 (c) In the case of an appeal of a criminal proceeding
25 tried before a jury, the following provisions shall apply:

26 (1) To prepare the record for appeal, the defendant
27 shall file with the circuit court a petition setting forth
28 the grounds relied upon, and designating those portions
29 of the testimony or other matters reflected in the
30 recording, if any, which he or she will rely upon in
31 prosecuting the appeal. The prosecuting attorney may
32 designate additional portions of the recording. Unless
33 otherwise ordered by the circuit court, the preparation
34 of a transcript of the portions of the recording desig-
35 nated by the defendant, and the payment of the cost
36 thereof shall be the responsibility of the defendant:
37 *Provided*, That such costs may be waived due to the
38 defendant's indigency. The circuit court may, by general
39 order or by order entered in a specific case, dispense
40 with preparation of a transcript and review the
41 designated portions of the recording aurally.

42 (2) The designated portions of the recording or the
43 transcript thereof, as the case may be, and the exhibits,
44 together with all papers and requests filed in the
45 proceeding, constitute the exclusive record for appeal,
46 and shall be made available to the defendant and the
47 prosecuting attorney.

48 (3) After the record for appeal is filed in the office
49 of the circuit clerk, the court may, in its discretion,
50 schedule the matter for oral argument or require the
51 parties to submit written memoranda of law. The circuit
52 court shall consider whether the judgment or order of
53 the magistrate is:

54 (A) Arbitrary, capricious, an abuse of discretion or
55 otherwise not in conformance with the law;

56 (B) Contrary to constitutional right, power, privilege
57 or immunity;

58 (C) In excess of statutory jurisdiction, authority or
59 limitations or short of statutory right;

60 (D) Without observance of procedure required by law;

61 (E) Unsupported by substantial evidence; or

62 (F) Unwarranted by the facts.

63 (4) The circuit court may take any of the following
64 actions which may be necessary to dispose of the
65 questions presented on appeal, with justice to the
66 defendant and the state:

67 (A) Dismiss the appeal;

68 (B) Reverse, affirm, or modify the judgment or order
69 being appealed;

70 (C) Remand the case for further proceedings, with
71 instructions to the magistrate;

72 (D) Finally dispose of the action by entering judgment
73 on appeal; or

74 (E) Retain the matter and retry the issues of fact, or
75 some part or portions thereof, as may be required by the
76 provisions of subdivision (5) of this subsection.

77 (5) If the circuit court finds that a record for appeal
78 is deficient as to matters which might be affected by
79 evidence not considered or inadequately developed, the
80 court may proceed to take such evidence and make
81 independent findings of fact to the extent that questions
82 of fact and law may merge in determining whether the
83 evidence was such, as a matter of law, as to require a
84 particular finding. If the party appealing the judgment
85 is also a party who elected to try the action before a jury
86 in the magistrate court, and if the circuit court finds
87 that the proceedings below were subject to error to the
88 extent that the party was effectively denied a jury trial,
89 the circuit court may, upon motion of the party, empanel
90 a jury to re-examine the issues of fact, or some part or
91 portions thereof.

92 (6) The review by the court and a decision on the
93 appeal shall be completed within ninety days after the
94 appeal is regularly placed upon the docket of the circuit
95 court.

96 (d) In the case of an appeal of a criminal proceeding
97 tried without a jury, the party seeking the appeal shall
98 file with the circuit court a petition for appeal and trial
99 de novo. The exhibits, together with all papers and
100 requests filed in the proceeding, constitute the exclusive
101 record for appeal and shall be made available to the
102 parties.

103 (e) Notwithstanding any other provision of this code
104 to the contrary, there shall be no appeal from a plea of
105 guilty where the defendant was represented by counsel
106 at the time the plea was entered: *Provided*, That the
107 defendant shall have an appeal from a plea of guilty
108 where an extraordinary remedy would lie or where the
109 magistrate court lacked jurisdiction.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

Article

3. Crimes Against Property.

3A. Shoplifting.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-13. Grand and petit larceny distinguished; penalties.

- §61-3-24. Obtaining money, property and services by false pretenses; disposing of property to defraud creditors; penalties.
- §61-3-24a. Attempted or fraudulent use, forgery, traffic of credit cards; possession and transfer of credit cards and credit card making equipment; false or fraudulent use of telephonic services; penalties.
- §61-3-27. Malicious killing of animals by poison or otherwise; penalty.
- §61-3-34. Taking or injuring garden or field crops; penalties.
- §61-3-39. Obtaining property in return for worthless check; penalty.

§61-3-13. Grand and petit larceny distinguished; penalties.

1 (a) If a person commits simple larceny of goods or
2 chattels of the value of one thousand dollars or more,
3 such person is guilty of a felony, designated grand
4 larceny, and, upon conviction thereof, shall be impris-
5 oned in the penitentiary not less than one nor more than
6 ten years, or, in the discretion of the court, be confined
7 in jail not more than one year and shall be fined not
8 more than two thousand five hundred dollars.

9 (b) If a person commits simple larceny of goods or
10 chattels of the value of less than one thousand dollars,
11 such person is guilty of a misdemeanor, designated petit
12 larceny, and, upon conviction thereof, shall be confined
13 in jail for a term not to exceed one year or fined not
14 to exceed two thousand five hundred dollars, or both, in
15 the discretion of the court.

§61-3-24. Obtaining money, property and services by false pretenses; disposing of property to defraud creditors; penalties.

1 (a) (1) If a person obtains from another by any false
2 pretense, token or representation, with intent to
3 defraud, any money, goods or other property which may
4 be the subject of larceny; or

5 (2) If a person obtains on credit from another any
6 money, goods or other property which may be the
7 subject of larceny, by representing that there is money
8 due him or her or to become due him or her, and assigns
9 the claim for such money, in writing, to the person from
10 whom he or she obtains such money, goods or other
11 property, and afterwards collects the money due or to
12 become due, without the consent of the assignee, and

13 with the intent to defraud;

14 (3) Such person is guilty of larceny. If the value of the
15 money, goods or other property is one thousand dollars
16 or more, such person is guilty of a felony, and, upon
17 conviction thereof, shall be imprisoned in the peniten-
18 tiary not less than one year nor more than ten years, or,
19 in the discretion of the court, be confined in jail not more
20 than one year and be fined not more than two thousand
21 five hundred dollars. If the value of the money, goods
22 or other property is less than one thousand dollars, such
23 person is guilty of a misdemeanor, and, upon conviction
24 thereof, shall be confined in jail not more than one year
25 or fined not more than two thousand five hundred
26 dollars, or both.

27 (b) If a person obtains by any false pretense, token or
28 representation, with intent to defraud, the signature of
29 another to a writing, the false making of which would
30 be forgery, the person is guilty of a felony, and, upon
31 conviction thereof, shall be imprisoned in the peniten-
32 tiary not less than one year nor more than five years,
33 or, in the discretion of the court, be confined in jail not
34 more than one year and fined not more than two
35 thousand five hundred dollars.

36 (c) (1) If a person removes any of his or her property
37 out of any county with the intent to prevent the same
38 from being levied upon by any execution; or

39 (2) If a person secretes, assigns or conveys, or
40 otherwise disposes of any of his or her property with the
41 intent to defraud any creditor or to prevent the property
42 from being made liable for payment of debts; or

43 (3) If a person receives the property of another with
44 the intent to defraud any creditor or to prevent the
45 property from being made liable for the payment of
46 debts;

47 (4) The person is guilty of a misdemeanor, and, upon
48 conviction thereof, shall be fined not more than two
49 thousand five hundred dollars and be confined in jail not
50 more than one year.

51 (d) If a person, firm or corporation obtains labor,

52 services or any other such thing of value from another
53 by any false pretense, token or representation, with
54 intent to defraud, the person, firm or corporation is
55 guilty of theft of services. If the value of the labor,
56 services or any other such thing of value is one thousand
57 dollars or more, the person, firm or corporation is guilty
58 of a felony, and, upon conviction thereof, shall be
59 imprisoned in the penitentiary not less than one year nor
60 more than ten years, or, in the discretion of the court,
61 be confined in jail not more than one year and be fined
62 not more than two thousand five hundred dollars. If the
63 value of the labor, services or any other such thing of
64 value is less than one thousand dollars, the person, firm
65 or corporation is guilty of a misdemeanor, and, upon
66 conviction thereof, shall be confined in jail not more
67 than one year or fined not more than two thousand five
68 hundred dollars, or both, in the discretion of the court.

69 (e) Theft of services includes the obtaining of a stop
70 payment order on a check, draft or order for payment
71 of money owed for services performed in good faith and
72 in substantial compliance with a written or oral contract
73 for services, with the fraudulent intent to permanently
74 deprive the provider of such labor, services or other such
75 thing of value of the payment represented by such
76 check, draft or order. Notwithstanding the penalties set
77 forth elsewhere in this section, any person, firm or
78 corporation violating the provisions of this subsection is
79 guilty of a misdemeanor, and, upon conviction thereof,
80 shall be fined not more than two times the face value
81 of the check, draft or order.

82 (f) Prosecution for an offense under this section does
83 not bar or otherwise affect adversely any right or
84 liability to damages, forfeiture or other civil remedy
85 arising from any or all elements of the criminal offense.

**§61-3-24a. Attempted or fraudulent use, forgery, traffic
of credit cards; possession and transfer of
credit cards and credit card making equip-
ment; false or fraudulent use of telephonic
services; penalties.**

1 (a) As used in this section:

2 (1) "Counterfeit credit card" means the following:

3 (A) Any credit card or a representation, depiction,
4 facsimile, aspect or component thereof that is counter-
5 feit, fictitious, altered, forged, lost, stolen, incomplete or
6 obtained in violation of this section, or as part of a
7 scheme to defraud; or

8 (B) Any invoice, voucher, sales draft or other reflec-
9 tion or manifestation of such a card.

10 (2) "Credit card making equipment" means any
11 equipment, machine, plate mechanism, impression or
12 any other contrivance which can be used to produce a
13 credit card, a counterfeit credit card, or any aspect or
14 component of either.

15 (3) "Traffic" means:

16 (A) To sell, transfer, distribute, dispense or otherwise
17 dispose of any property; or

18 (B) To buy, receive, possess, obtain control of or use
19 property with the intent to sell, transfer, distribute,
20 dispense or otherwise dispose of such property.

21 (4) "Notice" means either information given in person
22 or information given in writing to the person to whom
23 the number, card or device was issued. The sending of
24 a notice in writing by registered or certified mail in the
25 United States mail, duly stamped and addressed to such
26 person at his last known address, is prima facie evidence
27 that such notice was duly received. A cardholder's
28 knowledge of the revocation of his or her credit card
29 may be reasonably inferred by evidence that notice of
30 such revocation was mailed to him or her, at least four
31 days prior to his or her use or attempted use of the
32 credit card, by first class mail at his or her last known
33 address.

34 (b) (1) It is unlawful for any person knowingly to
35 obtain or attempt to obtain credit, or to purchase or
36 attempt to purchase any goods, property or service, by
37 the use of any false, fictitious or counterfeit credit card,
38 telephone number, credit number or other credit device,
39 or by the use of any credit card, telephone number,

40 credit number or other credit device of another beyond
41 or without the authority of the person to whom such
42 card, number or device was issued, or by the use of any
43 credit card, telephone number, credit number or other
44 credit device in any case where such card, number or
45 device has been revoked and notice of such revocation
46 has been given to the person to whom issued.

47 (2) It is unlawful for any person knowingly to obtain
48 or attempt to obtain, by the use of any fraudulent
49 scheme, device, means or method, telephone or tele-
50 graph service or the transmission of a message, signal
51 or other communication by telephone or telegraph, or
52 over telephone or telegraph facilities with intent to avoid
53 payment of charges therefor.

54 (3) Any person who violates any provision of this
55 subsection, if the credit, goods, property, service or
56 transmission is of the value of one thousand dollars or
57 more, is guilty of a felony, and, upon conviction thereof,
58 shall be imprisoned in the penitentiary not less than one
59 year nor more than ten years or, in the discretion of the
60 court, be confined in jail not more than one year and
61 be fined not more than two thousand five hundred
62 dollars; and if of less value, is guilty of a misdemeanor,
63 and, upon conviction thereof, shall be confined in jail not
64 more than one year or fined not more than two thousand
65 five hundred dollars, or both.

66 (c) A person is guilty of forgery of a credit card when
67 he or she makes, manufactures, presents, embosses,
68 alters or utters a credit card with intent to defraud any
69 person, issuer of credit or organization providing money,
70 goods, services, or anything else of value in exchange for
71 payment by credit card and he or she is guilty of a
72 felony, and, upon conviction thereof, shall be imprisoned
73 in the penitentiary not less than one year nor more than
74 ten years, or, in the discretion of the court, be confined
75 in jail not more than one year and fined not less than
76 fifty nor more than two thousand five hundred dollars.

77 (d) Any person who traffics in or attempts to traffic
78 in ten or more counterfeit credit cards or credit card
79 account numbers of another in any six-month period is

80 guilty of a felony, and, upon conviction thereof, shall be
81 imprisoned in the penitentiary not less than one year nor
82 more than ten years, or, in the discretion of the court,
83 be confined in jail not more than one year and fined not
84 less than fifty nor more than two thousand five hundred
85 dollars.

86 (e) A person who receives, possesses, transfers, buys,
87 sells, controls or has custody of any credit card making
88 equipment with intent that the equipment be used in the
89 production of counterfeit credit cards is guilty of a
90 felony, and, upon conviction thereof, shall be imprisoned
91 in the penitentiary not less than one year nor more than
92 ten years, or, in the discretion of the court, be confined
93 in jail not more than one year and fined not less than
94 one thousand nor more than five thousand dollars.

95 (f) A person who knowingly receives, possesses,
96 acquires, controls or has custody of a counterfeit credit
97 card is guilty of a misdemeanor, and, upon conviction
98 thereof, shall be confined in jail not exceeding six
99 months or fined not more than five hundred dollars, or
100 both.

§61-3-27. Malicious killing of animals by poison or otherwise; penalty.

1 If a person maliciously administers poison to, or
2 exposes poison with the intent that it should be taken
3 by any horse, cow or other animal of another person,
4 or if any person maliciously maims, kills, or causes the
5 death of any horse, cow or other animal of another
6 person, of the value of one hundred dollars or more, the
7 person is guilty of a felony, and, upon conviction, shall
8 be imprisoned in the penitentiary not less than one year
9 nor more than ten years; and, if the horse, cow or other
10 animal is of less value than one hundred dollars, the
11 person is guilty of a misdemeanor, and, upon conviction,
12 shall be confined in jail not more than three months and
13 fined not more than five hundred dollars: *Provided*, That
14 this section shall not be construed to include dogs.

§61-3-34. Taking or injuring garden or field crops; penalties.

1 If a person enters the orchard, field, garden or market

2 garden of another person, without the consent of the
3 owner or occupier thereof, and does any damage to the
4 fruit, vegetables, grain or grass growing or being
5 thereon, or takes, carries away, injures or destroys any
6 of the grain, fruit, grass or vegetables growing or being
7 thereon, the person is guilty of a misdemeanor, and,
8 upon conviction, shall be fined not more than five
9 hundred dollars, or confined in jail not exceeding six
10 months, or both. If a person commits any of the acts
11 mentioned herein, and if it is charged in the indictment
12 or information and proved that the property injured or
13 destroyed, or taken or carried away, is of a greater value
14 than one thousand dollars, the person is guilty of a
15 felony, and, upon conviction, shall be imprisoned in the
16 penitentiary not less than one year nor more than ten
17 years, or, in the discretion of the court, be confined in
18 jail not more than one year and fined not less than fifty
19 nor more than two thousand five hundred dollars.

**§61-3-39. Obtaining property in return for worthless
check; penalty.**

1 It is unlawful for any person, firm or corporation to
2 obtain any money, services, goods or other property or
3 thing of value by means of a check, draft or order for
4 the payment of money or its equivalent upon any bank
5 or other depository, knowing at the time of the making,
6 drawing, issuing, uttering or delivering of the check,
7 draft or order that there is not sufficient funds on
8 deposit in or credit with such bank or other depository
9 with which to pay the same upon presentation. The
10 making, drawing, issuing, uttering or delivery of any
11 such check, draft or order, for or on behalf of any
12 corporation, or its name, by any officer or agent of such
13 corporation, shall subject such officer or agent to the
14 penalties of this section to the same extent as though
15 such check, draft or order was his own personal act,
16 when such agent or officer knows that such corporation
17 does not have sufficient funds on deposit in or credit
18 with such bank or depository from which such check,
19 draft or order can legally be paid upon presentment.

20 This section shall not apply to any such check, draft
21 or order when the payee or holder knows or has been

22 expressly notified prior to the acceptance of same or has
23 reason to believe that the drawer did not have on deposit
24 or to his credit with the drawee sufficient funds to
25 insure payment as aforesaid, nor shall this section apply
26 to any postdated check, draft or order.

27 No prosecution shall be confined to the provisions of
28 this section by virtue of the fact that worthless checks,
29 drafts or orders may be employed in the commission of
30 some other criminal act.

31 A person who violates the provisions of this section,
32 if the amount of the check, draft or order is less than
33 five hundred dollars, is guilty of a misdemeanor, and,
34 upon conviction thereof, the person shall be fined not
35 more than two hundred dollars, or confined in jail not
36 more than six months, or both. A person who violates
37 the provisions of this section, if the amount of the check,
38 draft or order is five hundred dollars or more, is guilty
39 of a felony, and, upon conviction thereof, the person shall
40 be fined not more than five hundred dollars, or
41 imprisoned in the penitentiary not less than one year nor
42 more than ten years, or both.

ARTICLE 3A. SHOPLIFTING.

§61-3A-3. Penalties.

1 A person convicted of shoplifting shall be punished as
2 follows:

3 (a) *First offense conviction.* — Upon a first shoplifting
4 conviction:

5 (1) When the value of the merchandise is less than or
6 equal to five hundred dollars, the person is guilty of a
7 misdemeanor and shall be fined not more than two
8 hundred fifty dollars.

9 (2) When the value of the merchandise exceeds five
10 hundred dollars, the person is guilty of a misdemeanor
11 and shall be fined not less than one hundred dollars nor
12 more than five hundred dollars, and such fine shall not
13 be suspended, or the person shall be confined in jail not
14 more than sixty days, or both.

15 (b) *Second offense conviction.* — Upon a second
16 shoplifting conviction:

17 (1) When the value of the merchandise is less than or
18 equal to five hundred dollars, the person is guilty of a
19 misdemeanor and shall be fined not less than one
20 hundred dollars nor more than five hundred dollars, and
21 such fine shall not be suspended, or the person shall be
22 confined in jail not more than six months or both.

23 (2) When the value of the merchandise exceeds five
24 hundred dollars, the person is guilty of a misdemeanor
25 and shall be fined not less than five hundred dollars and
26 shall be confined in jail for not less than six months nor
27 more than one year.

28 (c) *Third offense conviction.* — Upon a third or
29 subsequent shoplifting conviction, regardless of the
30 value of the merchandise, the person is guilty of a felony
31 and shall be fined not less than five hundred dollars nor
32 more than five thousand dollars, and shall be impri-
33 soned in the penitentiary for not less than one year nor
34 more than ten years. At least one year shall actually be
35 spent in confinement and not subject to probation:
36 *Provided,* That an order for home detention by the court
37 pursuant to the provisions of article eleven-b, chapter
38 sixty-two of this code may be used as an alternative
39 sentence to the incarceration required by this
40 subsection.

41 (d) *Mandatory penalty.* — In addition to the fines and
42 imprisonment imposed by this section, in all cases of
43 conviction for the offense of shoplifting, the court shall
44 order the defendant to pay a penalty to the mercantile
45 establishment involved in the amount of fifty dollars, or
46 double the value of the merchandise involved, whichever
47 is higher. The mercantile establishment shall be entitled
48 to collect such mandatory penalty as in the case of a civil
49 judgment. This penalty shall be in addition to the
50 mercantile establishment's rights to recover the stolen
51 merchandise.

52 (e) In determining the number of prior shoplifting
53 convictions for purposes of imposing punishment under
54 this section, the court shall disregard all such convic-
55 tions occurring more than seven years prior to the
56 shoplifting offense in question.

CHAPTER 109

(S. B. 489—By Senator Miller)

[Passed March 9, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to antique motorcycles; defining antique motorcycles; establishing special registration fees; imposing certain restrictions on use; and establishing license and registration requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-3a. Special registration of antique motor vehicles and motorcycles.

1 (a) The annual registration fee for any antique motor
2 vehicle or motorcycle as defined in this section is two
3 dollars. "Antique motor vehicle" means any motor
4 vehicle which is over twenty-five years old and is owned
5 solely as a collector's item. "Antique motorcycle" means
6 any motorcycle which is over thirty-five years old and
7 is owned solely as a collector's item.

8 (b) Except as otherwise provided in this section,
9 antique motor vehicles or motorcycles may not be used
10 for general transportation but may only be used for:

11 (1) Participation in club activities, exhibits, tours,
12 parades and similar events;

13 (2) The purpose of testing their operation, obtaining
14 repairs or maintenance and transportation to and from
15 events as described in subdivision (1); and

16 (3) Recreational purposes on Saturdays, Sundays and
17 holidays.

18 (c) A West Virginia motor vehicle or motorcycle
19 displaying license plates of the same year of issue as the

46 model year of the antique motor vehicle or motorcycle,
47 as authorized in this section, may be used for general
48 transportation purposes if the following conditions are
49 met:

50 (1) The license plate's physical condition has been
51 inspected and approved by the division of motor
52 vehicles;

53 (2) The license plate is registered to the specific motor
54 vehicle or motorcycle by the division of motor vehicles;

55 (3) The owner of the motor vehicle or motorcycle
56 annually registers the motor vehicle or motorcycle and
57 pays an annual registration fee for the motor vehicle or
58 motorcycle equal to that charged to obtain regular state
59 license plates;

60 (4) The motor vehicle or motorcycle passes an annual
61 safety inspection; and

62 (5) The motor vehicle or motorcycle displays a sticker
63 attached to the license plate, issued by the division,
64 indicating that the motor vehicle or motorcycle may be
65 used for general transportation.

66 (d) If more than one request is made for license plates
67 having the same number, the division shall accept only
68 the first application.

69 (e) The commissioner may promulgate rules in
70 accordance with the provisions of chapter twenty-nine-
71 a of this code as may be necessary or convenient for the
72 carrying out of the provisions of this section.

CHAPTER 110

(H. B. 4611—By Delegates Tribett, Yeager, Fragale,
Linch, Manuel, Oliverio and L. Williams)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

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

to the issuance of driver's licenses; requiring a Class D commercial driver's license for certain persons whose primary function or employment is the transportation of persons or property for compensation or wages; and creating an exception for operators of Class A motor vehicles with gross vehicle weight ratings of less than eight thousand one pounds.

Be it enacted by the Legislature of West Virginia:

That section one, article two, chapter seventeen-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. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.

1 (a) No person, except those hereinafter expressly
2 exempted, may drive any motor vehicle upon a street or
3 highway in this state or upon any subdivision street, as
4 used in article twenty-four, chapter eight of this code,
5 when the use of such subdivision street is generally used
6 by the public unless the person has a valid driver's
7 license under the provisions of this code for the type or
8 class of vehicle being driven.

9 Any person licensed to operate a motor vehicle as
10 provided in this code may exercise the privilege thereby
11 granted as provided in this code and, except as other-
12 wise provided by law, shall not be required to obtain any
13 other license to exercise such privilege by any county,
14 municipality or local board or body having authority to
15 adopt local police regulations.

16 (b) The division, upon issuing a driver's license, shall
17 indicate on the license the type or general class or
18 classes of vehicle or vehicles the licensee may operate
19 in accordance with the provisions of this code, federal
20 law or rule.

21 (c) Driver's licenses issued by the division shall be
22 classified in the following manner:

23 (1) Class A, B or C license shall be issued to those
24 persons eighteen years of age or older with two years
25 driving experience and who have qualified for the
26 commercial driver's license established by chapter
27 seventeen-e of this code and the federal commercial
28 motor vehicle safety act of 1986, Title XII of public law
29 99870 and subsequent rules, and have paid the required
30 fee.

31 (2) Class D license shall be issued to those persons
32 eighteen years and older with one year driving expe-
33 rience who operate motor vehicles other than those types
34 of vehicles which require the operator to be licensed
35 under the provisions of chapter seventeen-e of this code
36 and federal law and rule and whose primary function
37 or employment is the transportation of persons or
38 property for compensation or wages and have paid the
39 required fee. For the purposes of the regulation of the
40 operation of a motor vehicle, wherever the term
41 chauffeur's license is used in this code, it shall be
42 construed to mean the Class A, B, C or D license
43 described in this section or chapter seventeen-e of this
44 code or federal law or rule: *Provided*, That anyone who
45 is not required to be licensed under the provisions of
46 chapter seventeen-e of this code and federal law or rule
47 and who operates a motor vehicle which is registered or
48 which is required to be registered as a Class A motor
49 vehicle as that term is defined in section three, article
50 ten, chapter seventeen-a of this code with a gross vehicle
51 weight rating of less than eight thousand one pounds,
52 is not required to obtain a Class D license.

53 (3) Class E license shall be issued to those persons who
54 have qualified under the provisions of this chapter and
55 who are not required to obtain a Class A, B, C or D
56 license and who have paid the required fee. The Class
57 E license may be endorsed under the provisions of
58 section seven-b, article two of this chapter for motorcy-
59 cle operation.

60 (4) Class F license shall be issued to those persons who

61 successfully complete the motorcycle examination
62 procedure provided for by this chapter and have paid
63 the required fee, but who do not possess a Class A, B,
64 C and D or E driver's license.

65 (d) No person, except those hereinafter expressly
66 exempted, shall drive any motorcycle upon a street or
67 highway in this state or upon any subdivision street, as
68 used in article twenty-four, chapter eight, when the use
69 of such subdivision street is generally used by the public
70 unless the person has a valid motorcycle license or a
71 valid license which has been endorsed under section
72 seven-b, article two of this chapter for motorcycle
73 operation or has a valid motorcycle instruction permit.

74 (e) (1) A nonoperator identification card may be issued
75 to any person who:

76 (A) Is a resident of this state in accordance with the
77 provisions of section one-a, article three, chapter
78 seventeen-a of this code;

79 (B) Does not have a valid driver's license;

80 (C) Has reached the age of sixteen years;

81 (D) Has paid the required fee of ten dollars: *Provided*,
82 That such fee is not required if the applicant is sixty-
83 five years or older or is legally blind; and

84 (E) Presents a birth certificate or other proof of age
85 and identity acceptable to the division with a completed
86 application on a form furnished by the division.

87 (2) The nondriver identification card shall contain the
88 same information as a driver's license, except that such
89 identification card shall be clearly marked as identifi-
90 cation card. The identification card shall expire every
91 four years. It may be renewed on application and
92 payment of the fee required by this section.

93 (3) The identification card shall be surrendered to the
94 division when the holder is issued a driver's license. The
95 division may issue an identification card to an applicant
96 whose privilege to operate a motor vehicle has been
97 refused, cancelled, suspended or revoked under the
98 provisions of this code.

CHAPTER 111

(Com. Sub. for H. B. 4020—By Mr. Speaker, Mr. Chambers, and Delegate Burk)

[By Request of the Executive]

[Passed March 12, 1994: in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section two, article five, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three and seven, article two, chapter seventeen-b of said code; to further amend said article by adding thereto a new section, designated section three-a; to amend and reenact sections one, four, nine and twelve, article three, chapter seventeen-b of said code; to amend and reenact sections one and three, article four of said chapter; to amend and reenact section twenty-eight, article one, chapter seventeen-c of said code; to amend and reenact sections two, four and eight, article five of said chapter; to further amend said article by adding thereto a new section, designated section six-a; to amend and reenact sections one, one-a, two, three and three-a, article five-a of said chapter; to amend and reenact section seven, article two-a, chapter seventeen-d of said code; to amend and reenact section fifteen, article one, chapter seventeen-e of said code; to amend and reenact section eighteen, article seven, chapter twenty of said code; to amend and reenact section six, article seven, chapter twenty-four-a of said code; to amend and reenact section one, article six-a, chapter thirty-three of said code; to amend and reenact section eight, article five, chapter forty-nine of said code; and to amend and reenact section nine, article six, chapter sixty of said code, all relating to the revision of criminal offenses and administrative sanctions for persons driving under the influence of alcohol, controlled substances or drugs; describing persons who shall not be licensed and providing exceptions thereto; providing for the issuance of junior driver's licenses to persons under the age of eighteen; establishing the examination requirements for applicants for a driver's license; requiring, before a license is issued, attendance at a class on the dangers and social consequences of driving under the influence;

authorizing the division of motor vehicles to cancel licenses; requiring an abstract of judgment of conviction for violation of motor vehicle laws to be sent to the division of motor vehicles; providing that the surrender and return of license is not required; requiring a mandatory suspension for fraudulent use of driver's license; defining offenses relating to the unlawful use of license or nonoperator's identification, and providing penalties therefor; describing license and nonoperator's identification violations generally, and providing penalties therefor; operating a motor powered boat while under the influence of alcohol, controlled substances or while having a blood alcohol level of ten hundredths or more; defining offenses relating to driving while a license is suspended or revoked, driving while a license is revoked for driving under the influence of alcohol, controlled substances or drugs, or while having alcoholic concentration in the blood of ten hundredths of one percent or more, by weight, or for refusing to take secondary chemical test of blood alcohol contents, and providing penalties therefor; defining the offense of driving while a license is suspended for driving while under the age of twenty-one years with an alcoholic concentration in the blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight; defining the term "division" to mean the division of motor vehicles; defining offenses relating to driving under influence of alcohol, controlled substances or drugs, and providing penalties therefor; defining the offense of driving while under the age of twenty-one years with an alcoholic concentration in the blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, and providing penalties therefor; authorizing home detention as an alternative to mandatory sentences for offenses relating to driving under the influence of alcohol, controlled substances or drugs; redefining the term "law-enforcement officer" to include special police officers appointed by the governor; establishing procedures for taking a child into custody for driving a motor vehicle with any amount of blood alcohol; describing the interpretation

and use of a secondary chemical test for blood alcohol; providing for implied consent to administrative procedure for suspension and revocation of a license for driving under the influence of alcohol, controlled substances or drugs; authorizing the revocation of a license for driving under the influence of alcohol, controlled substances or drugs or refusing to submit to secondary chemical test; providing for the suspension of a license for driving while under the age of twenty-one years with an alcoholic concentration in the blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight; providing for the revocation of a license upon a conviction for driving under the influence of alcohol, controlled substances or drugs; providing for the suspension of a license upon a conviction for driving while under the age of twenty-one years with an alcoholic concentration in the blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight; providing for an administrative hearing and judicial review of an order of revocation or suspension; establishing a safety and treatment program as a precondition to the reissuance of a license; establishing a motor vehicle alcohol test and lock program; providing for suspension or revocation of license, registration and reinstatement for failure to have adequate security; correcting an incorrect code citation relating to disqualification of a commercial driver for a refusal to submit to a secondary test or submitting to a test which discloses an alcohol concentration of four hundredths or more; authorizing an inspector for the public service commission to detain a driver until a law-enforcement officer is summoned to investigate and determine whether the person should be arrested and a secondary test of blood, breath or urine should be administered; setting forth restrictions for the handling of watercraft; duty to render aid after a collision, accident or casualty; accident reports; providing that an automobile liability insurance policy may not be canceled because a person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his blood of two hundredths of one percent or more, by weight, but

less than ten hundredths of one percent, by weight; describing conditions under which a law-enforcement official may take a child into custody; and defining offenses relating to intoxication or drinking in public places and the illegal possession of alcoholic liquor and providing penalties therefor.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 17B. Motor Vehicle Driver's Licenses.**
- 17C. Traffic Regulations and Laws of the Road.**
- 17D. Motor Vehicle Safety Responsibility Act.**
- 17E. Uniform Commercial Driver's License Act.**
- 20. Natural Resources.**

- 24A. Motor Carriers of Passengers and Property for Hire.
- 33. Insurance.
- 49. Child Welfare.
- 60. State Control of Alcoholic Liquors.

**CHAPTER 17B.
MOTOR VEHICLE DRIVER'S LICENSES.**

Article

- 2. Issuance of License, Expiration and Renewal.
- 3. Cancellation, Suspension or Revocation of Licenses.
- 4. Violation of License Provisions.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

- §17B-2-3. What persons shall not be licensed; exceptions.
- §17B-2-3a. Junior driver's license.
- §17B-2-7. Examination of applicants.

§17B-2-3. What persons shall not be licensed; exceptions.

- 1 The division shall not issue any license hereunder:
- 2 (1) To any person, as an operator, who is under the
- 3 age of eighteen years: *Provided*, That the division may
- 4 issue a junior driver's license to a person under the age
- 5 of eighteen years in accordance with the provisions of
- 6 section three-a of this article;
- 7 (2) To any person, as a Class A, B, C or D driver, who
- 8 is under the age of eighteen years;
- 9 (3) To any person, whose license has been suspended,
- 10 during such suspension, nor to any person whose license
- 11 (other than a junior driver's license) has been revoked,
- 12 except as provided in section eight, article three of this
- 13 chapter;
- 14 (4) To any person who is an habitual drunkard or is
- 15 addicted to the use of narcotic drugs;
- 16 (5) To any person, as an operator or chauffeur, who
- 17 has previously been adjudged to be afflicted with or
- 18 suffering from any mental disability or disease and who
- 19 has not at the time of application been restored to
- 20 competency by judicial decree or released from a
- 21 hospital for the mentally incompetent upon the certif-

22 icate of the superintendent of the institution that the
23 person is competent, and not then unless the commis-
24 sioner is satisfied that the person is competent to operate
25 a motor vehicle with a sufficient degree of care for the
26 safety of persons or property;

27 (6) To any person who is required by this chapter to
28 take an examination, unless the person has successfully
29 passed the examination;

30 (7) To any person when the commissioner has good
31 cause to believe that the operation of a motor vehicle on
32 the highways by the person would be inimical to public
33 safety or welfare.

§17B-2-3a. Junior driver's license.

1 (a) In accordance with rules established by the
2 commissioner and with the provisions hereinafter set
3 forth in this section, a junior driver's license may be
4 issued to any person between the ages of sixteen and
5 eighteen years, if the person is in compliance with
6 section eleven, article eight, chapter eighteen of this
7 code and is not otherwise disqualified by law. Applica-
8 tion for a junior driver's license shall be on a form
9 prescribed by the commissioner. A junior driver's
10 license may be issued upon the applicant's successful
11 completion of all examinations and driving tests
12 required by law for the issuance of a driver's license to
13 a person eighteen years of age or older. The commis-
14 sioner may impose reasonable conditions or restrictions
15 on the operation of a motor vehicle by a person holding
16 a junior driver's license, and the conditions or restric-
17 tions shall be printed on the license.

18 (b) In addition to all other provisions of this chapter
19 for which a driver's license may be revoked, suspended
20 or canceled, whenever a person holding a junior driver's
21 license operates a motor vehicle in violation of the
22 conditions or restrictions set forth on the license, or has
23 a record of two convictions for moving violations of the
24 traffic regulations and laws of the road, which convic-
25 tions have become final, the junior driver's license of the
26 person shall be permanently revoked, with like effect as
27 if the person had never held a junior driver's license:

28 *Provided*, That a junior driver's license shall be revoked
29 upon one final conviction for any offense described in
30 section five, article three of this chapter. Under no
31 circumstances shall such a license be revoked for
32 convictions of offenses in violation of any regulation or
33 law governing the standing or parking of motor
34 vehicles.

35 (c) A junior driver's license shall be suspended for
36 noncompliance with the provisions of section eleven,
37 article eight, chapter eighteen of this code, and may be
38 reinstated upon compliance.

39 (d) A person whose junior driver's license has been
40 revoked, or has been suspended without reinstatement,
41 shall not thereafter receive a junior driver's license, but
42 the person, upon attaining the age of eighteen, shall be
43 eligible, unless otherwise disqualified by law, for
44 examination and driver testing for a regular driver's
45 license. If a person has had his or her junior driver's
46 license revoked for a violation pursuant to section one
47 or two, article five-a, chapter seventeen-c of this code or
48 any offense specified in subsection (6), section five,
49 article three of this chapter, or has been adjudicated
50 delinquent upon a charge which would be crime under
51 the provisions of section two, article five, chapter
52 seventeen-c of this code if committed by an adult, the
53 person shall be disqualified for examination and driver
54 testing for a regular driver's license until that person
55 (1) has attained the age of eighteen years, (2) has
56 successfully completed the safety and treatment pro-
57 gram provided for in section three, article five-a,
58 chapter seventeen-c of this code, and (3) has had his or
59 her junior driver's license revoked or suspended for the
60 applicable statutory period of revocation or suspension
61 or a period of time equal to the period of revocation or
62 suspension which would have been imposed pursuant to
63 section two, article five-a, chapter seventeen-c if the
64 person had had a regular driver's license at the time of
65 the violation.

66 (e) No person shall receive a junior driver's license
67 unless the application therefor is accompanied by a
68 writing, duly acknowledged, consenting to the issuance

69 of the junior driver's license and executed by the parents
70 of the applicant; or if only one parent is living, then by
71 such parent; or if the parents be living separate and
72 apart, by the one to whom the custody of the applicant
73 was awarded; or if there is a guardian entitled to the
74 custody of the applicant, then by the guardian.

75 (f) Upon attaining the age of eighteen years, a person
76 holding an unrevoked, unsuspended or reinstated junior
77 driver's license shall, upon payment of the prescribed
78 fee, be entitled to receive a regular driver's license
79 without further examination or driver testing.

§17B-2-7. Examination of applicants.

1 (a) Upon the presentment by the applicant under the
2 age of eighteen years of the applicant's birth certificate,
3 or a certified copy thereof, as evidence that the applicant
4 is of lawful age, the division of public safety shall
5 examine every applicant for a license to operate a motor
6 vehicle in this state, except as otherwise provided in this
7 section. The examination shall include a test of the
8 applicant's eyesight, the applicant's ability to read and
9 understand highway signs regulating, warning, and
10 directing traffic, the applicant's knowledge of the traffic
11 laws of this state, and the applicant's knowledge of the
12 effects of alcohol upon persons and the dangers of
13 driving a motor vehicle under the influence of alcohol,
14 and shall include an actual demonstration of ability to
15 exercise ordinary and reasonable control in the opera-
16 tion of a motor vehicle, and such further physical and
17 mental examination as the division of motor vehicles and
18 the division of public safety deems necessary to deter-
19 mine the applicant's fitness to operate a motor vehicle
20 safely upon the highways.

21 (b) The commissioner and superintendent of public
22 safety shall promulgate legislative rules in accordance
23 with the provisions of chapter twenty-nine-a of this code
24 concerning the examination of applicants for licenses
25 and the qualifications required of applicants, and the
26 examination of applicants by the division of public
27 safety shall be in accordance with such rules. The rules
28 shall provide for the viewing of educational material or

29 films on the medical, biological, and psychological
 30 effects of alcohol upon persons, the dangers of driving
 31 a motor vehicle while under the influence of alcohol and
 32 the criminal penalties and administrative sanctions for
 33 alcohol and drug related motor vehicle violations.

34 (c) After successful completion of the examination
 35 required by this section or section seven-b of this article,
 36 and prior to the issuance of a license pursuant to the
 37 provisions of section eight of this article, every applicant
 38 for a driver's license, junior driver's license or motor-
 39 cycle-only license shall attend a mandatory education
 40 class on the dangers and social consequences of driving
 41 a motor vehicle while under the influence of alcohol. To
 42 the extent practicable, the commissioner shall utilize as
 43 lecturers at such classes persons who can relate first-
 44 hand experiences as victims or family members of
 45 victims of alcohol-related accidents or drivers who have
 46 been involved in alcohol-related accidents which caused
 47 serious bodily injury or death.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

§17B-3-1. Authority of division to cancel license.

§17B-3-4. Abstract of judgment of conviction for violation of motor vehicle laws to be sent to division.

§17B-3-9. Surrender and return of license not required.

§17B-3-12. Mandatory suspension for fraudulent use of driver's license.

§17B-3-1. Authority of division to cancel license.

1 The division is hereby authorized to cancel any
 2 operator's or chauffeur's license in any of the following
 3 events:

4 (1) When the division determines that the licensee was
 5 not entitled to the issuance thereof hereunder; or

6 (2) When said licensee failed to give the required or
 7 correct information in his application; or

8 (3) When said licensee committed any fraud in
 9 making such application; or

10 (4) When the division determines that the required fee
 11 has not been paid and the same is not paid upon
 12 reasonable notice or demand.

§17B-3-4. Abstract of judgment of conviction for violation of motor vehicle laws to be sent to division.

1 Whenever a conviction is had in any court of record,
2 or in a justice's court, or in the police court or mayor's
3 court of any incorporated municipality, for the violation
4 of any law of this state governing or regulating the
5 licensing or operation of any motor vehicle, or for the
6 violation of any provision of a charter, or bylaw, or
7 ordinance of such incorporated municipality governing
8 or regulating the operation of motor vehicles, except
9 regulations governing standing or parking, the clerk of
10 every such court, or the justice, or the clerk or recorder
11 of such municipality, as the case may be, shall in each
12 case transmit to the division within seventy-two hours
13 after such conviction is had a certified abstract of the
14 judgment on such conviction.

15 For the purposes of this chapter, a forfeiture of bail
16 or collateral deposited to secure a defendant's appear-
17 ance in court, which forfeiture has not been vacated,
18 shall be equivalent to a conviction.

19 Willful failure, refusal or neglect to comply with the
20 provisions of this section shall subject the person who
21 is guilty thereof to a fine of not less than ten dollars nor
22 more than fifty dollars and may be the grounds for
23 removal from office.

§17B-3-9. Surrender and return of license not required.

1 The division, upon suspending or revoking a license,
2 shall not require that such license be surrendered to and
3 be retained by the division. The surrender of a license
4 shall not be a precondition to the commencement and
5 tolling of any applicable period of suspension or
6 revocation: *Provided*, That before such license may be
7 reinstated, the licensee shall pay a fee of fifteen dollars,
8 in addition to all other fees and charges, which fee shall
9 be collected by the department and deposited in a
10 special revolving fund to be appropriated to the
11 department for use in the enforcement of the provisions
12 of this section.

§17B-3-12. Mandatory suspension for fraudulent use of driver's license.

1 (a) The commissioner shall suspend for a period of
2 ninety days the driver's license of any person upon
3 receipt of a sworn affidavit from any law-enforcement
4 officer, employee of the alcohol beverage control
5 commission or employee of the division of motor vehicles
6 stating that the person committed any one of the
7 following acts:

8 (1) Displayed or caused or permitted to be displayed
9 to any law-enforcement officer or employee of the
10 division of motor vehicles or have in his or her possession
11 any fictitious or fraudulently altered driver's license;

12 (2) Loaned or gave his or her driver's license to any
13 other person or knowingly permitted the use thereof by
14 another for an unlawful or fraudulent purpose;

15 (3) Displayed or represented as one's own any driver's
16 license not issued to him or her; or

17 (4) Used a false or fictitious name or birth date on any
18 application for a driver's license or knowingly made a
19 false statement, knowingly concealed a material fact or
20 otherwise committed a fraud in making application for
21 a driver's license.

22 (b) For the purposes of this section, "driver's license"
23 means any permit, camera card, identification card or
24 driver's license issued by this state or any other state
25 to a person which authorizes the person to drive a motor
26 vehicle of a specific class or classes subject to any
27 restriction or endorsement contained thereon.

28 (c) No person shall have his or her driver's license
29 suspended under any provision of this section unless he
30 or she shall first be given written notice of such
31 suspension sent by certified mail, return receipt
32 requested, at least twenty days prior to the effective date
33 of the suspension. Within ten days of the receipt of the
34 notice of suspension, the person may submit a written
35 request by certified mail for a hearing and request a
36 stay of the suspension pending the results of the hearing.
37 Upon receipt of the request for a hearing and request

38 for a stay of the suspension, the commissioner shall
39 grant a stay of the suspension pending the results of the
40 hearing. If the commissioner shall after hearing make
41 and enter an order affirming the earlier order of
42 suspension, the person affected shall be entitled to
43 judicial review as set forth in chapter twenty-nine-a of
44 this code and, pending the appeal, the court may grant
45 a stay or supersedeas of such order. If the person does
46 not appeal the suspension or if the suspension is
47 affirmed by the court, the order of suspension shall be
48 effective and the period of suspension shall commence
49 to run.

50 (d) The suspended driver's license shall be reinstated
51 following the period of suspension and upon compliance
52 with the conditions set forth in this chapter.

ARTICLE 4. VIOLATION OF LICENSE PROVISIONS.

§17B-4-1. Unlawful use of license or nonoperator's identification; license and nonoperator's identification violations generally.

§17B-4-3. Driving while license suspended or revoked; driving while license revoked for driving under the influence of alcohol, controlled substances or drugs, or while having alcoholic concentration in the blood of ten hundredths of one percent or more, by weight, or for refusing to take secondary chemical test of blood alcohol contents.

§17B-4-1. Unlawful use of license or nonoperator's identification; license and nonoperator's identification violations generally.

1 It is a misdemeanor for any person to commit any one
2 of the following acts:

3 (1) To display or cause or permit to be displayed or
4 have in his possession any fictitious or fraudulently
5 altered operator's or chauffeur's license or nonoperator's
6 identification;

7 (2) To lend his operator's or chauffeur's license or
8 nonoperator's identification to any other person or
9 knowingly permit the use thereof by another;

10 (3) To display or represent as one's own any operator's
11 or chauffeur's license or nonoperator's identification not
12 issued to him;

13 (4) To use a false or fictitious name in any application

14 for an operator's or chauffeur's license or nonoperator's
15 identification or to knowingly make a false statement or
16 to knowingly conceal a material fact or otherwise
17 commit a fraud in any such application;

18 (5) To permit any unlawful use of an operator's or
19 chauffeur's license or nonoperator's identification issued
20 to him; or

21 (6) To do any act forbidden or fail to perform any act
22 required by this chapter.

**§17B-4-3. Driving while license suspended or revoked;
driving while license revoked for driving
under the influence of alcohol, controlled
substances or drugs, or while having alco-
holic concentration in the blood of ten
hundredths of one percent or more, by
weight, or for refusing to take secondary
chemical test of blood alcohol contents.**

1 (a) Except as otherwise provided in subsection (b) or
2 (d) of this section, any person who drives a motor vehicle
3 on any public highway of this state at a time when his
4 or her privilege to do so has been lawfully suspended
5 or revoked by this state or any other jurisdiction shall,
6 for the first offense, be guilty of a misdemeanor, and,
7 upon conviction thereof, shall be confined in jail for
8 forty-eight hours and, in addition to such mandatory jail
9 sentence, shall be fined not less than fifty dollars nor
10 more than five hundred dollars; for the second offense,
11 such person is guilty of a misdemeanor, and, upon
12 conviction thereof, shall be confined in jail for a period
13 of ten days and, in addition to such mandatory jail
14 sentence, shall be fined not less than one hundred dollars
15 nor more than five hundred dollars; for the third or any
16 subsequent offense, such person is guilty of a misdemea-
17 nor, and, upon conviction thereof, shall be confined in
18 jail for six months and, in addition to such mandatory
19 jail sentence, shall be fined not less than one hundred
20 fifty dollars nor more than five hundred dollars.

21 (b) Any person who drives a motor vehicle on any
22 public highway of this state at a time when his or her
23 privilege to do so has been lawfully revoked for driving
24 under the influence of alcohol, controlled substances or

25 other drugs, or for driving while having an alcoholic
26 concentration in his or her blood of ten hundredths of
27 one percent or more, by weight, or for refusing to take
28 a secondary chemical test of blood alcohol content, shall,
29 for the first offense, be guilty of a misdemeanor, and,
30 upon conviction thereof, shall be confined in jail for six
31 months and in addition to such mandatory jail sentence,
32 shall be fined not less than one hundred dollars nor more
33 than five hundred dollars; for the second offense, such
34 person is guilty of a misdemeanor, and, upon conviction
35 thereof, shall be confined in jail for a period of one year
36 and, in addition to such mandatory jail sentence, shall
37 be fined not less than one thousand dollars nor more
38 than three thousand dollars; for the third or any
39 subsequent offense, such person is guilty of a felony,
40 and, upon conviction thereof, shall be imprisoned in the
41 penitentiary for not less than one year nor more than
42 three years and, in addition to such mandatory prison
43 sentence, shall be fined not less than three thousand
44 dollars nor more than five thousand dollars.

45 (c) Upon receiving a record of the conviction of any
46 person under subsection (a) or (b) of this section upon
47 a charge of driving a vehicle while the license of such
48 person was lawfully revoked, the division shall extend
49 the period of such suspension for an additional period
50 of one year from and after the date such person would
51 otherwise have been entitled to apply for a new license.

52 (d) Any person who drives a motor vehicle on any
53 public highway of this state at a time when his or her
54 privilege to do so has been lawfully suspended for
55 driving while under the age of twenty-one years with an
56 alcohol concentration in his or her blood of two hun-
57 dredths of one percent or more, by weight, but less than
58 ten hundredths of one percent, by weight, is guilty of
59 a misdemeanor, and, upon conviction thereof, shall be
60 confined in jail for twenty-four hours or shall be fined
61 not less than fifty dollars nor more than five hundred
62 dollars, or both.

63 (e) An order for home detention by the court pursuant
64 to the provisions of article eleven-b, chapter sixty-two of
65 this code may be used as an alternative sentence to any

66 period of incarceration required by this section.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

Article

1. **Words and Phrases Defined.**
5. **Serious Traffic Offenses.**
- 5A. **Administrative Procedures for Suspension and Revocation of Licenses for Driving Under the Influence of Alcohol, Controlled Substances or Drugs.**

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17C-1-28. Division.

- 1 "Division" means the division of motor vehicles of this
- 2 state acting directly or through its duly authorized
- 3 officers and agents. Wherever in this chapter reference
- 4 is made to "the department of motor vehicles" or "the
- 5 department", unless a different meaning is clearly
- 6 required, the reference shall be deemed to be a
- 7 reference to the division of motor vehicles.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

§17C-5-4. Implied consent to test; administration at direction of law-enforcement officers; designation of type of test; definition of law-enforcement officer.

§17C-5-6a. Taking a child into custody; driving a motor vehicle with any amount of blood alcohol.

§17C-5-8. Interpretation and use of chemical test.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

- 1 (a) Any person who:
- 2 (1) Drives a vehicle in this state while:
- 3 (A) He is under the influence of alcohol, or
- 4 (B) He is under the influence of any controlled
- 5 substance, or
- 6 (C) He is under the influence of any other drug, or
- 7 (D) He is under the combined influence of alcohol and
- 8 any controlled substance or any other drug, or

9 (E) He has an alcohol concentration in his or her blood
10 of ten hundredths of one percent or more, by weight; and

11 (2) When so driving does any act forbidden by law or
12 fails to perform any duty imposed by law in the driving
13 of such vehicle, which act or failure proximately causes
14 the death of any person within one year next following
15 such act or failure; and

16 (3) Commits such act or failure in reckless disregard
17 of the safety of others, and when the influence of alcohol,
18 controlled substances or drugs is shown to be a contri-
19 buting cause to such death, shall be guilty of a felony,
20 and, upon conviction thereof, shall be imprisoned in the
21 penitentiary for not less than one nor more than ten
22 years and shall be fined not less than one thousand
23 dollars nor more than three thousand dollars.

24 (b) Any person who:

25 (1) Drives a vehicle in this state while:

26 (A) He is under the influence of alcohol, or

27 (B) He is under the influence of any controlled
28 substance, or

29 (C) He is under the influence of any other drug, or

30 (D) He is under the combined influence of alcohol and
31 any controlled substance or any other drug, or

32 (E) He has an alcohol concentration in his or her blood
33 of ten hundredths of one percent or more, by weight; and

34 (2) When so driving does any act forbidden by law or
35 fails to perform any duty imposed by law in the driving
36 of such vehicle, which act or failure proximately causes
37 the death of any person within one year next following
38 such act or failure, is guilty of a misdemeanor, and,
39 upon conviction thereof, shall be confined in jail for not
40 less than ninety days nor more than one year and shall
41 be fined not less than five hundred dollars nor more
42 than one thousand dollars.

43 (c) Any person who:

44 (1) Drives a vehicle in this state while:

- 45 (A) He is under the influence of alcohol, or
46 (B) He is under the influence of any controlled
47 substance, or
48 (C) He is under the influence of any other drug, or
49 (D) He is under the combined influence of alcohol and
50 any controlled substance or any other drug, or
51 (E) He has an alcohol concentration in his or her blood
52 of ten hundredths of one percent or more, by weight; and
53 (2) When so driving does any act forbidden by law or
54 fails to perform any duty imposed by law in the driving
55 of such vehicle, which act or failure proximately causes
56 bodily injury to any person other than himself, is guilty
57 of a misdemeanor, and, upon conviction thereof, shall be
58 confined in jail for not less than one day nor more than
59 one year, which jail term shall include actual confine-
60 ment of not less than twenty-four hours, and shall be
61 fined not less than two hundred dollars nor more than
62 one thousand dollars.
- 63 (d) Any person who:
64 (1) Drives a vehicle in this state while:
65 (A) He is under the influence of alcohol, or
66 (B) He is under the influence of any controlled
67 substance, or
68 (C) He is under the influence of any other drug, or
69 (D) He is under the combined influence of alcohol and
70 any controlled substance or any other drug, or
71 (E) He has an alcohol concentration in his or her blood
72 of ten hundredths of one percent or more, by weight;
73 (2) Is guilty of a misdemeanor, and, upon conviction
74 thereof, shall be confined in jail for not less than one day
75 nor more than six months, which jail term shall include
76 actual confinement of not less than twenty-four hours,
77 and shall be fined not less than one hundred dollars nor
78 more than five hundred dollars.
- 79 (e) Any person who, being an habitual user of narcotic

80 drugs or amphetamine or any derivative thereof, drives
81 a vehicle in this state, is guilty of a misdemeanor, and,
82 upon conviction thereof, shall be confined in jail for not
83 less than one day nor more than six months, which jail
84 term shall include actual confinement of not less than
85 twenty-four hours, and shall be fined not less than one
86 hundred dollars nor more than five hundred dollars.

87 (f) Any person who:

88 (1) Knowingly permits his or her vehicle to be driven
89 in this state by any other person who is:

90 (A) Under the influence of alcohol, or

91 (B) Under the influence of any controlled substance,
92 or

93 (C) Under the influence of any other drug, or

94 (D) Under the combined influence of alcohol and any
95 controlled substance or any other drug, or

96 (E) Has an alcohol concentration in his or her blood
97 of ten hundredths of one percent or more, by weight;

98 (2) Is guilty of a misdemeanor, and, upon conviction
99 thereof, shall be confined in jail for not more than six
100 months and shall be fined not less than one hundred
101 dollars nor more than five hundred dollars.

102 (g) Any person who:

103 Knowingly permits his or her vehicle to be driven in
104 this state by any other person who is an habitual user
105 of narcotic drugs or amphetamine or any derivative
106 thereof, is guilty of a misdemeanor, and, upon conviction
107 thereof, shall be confined in jail for not more than six
108 months and shall be fined not less than one hundred
109 dollars nor more than five hundred dollars.

110 (h) Any person under the age of twenty-one years who
111 drives a vehicle in this state while he or she has an
112 alcohol concentration in his or her blood of two hun-
113 dredths of one percent or more, by weight, but less than
114 ten hundredths of one percent, by weight, shall, for a
115 first offense under this subsection, be guilty of a
116 misdemeanor, and, upon conviction thereof, shall be

117 fined not less than twenty-five dollars nor more than one
118 hundred dollars. For a second or subsequent offense
119 under this subsection, such person is guilty of a
120 misdemeanor, and, upon conviction thereof, shall be
121 confined in jail for twenty-four hours, and shall be fined
122 not less than one hundred dollars nor more than five
123 hundred dollars. A person who is charged with a first
124 offense under the provisions of this section may move for
125 a continuance of the proceedings from time to time to
126 allow the person to participate in the vehicle alcohol test
127 and lock program as provided for in section three-a,
128 article five-a of this chapter. Upon successful completion
129 of the program, the court shall dismiss the charge
130 against the person and expunge the person's record as
131 it relates to the alleged offense. In the event the person
132 fails to successfully complete the program, the court
133 shall proceed to an adjudication of the alleged offense.
134 A motion for a continuance under this section shall not
135 be construed as an admission or be used as evidence.

136 A person arrested and charged with an offense under
137 the provisions of subsection (a), (b), (c), (d), (e), (f) or (g)
138 of this section may not also be charged with an offense
139 under this subsection arising out of the same transaction
140 or occurrence.

141 (i) A person violating any provision of subsection (b),
142 (c), (d), (e), (f) or (g) of this section shall, for the second
143 offense under this section, be guilty of a misdemeanor,
144 and, upon conviction thereof, shall be confined in jail for
145 a period of not less than six months nor more than one
146 year, and the court may, in its discretion, impose a fine
147 of not less than one thousand dollars nor more than three
148 thousand dollars.

149 (j) A person violating any provision of subsection (b),
150 (c), (d), (e), (f) or (g) of this section shall, for the third
151 or any subsequent offense under this section, be guilty
152 of a felony, and, upon conviction thereof, shall be
153 imprisoned in the penitentiary for not less than one nor
154 more than three years, and the court may, in its
155 discretion, impose a fine of not less than three thousand
156 dollars nor more than five thousand dollars.

157 (k) For purposes of subsections (i) and (j) of this
158 section relating to second, third and subsequent offenses,
159 the following types of convictions shall be regarded as
160 convictions under this section:

161 (1) Any conviction under the provisions of subsection
162 (a), (b), (c), (d), (e) or (f) of the prior enactment of this
163 section for an offense which occurred on or after the
164 first day of September, one thousand nine hundred
165 eighty-one, and prior to the effective date of this section;

166 (2) Any conviction under the provisions of subsection
167 (a) or (b) of the prior enactment of this section for an
168 offense which occurred within a period of five years
169 immediately preceding the first day of September, one
170 thousand nine hundred eighty-one; and

171 (3) Any conviction under a municipal ordinance of this
172 state or any other state or a statute of the United States
173 or of any other state of an offense which has the same
174 elements as an offense described in subsection (a), (b),
175 (c), (d), (e), (f) or (g) of this section, which offense
176 occurred after June tenth, one thousand nine hundred
177 eighty-three.

178 (l) A person may be charged in a warrant or indict-
179 ment or information for a second or subsequent offense
180 under this section if the person has been previously
181 arrested for or charged with a violation of this section
182 which is alleged to have occurred within the applicable
183 time periods for prior offenses, notwithstanding the fact
184 that there has not been a final adjudication of the
185 charges for the alleged previous offense. In such case,
186 the warrant or indictment or information must set forth
187 the date, location and particulars of the previous offense
188 or offenses. No person may be convicted of a second or
189 subsequent offense under this section unless the convic-
190 tion for the previous offense has become final.

191 (m) The fact that any person charged with a violation
192 of subsection (a), (b), (c), (d) or (e) of this section, or any
193 person permitted to drive as described under subsection
194 (f) or (g) of this section, is or has been legally entitled
195 to use alcohol, a controlled substance or a drug shall not
196 constitute a defense against any charge of violating

197 subsection (a), (b), (c), (d), (e), (f) or (g) of this section.

198 (n) For purposes of this section, the term "controlled
199 substance" shall have the meaning ascribed to it in
200 chapter sixty-a of this code.

201 (o) The sentences provided herein upon conviction for
202 a violation of this article are mandatory and shall not
203 be subject to suspension or probation: *Provided*, That the
204 court may apply the provisions of article eleven-a,
205 chapter sixty-two of this code to a person sentenced or
206 committed to a term of one year or less. An order for
207 home detention by the court pursuant to the provisions
208 of article eleven-b, chapter sixty-two of this code may
209 be used as an alternative sentence to any period of
210 incarceration required by this section.

**§17C-5-4. Implied consent to test; administration at
direction of law-enforcement officer; design-
nation of type of test; definition of law-
enforcement officer.**

1 Any person who drives a motor vehicle in this state
2 shall be deemed to have given his consent by the
3 operation thereof, subject to the provisions of this
4 article, to a preliminary breath analysis and a secondary
5 chemical test of either his blood, breath or urine for the
6 purposes of determining the alcoholic content of his
7 blood. A preliminary breath analysis may be adminis-
8 tered in accordance with the provisions of section five
9 of this article whenever a law-enforcement officer has
10 reasonable cause to believe a person to have committed
11 an offense prohibited by section two of this article or by
12 an ordinance of a municipality of this state which has
13 the same elements as an offense described in said section
14 two of this article. A secondary test of blood, breath or
15 urine shall be incidental to a lawful arrest and shall be
16 administered at the direction of the arresting law-
17 enforcement officer having reasonable grounds to
18 believe the person to have committed an offense
19 prohibited by section two of this article or by an
20 ordinance of a municipality of this state which has the
21 same elements as an offense described in said section
22 two of this article. The law-enforcement agency by

23 which such law-enforcement officer is employed shall
24 designate which one of the aforesaid secondary tests
25 shall be administered: *Provided*, That if the test so
26 designated is a blood test and the person so arrested
27 refuses to submit to such blood test, then the law-
28 enforcement officer making such arrest shall designate
29 in lieu thereof, either a breath or urine test to be
30 administered, and notwithstanding the provisions of
31 section seven of this article, such refusal to submit to
32 a blood test only shall not result in the revocation of the
33 arrested person's license to operate a motor vehicle in
34 this state. Any person to whom a preliminary breath test
35 is administered who is then arrested shall be given a
36 written statement advising him that his refusal to
37 submit to the secondary chemical test finally designated
38 as provided in this section, will result in the revocation
39 of his license to operate a motor vehicle in this state for
40 a period of at least one year and up to life.

41 For the purpose of this article, the term "law-
42 enforcement officer" or "police officer" shall mean and
43 be limited to (1) any member of the department of
44 public safety of this state, (2) any sheriff and any deputy
45 sheriff of any county, (3) any member of a police
46 department in any municipality as defined in section
47 two, article one, chapter eight of this code, (4) any
48 conservation officer of the division of natural resources,
49 and (5) any special police officer appointed by the
50 governor pursuant to the provisions of section forty-one,
51 article three, chapter sixty-one of this code who has
52 completed the course of instruction at a law-enforcement
53 training academy as provided for under the provisions
54 of section nine, article twenty-nine, chapter thirty of this
55 code. If any municipality or the division of natural
56 resources does not have available to its law-enforcement
57 officers the testing equipment or facilities necessary to
58 conduct any secondary test which a law-enforcement
59 officer may administer under this article, or if the
60 person to be tested is arrested by a special police officer,
61 then any member of the department of public safety, the
62 sheriff of the county wherein the arrest is made or any
63 deputy of such sheriff or any municipal law-enforcement
64 officer of another municipality within the county

65 wherein the arrest is made may, upon the request of
66 such arresting law-enforcement officer and in his
67 presence, conduct such secondary test and the results of
68 such test may be used in evidence to the same extent
69 and in the same manner as if such test had been
70 conducted by such arresting law-enforcement officer.
71 Only the person actually administering or conducting
72 such test shall be competent to testify as to the results
73 and the veracity of such test.

§17C-5-6a. Taking a child into custody; driving a motor vehicle with any amount of blood alcohol.

1 (a) A preliminary breath analysis may be adminis-
2 tered to a child whenever a law-enforcement official has
3 reasonable cause to believe the child to have been
4 driving a motor vehicle with any amount of alcohol in
5 his or her blood, for the purpose of determining the
6 child's blood alcohol content. Such breath analysis must
7 be administered as soon as possible after the law-
8 enforcement officer arrives at a reasonable belief that
9 the child has been driving a motor vehicle with any
10 amount of alcohol in his or her blood. Any preliminary
11 breath analysis administered pursuant to this subsection
12 must be administered with a device and in a manner
13 approved by the division of health for that purpose. If
14 a preliminary breath analysis is administered, the
15 results shall be used solely for the purpose of guiding
16 the officer in deciding whether the child, at the time of
17 driving the motor vehicle, had an alcohol concentration
18 in his or her blood of two hundredths of one percent or
19 more, by weight, and should therefore be taken into
20 custody to administer a secondary test in accordance
21 with the provisions of this section.

22 (b) A child may be taken into custody by a law-
23 enforcement official without a warrant or court order
24 if the official has reasonable grounds to believe the child
25 to have been driving a motor vehicle with any amount
26 of alcohol in his or her blood. If a preliminary breath
27 analysis is administered and the results of the analysis
28 indicate that the child has an alcohol concentration in
29 his or her blood of less than two hundredths of one
30 percent, by weight, the child may not be taken into

31 custody unless other grounds exist under subsection (b),
32 section eight, article five, chapter forty-nine of this code.
33 Upon taking a child into custody pursuant to the
34 provisions of this section, the official shall take all
35 reasonable steps to cause notification to be made to the
36 child's parent or custodian or, if the parent or custodian
37 cannot be located, to a close relative.

38 (c) Upon taking a child into custody pursuant to this
39 section, the official shall take the child to a facility
40 where a secondary test of the child's blood or urine may
41 be administered at the direction of the official or a test
42 of the child's breath may be administered by the official.
43 The law-enforcement agency by which such law-
44 enforcement official is employed shall designate
45 whether the secondary test is a test of either blood,
46 breath or urine: *Provided*, That if the test so designated
47 is a blood test and the child refuses to submit to the
48 blood test, then the law-enforcement official taking the
49 child into custody shall designate in lieu thereof a breath
50 test to be administered. Notwithstanding the provisions
51 of section seven of this article, a refusal to submit to a
52 blood test only shall not result in the revocation of the
53 child's license to operate a motor vehicle in this state.
54 Any child taken into custody pursuant to this section
55 shall be given a written statement advising him or her
56 that a refusal to submit to a secondary test of either
57 blood, breath or urine, as finally designated by the law-
58 enforcement agency or official in accordance with this
59 subsection, will result in the suspension of his or her
60 license to operate a motor vehicle in this state for a
61 period of at least thirty days or a revocation of the
62 license for a period up to life.

63 (d) If the law-enforcement official taking the child
64 into custody is employed by a law-enforcement agency
65 which does not have available the testing equipment or
66 facilities necessary to conduct any secondary breath test
67 which may be administered pursuant to the provisions
68 of this section, then the official who took the child into
69 custody may request another qualified person to
70 administer a secondary breath test: *Provided*, That the
71 breath test shall be administered in the presence of the

72 official who took the child into custody. The results of
73 such breath test may be used in evidence to the same
74 extent and in the same manner as if such test had been
75 conducted by the law-enforcement official who took the
76 child into custody. The qualified person administering
77 the breath test must be a member of the division of
78 public safety, the sheriff of the county wherein the child
79 was taken into custody or any deputy of such sheriff, or
80 a law-enforcement official of another municipality
81 within the county wherein the child was taken into
82 custody. Only the person actually administering the
83 secondary breath test is competent to testify as to the
84 results and the veracity of the test. If the secondary test
85 is a blood test, the test shall be conducted in accordance
86 with the provisions of section six of this article.

87 (e) After taking the child into custody, if the law-
88 enforcement official has reasonable cause to believe that
89 the act of the child in driving the motor vehicle is such
90 that it would provide grounds for arrest for an offense
91 defined under the provisions of section two of this article
92 if the child were an adult, then the official shall proceed
93 to treat the child in the same manner as any other child
94 taken into custody without a warrant or court order, in
95 accordance with the provisions of section eight of this
96 article.

97 (f) If the results of any secondary test administered
98 pursuant to this section indicate that the child, at the
99 time of driving the motor vehicle, had an alcohol
100 concentration in his or her blood of ten hundredths of
101 one percent or less, by weight, and if the law-enforce-
102 ment official does not have reasonable cause to believe
103 that the act of the child in driving the motor vehicle is
104 such that it would provide grounds for arrest for an
105 offense defined under the provisions of section two of
106 this article if the child were an adult, then the official
107 shall release the child: *Provided*, That if the results of
108 any secondary test administered pursuant to this section
109 indicate that the child, at the time of driving the motor
110 vehicle, had an alcohol concentration in his or her blood
111 of two hundredths of one percent or more, by weight,
112 the child shall only be released to a parent or custodian,

113 or to some other responsible adult.

§17C-5-8. Interpretation and use of chemical test.

1 Upon trial for the offense of driving a motor vehicle
2 in this state while under the influence of alcohol,
3 controlled substances or drugs, or upon the trial of any
4 civil or criminal action arising out of acts alleged to
5 have been committed by any person driving a motor
6 vehicle while under the influence of alcohol, controlled
7 substances or drugs, evidence of the amount of alcohol
8 in the person's blood at the time of the arrest or of the
9 acts alleged, as shown by a chemical analysis of his or
10 her blood, breath or urine, is admissible, if the sample
11 or specimen was taken within two hours from and after
12 the time of arrest or of the acts alleged, and shall give
13 rise to the following presumptions or have the following
14 effect:

15 (a) Evidence that there was, at that time, five
16 hundredths of one percent or less, by weight, of alcohol
17 in his or her blood, shall be prima facie evidence that
18 the person was not under the influence of alcohol;

19 (b) Evidence that there was, at that time, more than
20 five hundredths of one percent and less than ten
21 hundredths of one percent, by weight, of alcohol in the
22 person's blood shall be relevant evidence, but it is not
23 to be given prima facie effect in indicating whether the
24 person was under the influence of alcohol;

25 (c) Evidence that there was, at that time, ten
26 hundredths of one percent or more, by weight, of alcohol
27 in his or her blood, shall be admitted as prima facie
28 evidence that the person was under the influence of
29 alcohol.

30 A determination of the percent, by weight, of alcohol
31 in the blood shall be based upon a formula of (1) the
32 number of grams of alcohol per one hundred cubic
33 centimeters of blood, (2) the number of grams of alcohol
34 per two hundred ten liters of breath, or (3) the number
35 of grams of alcohol per sixty-seven milliliters of urine.

36 A chemical analysis of a person's blood, breath or
37 urine, in order to give rise to the presumptions or to

38 have the effect provided for in subdivisions (a), (b) and
39 (c) of this section, must be performed in accordance with
40 methods and standards approved by the state division
41 of health. A chemical analysis of blood or urine to
42 determine the alcoholic content of blood shall be
43 conducted by a qualified laboratory or by the state
44 police scientific laboratory of the criminal identification
45 bureau of the division of public safety.

46 The provisions of this article shall not limit the
47 introduction in any administrative or judicial proceed-
48 ing of any other competent evidence bearing on the
49 question of whether the person was under the influence
50 of alcohol, controlled substances or drugs.

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPEN-
SION AND REVOCATION OF LICENSES FOR
DRIVING UNDER THE INFLUENCE OF ALCO-
HOL, CONTROLLED SUBSTANCES OR DRUGS.**

§17C-5A-1. Implied consent to administrative procedure; revocation for driving under the influence of alcohol, controlled substances or refusal to submit to secondary chemical test.

§17C-5A-1a. Revocation upon conviction for driving under the influence of alcohol, controlled substances or drugs.

§17C-5A-2. Hearing; revocation; review.

§17C-5A-3. Safety and treatment program; reissuance of license.

§17C-5A-3a. Establishment of and participation in the motor vehicle alcohol test and lock program.

**§17C-5A-1. Implied consent to administrative procedure;
revocation for driving under the influence
of alcohol, controlled substances or refusal
to submit to secondary chemical test.**

1 (a) Any person who is licensed to operate a motor
2 vehicle in this state and who drives a motor vehicle in
3 this state shall be deemed to have given his or her
4 consent by the operation thereof, subject to the provi-
5 sions of this article, to the procedure set forth in this
6 article for the determination of whether his or her
7 license to operate a motor vehicle in this state should be
8 revoked because he or she did drive a motor vehicle
9 while under the influence of alcohol, controlled substan-
10 ces or drugs, or combined influence of alcohol or
11 controlled substances or drugs, or did drive a motor
12 vehicle while having an alcoholic concentration in his or

13 her blood of ten hundredths of one percent or more, by
14 weight, or did refuse to submit to any designated
15 secondary chemical test, or did drive a motor vehicle
16 while under the age of twenty-one years with an alcohol
17 concentration in his or her blood of two hundredths of
18 one percent or more, by weight, but less than ten
19 hundredths of one percent, by weight.

20 (b) Any law-enforcement officer arresting a person for
21 an offense described in section two, article five of this
22 chapter or for an offense described in a municipal
23 ordinance which has the same elements as an offense
24 described in said section two of article five shall report
25 to the commissioner of the division of motor vehicles by
26 written statement within forty-eight hours the name and
27 address of the person so arrested. The report shall
28 include the specific offense with which the person is
29 charged, and, if applicable, a copy of the results of any
30 secondary tests of blood, breath or urine. The signing
31 of the statement required to be signed by this subsection
32 shall constitute an oath or affirmation by the person
33 signing the statement that the statements contained
34 therein are true and that any copy filed is a true copy.
35 The statement shall contain upon its face a warning to
36 the officer signing that to willfully sign a statement
37 containing false information concerning any matter or
38 thing, material or not material, is false swearing and is
39 a misdemeanor.

40 (c) If, upon examination of the written statement of
41 the officer and the tests results described in subsection
42 (b) of this section, the commissioner shall determine that
43 a person was arrested for an offense described in section
44 two, article five of this chapter or for an offense
45 described in a municipal ordinance which has the same
46 elements as an offense described in said section two of
47 article five, and that the results of any secondary test
48 or tests indicate that at the time the test or tests were
49 administered the person had, in his or her blood, an
50 alcohol concentration of ten hundredths of one percent
51 or more, by weight, or at the time the person was
52 arrested he or she was under the influence of alcohol,
53 controlled substances or drugs, the commissioner shall

54 make and enter an order revoking the person's license
55 to operate a motor vehicle in this state. If the results of
56 the tests indicate that at the time the test or tests were
57 administered the person was under the age of twenty-
58 one years and had an alcohol concentration in his or her
59 blood of two hundredths of one percent or more, by
60 weight, but less than ten hundredths of one percent, by
61 weight, the commissioner shall make and enter an order
62 suspending the person's license to operate a motor
63 vehicle in this state. A copy of the order shall be
64 forwarded to the person by registered or certified mail,
65 return receipt requested, and shall contain the reasons
66 for the revocation or suspension and describe the
67 applicable revocation or suspension periods provided for
68 in section two of this article. No revocation or suspension
69 shall become effective until ten days after receipt of a
70 copy of the order.

71 (d) Any law-enforcement officer taking a child into
72 custody under the provisions of section six-a, article five
73 of this chapter who has reasonable cause to believe that
74 the child, at the time of driving the motor vehicle, had
75 an alcohol concentration in his or her blood of two
76 hundredths of one percent or more, by weight, or that
77 the act of the child in driving the motor vehicle was such
78 that it would provide grounds for arrest for an offense
79 defined under the provisions of section two, article five
80 of this chapter if the child were an adult, shall report
81 to the commissioner of the division of motor vehicles by
82 written statement within forty-eight hours the name and
83 address of the child.

84 (e) If applicable, the report shall include a description
85 of the specific offense with which the child could have
86 been charged if the child were an adult, and a copy of
87 the results of any secondary tests of blood, breath or
88 urine. The signing of the statement required to be
89 signed by this subsection shall constitute an oath or
90 affirmation by the person signing such statement that
91 the statements contained therein are true and that any
92 copy filed is a true copy. Such statement shall contain
93 upon its face a warning to the officer signing that to
94 willfully sign a statement containing false information

95 concerning any matter or thing, material or not
96 material, is false swearing and is a misdemeanor.

97 (f) Upon examination of the written statement of the
98 officer and any test results described in subsection (d)
99 of this section, if the commissioner determines that the
100 results of the tests indicate that at the time the test or
101 tests were administered the child had, in his or her
102 blood, an alcohol concentration of two hundredths of one
103 percent or more, by weight, but also determines that the
104 act of the child in driving the motor vehicle was not such
105 that it would provide grounds for arrest for an offense
106 defined under the provisions of subsection (a), (b), (c),
107 (d), (e), (f) or (g), section two, article five of this chapter
108 if the child were an adult, the commissioner shall make
109 and enter an order suspending the child's license to
110 operate a motor vehicle in this state. If the commissioner
111 determines that the act of the child in driving the motor
112 vehicle was such that it would provide grounds for
113 arrest for an offense defined under the provisions of
114 subsection (a), (b), (c), (d), (e), (f) or (g), section two,
115 article five of this chapter if the child were an adult,
116 the commissioner shall make and enter an order
117 revoking the child's license to operate a motor vehicle
118 in this state. A copy of such order shall be forwarded
119 to the child by registered or certified mail, return
120 receipt requested, and shall contain the reasons for the
121 suspension or revocation and describe the applicable
122 suspension or revocation periods provided for in section
123 two of this article. No suspension or revocation shall
124 become effective until ten days after receipt of a copy
125 of such order.

**§17C-5A-1a. Revocation upon conviction for driving
under the influence of alcohol, controlled
substances or drugs.**

1 (a) If a person is convicted for an offense defined in
2 section two, article five of this chapter or for an offense
3 described in a municipal ordinance which has the same
4 elements as an offense described in said section two of
5 article five, because the person did drive a motor vehicle
6 while under the influence of alcohol, controlled substan-
7 ces or drugs, or the combined influence of alcohol or

8 controlled substances or drugs, or did drive a motor
9 vehicle while having an alcoholic concentration in his or
10 her blood of ten hundredths of one percent or more, by
11 weight, or did drive a motor vehicle while under the age
12 of twenty-one years with an alcohol concentration in his
13 blood of two hundredths of one percent or more, by
14 weight, but less than ten hundredths of one percent, by
15 weight, and if the person does not act to appeal the
16 conviction within the time periods described in subsec-
17 tion (b) of this section, the person's license to operate a
18 motor vehicle in this state shall be revoked or suspended
19 in accordance with the provisions of this section.

20 (b) The clerk of the court in which a person is
21 convicted for an offense described in section two, article
22 five of this chapter or for an offense described in a
23 municipal ordinance which has the same elements as an
24 offense described in said section two of article five, shall
25 forward to the commissioner a transcript of the
26 judgment of conviction. If the conviction is the judgment
27 of a magistrate court, the magistrate court clerk shall
28 forward the transcript when the person convicted has
29 not requested an appeal within twenty days of the
30 sentencing for such conviction. If the conviction is the
31 judgment of a mayor or police court judge or municipal
32 court judge, the clerk or recorder shall forward the
33 transcript when the person convicted has not perfected
34 an appeal within ten days from and after the date upon
35 which the sentence is imposed. If the conviction is the
36 judgment of a circuit court, the circuit clerk shall
37 forward the transcript when the person convicted has
38 not filed a notice of intent to file a petition for appeal
39 or writ of error within thirty days after the judgment
40 was entered.

41 (c) If, upon examination of the transcript of the
42 judgment of conviction, the commissioner shall deter-
43 mine that the person was convicted for an offense
44 described in section two, article five of this chapter or
45 for an offense described in a municipal ordinance which
46 has the same elements as an offense described in said
47 section two of article five, because the person did drive
48 a motor vehicle while under the influence of alcohol,

49 controlled substances or drugs, or the combined influ-
50 ence of alcohol or controlled substances or drugs, or did
51 drive a motor vehicle while having an alcoholic concen-
52 tration in his or her blood of ten hundredths of one
53 percent or more, by weight, the commissioner shall
54 make and enter an order revoking the person's license
55 to operate a motor vehicle in this state. If the commis-
56 sioner determines that the person was convicted of
57 driving a motor vehicle while under the age of twenty-
58 one years with an alcohol concentration in his blood of
59 two hundredths of one percent or more, by weight, but
60 less than ten hundredths of one percent, by weight, the
61 commissioner shall make and enter an order suspending
62 the person's license to operate a motor vehicle in this
63 state. The order shall contain the reasons for the
64 revocation or suspension and the revocation or suspen-
65 sion periods provided for in section two of this article.
66 Further, the order shall give the procedures for
67 requesting a hearing which is to be held in accordance
68 with the provisions of section two of this article. The
69 person shall be advised in the order that because of the
70 receipt of a transcript of the judgment of conviction by
71 the commissioner a presumption exists that the person
72 named in the transcript of the judgment of conviction
73 is the person named in the commissioner's order and
74 such constitutes sufficient evidence to support revoca-
75 tion or suspension and that the sole purpose for the
76 hearing held under this section is for the person
77 requesting the hearing to present evidence that he or she
78 is not the person named in the transcript of the
79 judgment of conviction. A copy of the order shall be
80 forwarded to the person by registered or certified mail,
81 return receipt requested. No revocation or suspension
82 shall become effective until ten days after receipt of a
83 copy of the order.

84 (d) The provisions of this section shall not apply if an
85 order reinstating the operator's license of the person has
86 been entered by the commissioner prior to the receipt
87 of the transcript of the judgment of conviction.

88 (e) For the purposes of this section, a person is
89 convicted when the person enters a plea of guilty or is

90 found guilty by a court or jury.

§17C-5A-2. Hearing; revocation; review.

1 (a) Upon the written request of a person whose license
2 to operate a motor vehicle in this state has been revoked
3 or suspended under the provisions of section one of this
4 article or section seven, article five of this chapter, the
5 commissioner of motor vehicles shall stay the imposition
6 of the period of revocation or suspension and afford the
7 person an opportunity to be heard. The written request
8 must be filed with the commissioner in person or by
9 registered or certified mail, return receipt requested,
10 within ten days after receipt of a copy of the order of
11 revocation or suspension. The hearing shall be before the
12 commissioner or a hearing examiner retained by the
13 commissioner who shall rule on evidentiary issues and
14 submit proposed findings of fact and conclusions of law
15 for the consideration of said commissioner and all of the
16 pertinent provisions of article five, chapter twenty-nine-
17 a of this code shall apply: *Provided*, That in the case of
18 a resident of this state the hearing shall be held in the
19 county wherein the arrest was made in this state unless
20 the commissioner or the commissioner's authorized
21 deputy or agent and the person agree that the hearing
22 may be held in some other county.

23 (b) Any such hearing shall be held within twenty days
24 after the date upon which the commissioner received the
25 timely written request therefor, unless there is a
26 postponement or continuance. The commissioner may
27 postpone or continue any hearing on the commissioner's
28 own motion, or upon application for each person for good
29 cause shown. The commissioner shall adopt and imple-
30 ment by a procedural rule written policies governing the
31 postponement or continuance of any such hearing on the
32 commissioner's own motion or for the benefit of any law-
33 enforcement officer or any person requesting the
34 hearing, and such policies shall be enforced and applied
35 to all parties equally. For the purpose of conducting the
36 hearing, the commissioner shall have the power and
37 authority to issue subpoenas and subpoenas duces tecum
38 in accordance with the provisions of section one, article
39 five, chapter twenty-nine-a of this code: *Provided*, That

40 the notice of hearing to the appropriate law-enforcement
41 officers by registered or certified mail, return receipt
42 requested, shall constitute a subpoena to appear at the
43 hearing without the necessity of payment of fees by the
44 division of motor vehicles. All subpoenas and subpoenas
45 duces tecum shall be issued and served within the time
46 and for the fees and shall be enforced, as specified in
47 section one, article five of said chapter twenty-nine-a,
48 and all of the said section one provisions dealing with
49 subpoenas and subpoenas duces tecum shall apply to
50 subpoenas and subpoenas duces tecum issued for the
51 purpose of a hearing hereunder.

52 (c) Law-enforcement officers shall be compensated for
53 the time expended in their travel and appearance before
54 the commissioner by the law-enforcement agency by
55 whom they are employed at their regular rate if they
56 are scheduled to be on duty during said time or at their
57 regular overtime rate if they are scheduled to be off
58 duty during said time.

59 (d) The principal question at the hearing shall be
60 whether the person did drive a motor vehicle while
61 under the influence of alcohol, controlled substances or
62 drugs, or did drive a motor vehicle while having an
63 alcohol concentration in the person's blood of ten
64 hundredths of one percent or more, by weight, or did
65 refuse to submit to the designated secondary chemical
66 test, or did drive a motor vehicle while under the age
67 of twenty-one years with an alcohol concentration in his
68 blood of two hundredths of one percent or more, by
69 weight, but less than ten hundredths of one percent, by
70 weight.

71 The commissioner may propose a legislative rule in
72 compliance with the provisions of article three, chapter
73 twenty-nine-a of this code, which rule may provide that
74 if a person accused of driving a motor vehicle while
75 under the influence of alcohol, controlled substances or
76 drugs, or accused of driving a motor vehicle while
77 having an alcohol concentration in the person's blood of
78 ten hundredths of one percent or more, by weight, or
79 accused of driving a motor vehicle while under the age
80 of twenty-one years with an alcohol concentration in his

81 blood of two hundredths of one percent or more, by
82 weight, but less than ten hundredths of one percent, by
83 weight, intends to challenge the results of any secondary
84 chemical test of blood, breath or urine, or intends to
85 cross-examine the individual or individuals who admin-
86 istered the test or performed the chemical analysis, the
87 person shall, within an appropriate period of time prior
88 to the hearing, notify the commissioner in writing of
89 such intention. The rule may provide that when there
90 is a failure to comply with the notice requirement, the
91 results of the secondary test, if any, shall be admissible
92 as though the person and the commissioner had stipu-
93 lated the admissibility of such evidence. Any such rule
94 shall provide that the rule shall not be invoked in the
95 case of a person who is not represented by counsel unless
96 the communication from the commissioner to the person
97 establishing a time and place for the hearing also
98 informed the person of the consequences of the person's
99 failure to timely notify the commissioner of the person's
100 intention to challenge the results of the secondary
101 chemical test or cross-examine the individual or
102 individuals who administered the test or performed the
103 chemical analysis.

104 (e) In the case of a hearing wherein a person is
105 accused of driving a motor vehicle while under the
106 influence of alcohol, controlled substances or drugs, or
107 accused of driving a motor vehicle while having an
108 alcoholic concentration in the person's blood of ten
109 hundredths of one percent or more, by weight, or
110 accused of driving a motor vehicle while under the age
111 of twenty-one years with an alcohol concentration in his
112 or her blood of two hundredths of one percent or more,
113 by weight, but less than ten hundredths of one percent,
114 by weight, the commissioner shall make specific
115 findings as to (1) whether the arresting law-enforcement
116 officer had reasonable grounds to believe the person to
117 have been driving while under the influence of alcohol,
118 controlled substances or drugs, or while having an
119 alcoholic concentration in the person's blood of ten
120 hundredths of one percent or more, by weight, or to have
121 been driving a motor vehicle while under the age of
122 twenty-one years with an alcohol concentration in his or

123 her blood of two hundredths of one percent or more, by
124 weight, but less than ten hundredths of one percent, by
125 weight, (2) whether the person was lawfully placed
126 under arrest for an offense involving driving under the
127 influence of alcohol, controlled substances or drugs, or
128 was lawfully taken into custody for the purpose of
129 administering a secondary test, and (3) whether the
130 tests, if any, were administered in accordance with the
131 provisions of this article and article five of this chapter.

132 (f) If, in addition to a finding that the person did drive
133 a motor vehicle while under the influence of alcohol,
134 controlled substances or drugs, or did drive a motor
135 vehicle while having an alcoholic concentration in the
136 person's blood of ten hundredths of one percent or more,
137 by weight, or did drive a motor vehicle while under the
138 age of twenty-one years with an alcohol concentration in
139 his blood of two hundredths of one percent or more, by
140 weight, but less than ten hundredths of one percent, by
141 weight, the commissioner also finds by a preponderance
142 of the evidence that the person when so driving did an
143 act forbidden by law or failed to perform a duty imposed
144 by law, which act or failure proximately caused the
145 death of a person and was committed in reckless
146 disregard of the safety of others, and if the commis-
147 sioner further finds that the influence of alcohol,
148 controlled substances or drugs or the alcoholic concen-
149 tration in the blood was a contributing cause to the
150 death, the commissioner shall revoke the person's license
151 for a period of ten years: *Provided*, That if the commis-
152 sioner has previously suspended or revoked the person's
153 license under the provisions of this section or section one
154 of this article within the ten years immediately preced-
155 ing the date of arrest, the period of revocation shall be
156 for the life of the person.

157 (g) If, in addition to a finding that the person did
158 drive a motor vehicle while under the influence of
159 alcohol, controlled substances or drugs, or did drive a
160 motor vehicle while having an alcoholic concentration in
161 the person's blood of ten hundredths of one percent or
162 more, by weight, the commissioner also finds by a
163 preponderance of the evidence that the person when so

164 driving did an act forbidden by law or failed to perform
165 a duty imposed by law, which act or failure proximately
166 caused the death of a person, the commissioner shall
167 revoke the person's license for a period of five years:
168 *Provided*, That if the commissioner has previously
169 suspended or revoked the person's license under the
170 provisions of this section or section one of this article
171 within the ten years immediately preceding the date of
172 arrest, the period of revocation shall be for the life of
173 the person.

174 (h) If, in addition to a finding that the person did
175 drive a motor vehicle while under the influence of
176 alcohol, controlled substances or drugs, or did drive a
177 motor vehicle while having an alcoholic concentration in
178 the person's blood of ten hundredths of one percent or
179 more, by weight, the commissioner also finds by a
180 preponderance of the evidence that the person when so
181 driving did an act forbidden by law or failed to perform
182 a duty imposed by law, which act or failure proximately
183 caused bodily injury to a person other than himself or
184 herself, the commissioner shall revoke the person's
185 license for a period of two years: *Provided*, That if the
186 commissioner has previously suspended or revoked the
187 person's license under the provisions of this section or
188 section one of this article within the ten years imme-
189 diately preceding the date of arrest, the period of
190 revocation shall be ten years: *Provided, however*, That if
191 the commissioner has previously suspended or revoked
192 the person's license more than once under the provisions
193 of this section or section one of this article within the
194 ten years immediately preceding the date of arrest, the
195 period of revocation shall be for the life of the person.

196 (i) If the commissioner finds by a preponderance of
197 the evidence that the person did drive a motor vehicle
198 while under the influence of alcohol, controlled substan-
199 ces or drugs, or did drive a motor vehicle while having
200 an alcoholic concentration in the person's blood of ten
201 hundredths of one percent or more, by weight, or finds
202 that the person, being an habitual user of narcotic drugs
203 or amphetamine or any derivative thereof, did drive a
204 motor vehicle, or finds that the person knowingly

205 permitted the person's vehicle to be driven by another
206 person who was under the influence of alcohol, con-
207 trolled substances or drugs, or knowingly permitted the
208 person's vehicle to be driven by another person who had
209 an alcoholic concentration in his or her blood of ten
210 hundredths of one percent or more, by weight, the
211 commissioner shall revoke the person's license for a
212 period of six months: *Provided*, That if the commissioner
213 has previously suspended or revoked the person's license
214 under the provisions of this section or section one of this
215 article within the ten years immediately preceding the
216 date of arrest, the period of revocation shall be ten years:
217 *Provided, however*, That if the commissioner has
218 previously suspended or revoked the person's license
219 more than once under the provisions of this section or
220 section one of this article within the ten years imme-
221 diately preceding the date of arrest, the period of
222 revocation shall be for the life of the person.

223 (j) If, in addition to a finding that the person did drive
224 a motor vehicle while under the age of twenty-one years
225 with an alcohol concentration in his blood of two
226 hundredths of one percent or more, by weight, but less
227 than ten hundredths of one percent, by weight, the
228 commissioner also finds by a preponderance of the
229 evidence that the person when so driving did an act
230 forbidden by law or failed to perform a duty imposed
231 by law, which act or failure proximately caused the
232 death of a person, and if the commissioner further finds
233 that the alcoholic concentration in the blood was a
234 contributing cause to the death, the commissioner shall
235 revoke the person's license for a period of five years:
236 *Provided*, That if the commissioner has previously
237 suspended or revoked the person's license under the
238 provisions of this section or section one of this article
239 within the ten years immediately preceding the date of
240 arrest, the period of revocation shall be for the life of
241 the person.

242 (k) If, in addition to a finding that the person did
243 drive a motor vehicle while under the age of twenty-one
244 years with an alcohol concentration in his blood of two
245 hundredths of one percent or more, by weight, but less

246 than ten hundredths of one percent, by weight, the
247 commissioner also finds by a preponderance of the
248 evidence that the person when so driving did an act
249 forbidden by law or failed to perform a duty imposed
250 by law, which act or failure proximately caused bodily
251 injury to a person other than himself or herself, and if
252 the commissioner further finds that the alcoholic
253 concentration in the blood was a contributing cause to
254 the bodily injury, the commissioner shall revoke the
255 person's license for a period of two years: *Provided*, That
256 if the commissioner has previously suspended or revoked
257 the person's license under the provisions of this section
258 or section one of this article within the ten years
259 immediately preceding the date of arrest, the period of
260 revocation shall be ten years: *Provided, however*, That if
261 the commissioner has previously suspended or revoked
262 the person's license more than once under the provisions
263 of this section or section one of this article within the
264 ten years immediately preceding the date of arrest, the
265 period of revocation shall be for the life of the person.

266 (l) If the commissioner finds by a preponderance of
267 the evidence that the person did drive a motor vehicle
268 while under the age of twenty-one years with an alcohol
269 concentration in his blood of two hundredths of one
270 percent or more, by weight, but less than ten hun-
271 dredths of one percent, by weight, the commissioner
272 shall suspend the person's license for a period of sixty
273 days.

274 (m) For purposes of this section, where reference is
275 made to previous suspensions or revocations under this
276 section, the following types of criminal convictions or
277 administrative suspensions or revocations shall also be
278 regarded as suspensions or revocations under this
279 section or section one of this article:

280 (1) Any administrative revocation under the provi-
281 sions of the prior enactment of this section for conduct
282 which occurred within the ten years immediately
283 preceding the date of arrest.

284 (2) Any suspension or revocation on the basis of a
285 conviction under a municipal ordinance of another state

286 or a statute of the United States or of any other state
287 of an offense which has the same elements as an offense
288 described in section two, article five of this chapter, for
289 conduct which occurred within the ten years imme-
290 diately preceding the date of arrest.

291 (3) Any revocation under the provisions of section
292 seven, article five of this chapter, for conduct which
293 occurred within the ten years immediately preceding
294 the date of arrest.

295 (n) In the case of a hearing wherein a person is
296 accused of refusing to submit to a designated secondary
297 test, the commissioner shall make specific findings as to
298 (1) whether the arresting law-enforcement officer had
299 reasonable grounds to believe the person had been
300 driving a motor vehicle in this state while under the
301 influence of alcohol, controlled substances or drugs, (2)
302 whether the person was lawfully placed under arrest for
303 an offense relating to driving a motor vehicle in this
304 state while under the influence of alcohol, controlled
305 substances or drugs, (3) whether the person refused to
306 submit to the secondary test finally designated in the
307 manner provided in section four, article five of this
308 chapter, and (4) whether the person had been given a
309 written statement advising the person that the person's
310 license to operate a motor vehicle in this state would be
311 revoked for at least one year and up to life if the person
312 refused to submit to the test finally designated in the
313 manner provided in section four, article five of this
314 chapter.

315 (o) If the commissioner finds by a preponderance of
316 the evidence that (1) the arresting law-enforcement
317 officer had reasonable grounds to believe the person had
318 been driving a motor vehicle in this state while under
319 the influence of alcohol, controlled substances or drugs,
320 (2) the person was lawfully placed under arrest for an
321 offense relating to driving a motor vehicle in this state
322 while under the influence of alcohol, controlled substan-
323 ces or drugs, (3) the person refused to submit to the
324 secondary chemical test finally designated, and (4) the
325 person had been given a written statement advising the
326 person that the person's license to operate a motor

327 vehicle in this state would be revoked for a period of at
328 least one year and up to life if the person refused to
329 submit to the test finally designated, the commissioner
330 shall revoke the person's license to operate a motor
331 vehicle in this state for the periods specified in section
332 seven, article five of this chapter.

333 (p) If the commissioner finds to the contrary with
334 respect to the above issues, the commissioner shall
335 rescind his or her earlier order of revocation or shall
336 reduce the order of revocation to the appropriate period
337 of revocation under this section, or section seven, article
338 five of this chapter.

339 A copy of the commissioner's order made and entered
340 following the hearing shall be served upon the person
341 by registered or certified mail, return receipt requested.
342 During the pendency of any such hearing, the revocation
343 of the person's license to operate a motor vehicle in this
344 state shall be stayed.

345 If the commissioner shall after hearing make and
346 enter an order affirming the commissioner's earlier
347 order of revocation, the person shall be entitled to
348 judicial review as set forth in chapter twenty-nine-a of
349 this code, except that the commissioner shall not stay
350 enforcement of the order; and, pending the appeal, the
351 court may grant a stay or supersedeas of the order only
352 upon motion and hearing, and a finding by the court
353 upon the evidence presented, that there is a substantial
354 probability that the appellant shall prevail upon the
355 merits, and the appellant will suffer irreparable harm
356 if the order is not stayed: *Provided*, That in no event
357 shall the stay or supersedeas of the order exceed thirty
358 days.

359 (q) In any revocation or suspension pursuant to this
360 section, if the driver whose license is revoked or
361 suspended had not reached the driver's eighteenth
362 birthday at the time of the conduct for which the license
363 is revoked or suspended, the driver's license shall be
364 revoked or suspended until the driver's eighteenth
365 birthday, or the applicable statutory period of revoca-
366 tion or suspension prescribed by this section, whichever

367 is longer.

368 (r) Funds for this section's hearing and appeal process
369 may be provided from the drunk driving prevention
370 fund, as created by section sixteen, article fifteen,
371 chapter eleven of this code, upon application for such
372 funds to the commission on drunk driving prevention.

§17C-5A-3. Safety and treatment program; reissuance of license.

1 (a) The division of motor vehicles, in cooperation with
2 the department of health and human resources, the
3 division of alcoholism and drug abuse, shall propose a
4 legislative rule or rules for promulgation in accordance
5 with the provisions of chapter twenty-nine-a of this code,
6 establishing a comprehensive safety and treatment
7 program for persons whose licenses have been revoked
8 under the provisions of this article, or section seven,
9 article five of this chapter, or subsection (6), section five,
10 article three, chapter seventeen-b of this code, and shall
11 likewise establish the minimum qualifications for
12 mental health facilities or other public agencies or
13 private entities conducting the safety and treatment
14 program: *Provided*, That the commissioner may estab-
15 lish standards whereby the division will accept or
16 approve participation by violators in another treatment
17 program which provides the same or substantially
18 similar benefits as the safety and treatment program
19 established pursuant to this section. The program shall
20 include, but not be limited to, treatment of alcoholism,
21 alcohol and drug abuse, psychological counseling,
22 educational courses on the dangers of alcohol and drugs
23 as they relate to driving, defensive driving, or other
24 safety driving instruction, and other programs designed
25 to properly educate, train and rehabilitate the offender.

26 (b) (1) The division of motor vehicles, in cooperation
27 with the department of health and human resources, the
28 division of alcoholism and drug abuse, shall provide for
29 the preparation of an educational and treatment
30 program for each person whose license has been revoked
31 under the provisions of this article or section seven,
32 article five of this chapter, or subsection (6), section five,

33 article three, chapter seventeen-b of this code, which
34 shall contain the following: (A) A listing and evaluation
35 of the offender's prior traffic record; (B) characteristics
36 and history of alcohol or drug use, if any; (C) his or her
37 amenability to rehabilitation through the alcohol safety
38 program; and (D) a recommendation as to treatment or
39 rehabilitation, and the terms and conditions of the
40 treatment or rehabilitation. The program shall be
41 prepared by persons knowledgeable in the diagnosis of
42 alcohol or drug abuse and treatment. The cost of the
43 program shall be paid out of fees established by the
44 commissioner of motor vehicles in cooperation with the
45 department of health and human resources, division of
46 alcohol and drug abuse. These fees shall be deposited in
47 a special account administering the program, to be
48 designated the "driver's rehabilitation fund."

49 (2) The commissioner, after giving due consideration
50 to the program developed for the offender, shall
51 prescribe the necessary terms and conditions for the
52 reissuance of the license to operate a motor vehicle in
53 this state revoked under this article, or section seven,
54 article five of this chapter, or subsection (6), section five,
55 article three, chapter seventeen-b of this code, which
56 shall include successful completion of the educational,
57 treatment or rehabilitation program, subject to the
58 following:

59 (A) When the period of revocation is six months, the
60 license to operate a motor vehicle in this state shall not
61 be reissued until (i) at least ninety days have elapsed
62 from the date of the initial revocation, during which
63 time the revocation was actually in effect, (ii) the
64 offender has successfully completed the program, (iii) all
65 costs of the program and administration have been paid,
66 and (iv) all costs assessed as a result of a revocation
67 hearing have been paid.

68 (B) When the period of revocation is for a period of
69 years, the license to operate a motor vehicle in this state
70 shall not be reissued until (i) at least one half of such
71 time period has elapsed from the date of the initial
72 revocation, during which time the revocation was
73 actually in effect, (ii) the offender has successfully

74 completed the program, (iii) all costs of the program and
75 administration have been paid, and (iv) all costs assessed
76 as a result of a revocation hearing have been paid.

77 (C) When the period of revocation is for life, the
78 license to operate a motor vehicle in this state shall not
79 be reissued until (i) at least ten years have elapsed from
80 the date of the initial revocation, during which time the
81 revocation was actually in effect, (ii) the offender has
82 successfully completed the program, (iii) all costs of the
83 program and administration have been paid, and (iv) all
84 costs assessed as a result of a revocation hearing have
85 been paid.

86 (D) Notwithstanding any provision of this code or any
87 rule, any mental health facilities or other public
88 agencies or private entities conducting the safety and
89 treatment program when certifying that a person has
90 successfully completed a safety and treatment program,
91 shall only have to certify that such person has success-
92 fully completed the program.

93 (c) (1) The division of motor vehicles, in cooperation
94 with the department of health and human resources,
95 division of alcoholism and drug abuse, shall provide for
96 the preparation of an educational program for each
97 person whose license has been suspended for sixty days
98 pursuant to the provisions of subsection (1), section two,
99 article five-a of this chapter. The educational program
100 shall consist of not less than twelve nor more than
101 eighteen hours of actual classroom time.

102 (2) When a sixty-day period of suspension has been
103 ordered, the license to operate a motor vehicle shall not
104 be reinstated until (A) at least sixty days have elapsed
105 from the date of the initial suspension, during which
106 time the suspension was actually in effect, (B) the
107 offender has successfully completed the educational
108 program, (C) all costs of the program and administra-
109 tion have been paid, and (D) all costs assessed as a result
110 of a suspension hearing have been paid.

111 (d) A required component of the rehabilitation
112 program provided for in subsection (b) and the educa-
113 tion program provided for in subsection (c) shall be

114 participation by the violator with a victim impact panel
115 program providing a forum for victims of alcohol and
116 drug related offenses and offenders to share first-hand
117 experiences on the impact of alcohol and drug related
118 offenses in their lives. The commissioner shall propose
119 legislative rules for promulgation in accordance with
120 the provisions of chapter twenty-nine-a of this code to
121 implement victim impact panels where appropriate
122 numbers of victims are available and willing to partic-
123 ipate, and shall establish guidelines for other innovative
124 programs which may be substituted where such victims
125 are not available, so as to assist persons whose licenses
126 have been suspended or revoked for alcohol and drug
127 related offenses to gain a full understanding of the
128 severity of their offenses in terms of the impact of such
129 offenses on victims and offenders. The legislative rules
130 proposed for promulgation by the commissioner shall
131 require, at a minimum, discussion and consideration of
132 the following:

133 (A) Economic losses suffered by victims or offenders;

134 (B) Death or physical injuries suffered by victims or
135 offenders;

136 (C) Psychological injuries suffered by victims or
137 offenders;

138 (D) Changes in the personal welfare or familial
139 relationships of victims or offenders; and

140 (E) Other information relating to the impact of
141 alcohol and drug related offenses upon victims or
142 offenders.

143 Any rules promulgated pursuant to this subsection
144 shall contain provisions which ensure that any meetings
145 between victims and offenders shall be nonconfronta-
146 tional and ensure the physical safety of the persons
147 involved.

**§17C-5A-3a. Establishment of and participation in the
motor vehicle alcohol test and lock
program.**

1 (a) The division of motor vehicles shall control and
2 regulate a motor vehicle alcohol test and lock program
3 for persons whose licenses have been revoked pursuant
4 to this article or the provisions of article five of this
5 chapter. Such program shall include the establishment
6 of a users fee for persons participating in the program
7 which shall be paid in advance and deposited into the
8 driver's rehabilitation fund. Except where specified
9 otherwise, the use of the term "program" in this section
10 refers to the motor vehicle alcohol test and lock
11 program. The commissioner of the division of motor
12 vehicles shall propose legislative rules for promulgation
13 in accordance with the provisions of chapter twenty-
14 nine-a of this code for the purpose of implementing the
15 provisions of this section. Such rules shall also prescribe
16 those requirements which, in addition to the require-
17 ments specified by this section for eligibility to partic-
18 ipate in the program, the commissioner determines
19 must be met to obtain the commissioner's approval to
20 operate a motor vehicle equipped with a motor vehicle
21 alcohol test and lock system. For purposes of this
22 section, a "motor vehicle alcohol test and lock system"
23 means a mechanical or computerized system which, in
24 the opinion of the commissioner, prevents the operation
25 of a motor vehicle when, through the system's assess-
26 ment of the blood alcohol content of the person operating
27 or attempting to operate the vehicle, such person is
28 determined to be under the influence of alcohol.

29 (b) (1) Any person whose license has been revoked
30 pursuant to this article or the provisions of article five
31 of this chapter is eligible to participate in the program
32 when such person's minimum revocation period as
33 specified by subsection (c) of this section has expired and
34 such person is enrolled in or has successfully completed
35 the safety and treatment program or presents proof to
36 the commissioner within sixty days of receiving approval
37 to participate by the commissioner that he or she is
38 enrolled in a safety and treatment program: *Provided,*
39 That no person whose license has been revoked pursuant
40 to the provisions of subsection (f) or (g), section two of
41 this article shall be eligible for participation in the
42 program: *Provided, however,* That any person whose

43 license is revoked pursuant to this article or pursuant
44 to article five of this chapter for an act which occurred
45 either while participating in or after successfully
46 completing the program shall not again be eligible to
47 participate in such program.

48 (2) Any person whose license has been suspended
49 pursuant to the provisions of subsection (l), section two
50 of this article for driving a motor vehicle while under
51 the age of twenty-one years with an alcohol concentra-
52 tion in his or her blood of two hundredths of one percent
53 or more, by weight, but less than ten hundredths of one
54 percent, by weight, is eligible to participate in the
55 program after thirty days have elapsed from the date
56 of the initial suspension, during which time the suspen-
57 sion was actually in effect: *Provided*, That in the case
58 of a person under the age of eighteen, the person shall
59 be eligible to participate in the program after thirty
60 days have elapsed from the date of the initial suspension,
61 during which time the suspension was actually in effect,
62 or after the person's eighteenth birthday, whichever is
63 later. Before the commissioner approves a person to
64 operate a motor vehicle equipped with a motor vehicle
65 alcohol test and lock system, the person must agree to
66 thereafter comply with the following conditions:

67 (A) If not already enrolled, the person will enroll in
68 and complete the educational program provided for in
69 subsection (c), section three of this article at the earliest
70 time that placement in the educational program is
71 available, unless good cause is demonstrated to the
72 commissioner as to why placement should be postponed;

73 (B) The person will pay all costs of the educational
74 program, any administrative costs and all costs assessed
75 for any suspension hearing.

76 (3) Notwithstanding the provisions of this section to
77 the contrary, no person eligible to participate in the
78 program shall operate a motor vehicle unless approved
79 to do so by the commissioner.

80 (c) For purposes of this section, "minimum revocation
81 period" means the portion which has actually expired of
82 the period of revocation imposed by the commissioner

83 pursuant to this article or the provisions of article five
84 of this chapter upon a person eligible for participation
85 in the program as follows:

86 (1) For a person whose license has been revoked for
87 six months pursuant to subsection (i), section two of this
88 article, the minimum period of revocation is thirty days;

89 (2) For a person whose license has been revoked for
90 one year pursuant to section seven, article five of this
91 chapter, the minimum period of revocation is ninety
92 days;

93 (3) For a person whose license has been revoked for
94 any other period of time pursuant to section two of this
95 article or pursuant to section seven, article five of this
96 chapter, the minimum period of revocation is one year.

97 (e) Upon permitting an eligible person to participate
98 in the program, the commissioner shall issue to such
99 person, and such person shall be required to exhibit on
100 demand, a driver's license which shall reflect that such
101 person is restricted to the operation of a motor vehicle
102 which is equipped with an approved motor vehicle
103 alcohol test and lock system.

104 (f) Any person who has completed the safety and
105 treatment program and who has not violated the terms
106 required by the commissioner of such person's partici-
107 pation in the motor vehicle alcohol test and lock
108 program shall be entitled to the restoration of such
109 person's driver's license upon the expiration of:

110 (1) One hundred eighty days of the full revocation
111 period imposed by the commissioner for a person
112 described in subdivision (1), subsection (c) of this section;

113 (2) The full revocation period imposed by the commis-
114 sioner for a person described in subdivision (2), subsec-
115 tion (c) of this section;

116 (3) One year from the date a person described in
117 subdivision (3), subsection (c) of this section is permitted
118 to operate a motor vehicle by the commissioner.

119 (g) A person whose license has been suspended
120 pursuant to the provisions of subsection (l), section two

121 of this article, who has completed the educational
122 program, and who has not violated the terms required
123 by the commissioner of such person's participation in the
124 motor vehicle alcohol test and lock program shall be
125 entitled to the reinstatement of his or her driver's license
126 six months from the date the person is permitted to
127 operate a motor vehicle by the commissioner. When a
128 license has been reinstated pursuant to this subsection,
129 the records ordering the suspension, records of any
130 administrative hearing, records of any blood alcohol test
131 results and all other records pertaining to the suspen-
132 sion shall be expunged by operation of law: *Provided,*
133 That a person shall be entitled to expungement under
134 the provisions of this subsection only once. The expun-
135 gement shall be accomplished by physically marking the
136 records to show that such records have been expunged,
137 and by securely sealing and filing the records. Expun-
138 gement shall have the legal effect as if the suspension
139 never occurred. The records shall not be disclosed or
140 made available for inspection, and in response to a
141 request for record information, the commissioner shall
142 reply that no information is available. Information from
143 the file may be used by the commissioner for research
144 and statistical purposes so long as the use of such
145 information does not divulge the identity of the person.

146 (h) In addition to any other penalty imposed by this
147 code, any person who operates a motor vehicle not
148 equipped with an approved motor vehicle alcohol test
149 and lock system during such person's participation in
150 the motor vehicle alcohol test and lock program is guilty
151 of a misdemeanor, and, upon conviction thereof, shall be
152 confined in the county jail for a period not less than one
153 month nor more than six months and fined not less than
154 one hundred dollars nor more than five hundred dollars.
155 Any person who assists another person required by the
156 terms of such other person's participation in the motor
157 vehicle alcohol test and lock program to use a motor
158 vehicle alcohol test and lock system in any effort to
159 bypass the system, is guilty of a misdemeanor, and, upon
160 conviction thereof, shall be confined in the county jail
161 not more than six months and fined not less than one
162 hundred dollars nor more than one thousand dollars.

**CHAPTER 17D. MOTOR VEHICLE
SAFETY RESPONSIBILITY ACT.**

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§17D-2A-7. Suspension or revocation of license, registration; reinstatement.

1 (a) Any owner of a motor vehicle, subject to the
2 provisions of this article, who fails to have the required
3 security in effect at the time such vehicle is being
4 operated upon the roads or highways of this state, shall
5 have his or her driver's license suspended by the
6 commissioner of the division of motor vehicles for a
7 period of thirty days and shall have his or her motor
8 vehicle registration revoked until such time as he or she
9 shall present to the division of motor vehicles the proof
10 of security required by this article: *Provided*, That if a
11 motor vehicle is registered in more than one name, the
12 driver's license of only one of the owners shall be
13 suspended by the commissioner.

14 (b) Any person who knowingly operates a motor
15 vehicle upon the roads or highways of this state, which
16 does not have the security required by the provisions of
17 this article, shall have his or her driver's license
18 suspended by the commissioner for a period of thirty
19 days.

20 (c) A person's driver's license shall be suspended for
21 a period of thirty days if the person is operating a motor
22 vehicle designated for off highway use upon the roads
23 and highways of this state without the required security
24 in effect, if the motor vehicle is not properly registered
25 and licensed, or if the required security was canceled.

26 (d) The commissioner may withdraw a suspension of
27 a driver's license provided that the commissioner is
28 satisfied that there was not a violation of the provisions
29 of required security related to operation of a motor
30 vehicle upon the roads or highways of this state by such
31 person. The commissioner may request additional
32 information as needed in order to make such
33 determination.

34 (e) No person shall have his or her driver's license or

35 motor vehicle registration suspended or revoked under
36 any provisions of this section unless he or she shall first
37 be given written notice of such suspension or revocation
38 sent by certified mail, at least twenty days prior to the
39 effective date of such suspension or revocation, and upon
40 such person's written request, sent by certified mail, he
41 or she shall be afforded an opportunity for a hearing
42 thereupon as well as a stay of the commissioner's order
43 of suspension or revocation and an opportunity for
44 judicial review of such hearing. Upon affirmation of the
45 commissioner's order, the period of suspension or
46 revocation shall commence to run.

47 (f) Such suspended driver's license shall be reinstated
48 following the period of suspension upon compliance with
49 the conditions set forth in this article and such revoked
50 motor vehicle registration shall be reissued only upon
51 lawful compliance with the provisions of this article.

52 (g) If the commissioner has previously suspended the
53 person's driver's license under the provisions of this
54 section or section five of this article, the period of
55 suspension shall be for a period of ninety days.

CHAPTER 17E. UNIFORM COMMERCIAL DRIVER'S LICENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-15. Implied consent requirements for commercial motor vehicle drivers.

1 (a) A person who drives a commercial motor vehicle
2 within this state is deemed to have given consent,
3 subject to provisions of section four, article five, chapter
4 seventeen-c of this code, to take a test or tests of that
5 person's blood, breath or urine for the purpose of
6 determining that person's alcohol concentration, or the
7 presence of other drugs.

8 (b) A test or tests may be administered at the
9 direction of a law-enforcement officer, who after
10 stopping or detaining the commercial motor vehicle
11 driver, has reasonable cause to believe that driver was
12 driving a commercial motor vehicle while having
13 alcohol in his or her system.

14 (c) A person requested to submit to a test as provided
15 in subsection (a) of this section must be warned by the
16 law-enforcement officer requesting the test that a
17 refusal to submit to the test will result in that person
18 being disqualified from operating a commercial motor
19 vehicle under section fifteen of this article.

20 (d) If the person refuses testing, or submits to a test
21 which discloses an alcohol concentration of four hun-
22 dredths or more, that law-enforcement officer must
23 submit a sworn report to the division of motor vehicles
24 certifying that the test was requested pursuant to
25 subsection (a) of this section and that the person refused
26 to submit to testing, or submitted to a test which
27 disclosed an alcohol concentration of four hundredths or
28 more.

29 (e) Upon receipt of the sworn report of a law-
30 enforcement officer submitted under subsection (d) of
31 this section, the commissioner must disqualify the driver
32 from driving a commercial motor vehicle under section
33 thirteen of this article.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 7. LAW ENFORCEMENT; MOTORBOATING; LITTER.

§20-7-18. Care in handling watercraft; duty to render aid after a collision, accident or casualty; accident reports.

1 (a) No person shall operate a motorboat or other vessel
2 or manipulate any water skis, surfboard or similar
3 device in a reckless or negligent manner so as to
4 endanger the life, limb or property of any person.

5 (b) No person shall operate any motorboat or vessel,
6 or manipulate any water skis, surfboard or similar
7 device while under the influence of alcohol or a
8 controlled substance or drug, under the combined
9 influence of alcohol and any controlled substance or any
10 other drug, or while having an alcohol concentration in
11 his blood of ten hundredths of one percent or more, by
12 weight.

13 (c) It shall be the duty of the operator of a vessel
14 involved in a collision, accident or other casualty, so far

15 as he can do so without serious danger to his own vessel,
16 crew and passengers (if any), to render to other persons
17 affected by the collision, accident or other casualty such
18 assistance as may be practicable and as may be
19 necessary in order to save them from or minimize any
20 danger caused by the collision, accident or other
21 casualty, and also to give his name, address and
22 identification of his vessel in writing to any person
23 injured and to the owner of any property damaged in
24 the collision, accident or other casualty.

25 (d) The operator of a vessel involved in a collision,
26 accident or other casualty shall file an accident report
27 with the director if the incident results in a loss of life,
28 in a personal injury that requires medical treatment
29 beyond first aid or in excess of five hundred dollars
30 damage to a vessel or other property. The report shall
31 be made on such forms and contain such information as
32 prescribed by the director. Upon a request duly made
33 by an authorized official or agency of the United States,
34 any information compiled or otherwise available to the
35 director pursuant to this subsection shall be transmitted
36 to the official or agency.

CHAPTER 24A. MOTOR CARRIERS OF PASSENGERS AND PROPERTY FOR HIRE.

ARTICLE 7. COMPLAINTS, DAMAGES AND VIOLATIONS.

§24A-7-6. Duty of prosecuting attorneys and peace officers to enforce chapter; police powers of inspectors.

1 It shall be the duty of the department of public safety
2 and the sheriffs of the counties in West Virginia to make
3 arrests and the duty of the prosecuting attorneys of the
4 several counties to prosecute all violations of this
5 chapter, and the commission employees designated by it
6 as inspectors shall have all the lawful powers of peace
7 officers to enforce this chapter in any county or city of
8 this state. If, in the course of enforcing the provisions
9 of this chapter, a commission employee designated by it
10 as an inspector shall have reasonable cause to believe
11 that a driver has been operating a vehicle regulated by
12 this chapter in violation of section two, article five,
13 chapter seventeen-c of this code or section fourteen,

14 article one, chapter seventeen-e of this code, the
15 inspector may detain the driver until a member of the
16 division of public safety, a sheriff or deputy sheriff, or
17 a member of a municipal law-enforcement agency is
18 summoned to investigate the suspected violation and
19 determine whether the person should be arrested and a
20 secondary test of blood, breath or urine should be
21 administered.

CHAPTER 33. INSURANCE

ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

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

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

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

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

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

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

18 (1) Has had his operator's license suspended or
19 revoked during the policy period including suspension
20 or revocation for failure to comply with the provisions
21 of article five-a, chapter seventeen-c of this code,
22 regarding consent for chemical test for intoxication:
23 *Provided*, That when a license is suspended for sixty
24 days by the commissioner of motor vehicles because a
25 person did drive a motor vehicle while under the age
26 of twenty-one years with an alcohol concentration in his
27 blood of two hundredths of one percent or more, by

28 weight, but less than ten hundredths of one percent, by
29 weight, pursuant to subsection (1), section two, article
30 five-a, chapter seventeen-c of this code, such suspension
31 shall not be grounds for cancellation; or

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

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

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

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

45 (3) Operating a motor vehicle while under the
46 influence of alcohol or of any controlled substance or
47 while having an alcohol concentration in his blood of ten
48 hundredths of one percent (.10) or more, by weight;

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

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

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

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

66 consideration to be paid by the insured upon initial
67 issuance of the insurance policy is effective upon the
68 expiration of ten days' notice of cancellation to the
69 insured.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-8. Taking a child into custody; detention hearing; counsel.

1 (a) In proceedings instituted by the filing of a juvenile
2 petition the circuit court may enter an order directing
3 that a child be taken into custody only if one of the
4 following conditions exist: (1) The petition shows that
5 grounds exist for the arrest of an adult in identical
6 circumstances; (2) the health, safety and welfare of the
7 child demand such custody; (3) the child is a fugitive
8 from a lawful custody or commitment order of a juvenile
9 court; or (4) the child has a record of willful failure to
10 appear at juvenile proceedings, and custody is necessary
11 to assure his or her presence before the court. A
12 detention hearing shall be held without delay by the
13 judge, juvenile referee or magistrate authorized to
14 conduct such hearing, and in no event shall the delay
15 exceed the next succeeding judicial day, excluding
16 Saturday, and such child shall be released on recogniz-
17 ance to his or her parent, guardian or custodian unless
18 findings are made as specified in subsection (d) of this
19 section.

20 (b) Absent a warrant or court order, a child may be
21 taken into custody by a law-enforcement official only if
22 one of the following conditions exist: (1) Grounds exist
23 for the arrest of an adult in identical circumstances; (2)
24 emergency conditions exist which in the judgment of the
25 officer pose imminent danger to the health, safety and
26 welfare of the child; (3) the official has reasonable
27 grounds to believe that the child is a runaway without
28 just cause from the child's parents or legal custodian
29 and the health, safety and welfare of the child is
30 endangered; (4) the child is a fugitive from a lawful
31 custody or commitment order of a juvenile court; or (5)
32 the official has reasonable grounds to believe the child

33 to have been driving a motor vehicle with any amount
34 of alcohol in his or her blood. Except as is otherwise
35 provided in section six-a, article five, chapter seventeen-
36 c of this code, upon taking a child into custody, with or
37 without a warrant or court order, the official shall: (i)
38 Immediately notify the child's parent, custodian or, if
39 the parent or custodian cannot be located, a close
40 relative; (ii) release the child into the custody of his or
41 her parent or custodian unless the circumstances
42 warrant otherwise; (iii) refer the matter to the prosecut-
43 ing attorney, state division or probation officer for
44 proceedings under this article; and (iv) if a child is being
45 held in custody absent a warrant or court order, cause
46 a warrant, petition or order, as the case may be, to be
47 immediately issued authorizing the detention of such
48 child.

49 If a child is taken into custody pursuant to subdivision
50 (2) or (3) hereunder, the state division shall be imme-
51 diately notified. Any child taken into custody as a
52 runaway shall not be held in custody more than forty-
53 eight hours without a court order, or more than seven
54 days in any event. Such child shall not be confined in
55 any facility wherein persons are being detained for an
56 offense which would be a crime if committed by an
57 adult.

58 (c) In the event that a child is delivered into the
59 custody of a sheriff or director of a detention facility,
60 such sheriff or director shall immediately notify the
61 court or referee. Said sheriff or director shall imme-
62 diately provide to every child who is delivered into his
63 or her custody a written statement explaining the child's
64 right to a prompt detention hearing, his or her right to
65 counsel including appointed counsel if he cannot afford
66 counsel and his or her privilege against self-incrimina-
67 tion. In all cases when a child is delivered into custody,
68 the child shall be released to his or her parent, guardian
69 or custodian by the end of the next succeeding judicial
70 day, excluding Saturday, after being delivered into such
71 custody, unless the child has been placed in detention
72 pursuant to subsection (d) of this section.

73 (d) A child in custody must immediately be taken

74 before a referee or judge of the circuit court and in no
75 event shall a delay exceed the next succeeding judicial
76 day: *Provided*, That if there be no judge or referee then
77 available in the county, then such child shall be taken
78 immediately before any magistrate in the county for the
79 sole purpose of holding a detention hearing. The judge,
80 referee or magistrate shall inform the child of his or her
81 right to remain silent, that any statement may be used
82 against him or her and of his or her right to counsel,
83 and no interrogation shall be made without the presence
84 of a parent or counsel. If the child or his or her parent,
85 guardian or custodian has not retained counsel, counsel
86 shall be appointed as soon as practicable. The referee,
87 judge or magistrate shall hear testimony concerning the
88 circumstances for taking the child into custody and the
89 possible need for detention in accordance with section
90 two, article five-a of this chapter. The sole mandatory
91 issue at the detention hearing shall be whether the child
92 shall be detained pending further court proceedings.
93 The court shall, if advisable, and if the health, safety
94 and welfare of the child will not be endangered thereby,
95 release the child on recognizance to his or her parents,
96 custodians or an appropriate agency; however, if
97 warranted, the court may require bail, except that bail
98 may be denied in any case where bail could be denied
99 if the accused were an adult.

100 The judge of the circuit court or referee may, in
101 conjunction with the detention hearing, conduct a
102 preliminary hearing pursuant to section nine, article
103 five of this chapter: *Provided*, That all parties are
104 prepared to proceed and the child has counsel during
105 such hearing.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-9. Intoxication or drinking in public places; illegal possession of alcoholic liquor; arrests by sheriffs or their deputies for violation in their presence.

1 (a) A person shall not:

2 (1) Appear in a public place in an intoxicated
3 condition;

4 (2) Drink alcoholic liquor in a public place;

5 (3) Drink alcoholic liquor in a motor vehicle on any
6 highway, street, alley or in a public garage;

7 (4) Tender a drink of alcoholic liquor to another
8 person in a public place;

9 (5) Possess alcoholic liquor in the amount in excess of
10 ten gallons, in containers not bearing stamps or seals of
11 the commission, without having first obtained written
12 authority from the said commission therefor; or

13 (6) Possess any alcoholic liquor which was manufac-
14 tured or acquired in violation of the provisions of this
15 chapter.

16 (b) Any law-enforcement officer may arrest without
17 a warrant and take the following actions against a
18 person who, in his or her presence, violates subdivision
19 (1) of subsection (a) of this section: (1) If there is some
20 nonintoxicated person who will accept responsibility for
21 the intoxicated person, the officer may issue the
22 intoxicated person a citation specifying a date for
23 appearance before a judicial officer and release him to
24 the custody of the individual accepting responsibility:
25 *Provided*, That the issuance of a citation shall be used
26 whenever feasible; (2) if it does not impose an undue
27 burden on the officer, he may, after issuance of such a
28 citation, transport the individual to the individual's
29 present residence or arrange for such transportation; (3)
30 if the individual is incapacitated or the alternatives
31 provided in subdivisions (1) and (2) of this subsection are
32 not possible, the officer shall transport or arrange for
33 transportation to the appropriate judicial officer as
34 defined by section seventeen, article eleven, chapter
35 twenty-seven of this code; or (4) if the individual is
36 incapacitated and, in the law-enforcement officer's
37 judgment, is in need of acute medical attention, that
38 officer shall arrange for transportation by ambulance or
39 otherwise to a hospital emergency room. The officer
40 shall accompany the individual until he is discharged

41 from the emergency room or admitted to the hospital.
42 If the individual is released from the emergency room,
43 the officer may proceed as described in subdivisions (1),
44 (2) and (3) of this subsection. If the individual is
45 admitted to the hospital, the officer shall issue a citation
46 to the individual specifying a date for appearance before
47 a judicial officer.

48 (c) Upon presentment before the proper judicial
49 officer, the law-enforcement officer shall serve as the
50 chief complaining witness. The judicial officer must
51 make a finding that there is probative evidence that the
52 individual may be guilty of the charge of public
53 intoxication. If such evidence is not presented, the
54 charge shall be dismissed and the individual released.
55 If sufficient evidence is presented, the judicial officer
56 shall issue a warrant and establish bail or issue a
57 summons to the individual. Once a warrant or summons
58 has been issued, the following actions may be taken: (1)
59 If the individual is no longer incapacitated, he may be
60 released; (2) if the individual is still incapacitated but
61 a nonintoxicated person is available to accept responsi-
62 bility for him, he may be released to the responsible
63 person; or (3) if the individual is still incapacitated and
64 no responsible person is available, the judicial officer
65 shall proceed under the provisions of article five or six-
66 a, chapter twenty-seven of this code.

67 (d) Any law-enforcement officer is hereby authorized
68 and empowered to arrest and hold in custody, without
69 a warrant, until complaint may be made before a
70 judicial officer and a warrant or summons issued, any
71 person who in the presence of the law-enforcement
72 officer violates any one or more of subdivisions (1)
73 through (6), subsection (a) of this section: *Provided*, That
74 the law-enforcement officer may use reasonable force to
75 prevent harm to himself, the individual arrested or
76 others in carrying out the provisions of this section.

77 (e) Any person who violates subdivision (1), subsection
78 (a) of this section shall be guilty of a misdemeanor, and,
79 upon conviction thereof, shall be sentenced by a judicial
80 officer in accordance with the following options: (1)
81 Upon first offense, a fine of not less than five dollars nor

82 more than one hundred dollars and not more than sixty
83 days in jail or completion of an alcohol education
84 program of not more than six hours' duration at the
85 nearest community mental health — mental retardation
86 center. If the individual, prior to conviction, agrees to
87 voluntarily attend the alcohol education program, the
88 judicial officer may delay sentencing until the program
89 is completed and upon completion may dismiss the
90 charges; (2) upon conviction for a second offense, a fine
91 of not less than five dollars nor more than one hundred
92 dollars and not more than sixty days in jail or comple-
93 tion of not less than five hours of alcoholism counseling
94 at the nearest community mental health — mental
95 retardation center; (3) upon third and subsequent
96 convictions, a fine of not less than five dollars nor more
97 than one hundred dollars and not less than five nor more
98 than sixty days in jail or a fine of not less than five
99 dollars nor more than one hundred dollars and comple-
100 tion of not less than five hours of alcoholism counseling
101 at the nearest community mental health — mental
102 retardation center: *Provided*, That three convictions for
103 public intoxication within the preceding six months
104 shall be considered evidence of alcoholism: *Provided*,
105 *however*, That for the educational counseling programs
106 described in this subsection the community mental
107 health — mental retardation center may charge each
108 participant its usual and customary fee and shall certify
109 in writing to the referring judicial officer the comple-
110 tion or failure to complete the prescribed program for
111 each individual.

112 (f) A person charged with a violation of subdivision
113 (1), subsection (a) of this section who is an alcoholic shall
114 be found not guilty by reason of addiction and proper
115 disposition made pursuant to articles five and six-a,
116 chapter twenty-seven of this code.

117 (g) Any person who violates subdivision (2) or (3),
118 subsection (a) of this section shall be guilty of a
119 misdemeanor, and, upon conviction thereof, shall be
120 fined not less than five nor more than one hundred
121 dollars, or confined in jail not more than sixty days, or
122 both such fine and imprisonment. Any person who

123 violates subdivision (4) or (5), subsection (a) of this
124 section shall be guilty of a misdemeanor, and, upon
125 conviction, shall be fined not less than one hundred
126 dollars nor more than five hundred dollars, or confined
127 in jail not less than sixty days nor more than twelve
128 months, or both such fine and imprisonment, and, upon
129 conviction of second or subsequent offense, he shall be
130 guilty of a felony and shall be confined in the peniten-
131 tiary of this state for a period of not less than one year
132 nor more than three years.

CHAPTER 112

(Com. Sub. for H. B. 2572—By Delegates Tribett and Varner)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four-a, article three, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section four-b, all relating to prescribing criminal penalties for certain traffic violations committed in posted construction zones; and requiring posting of signs in construction zones.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. TRAFFIC SIGNS, SIGNALS AND MARKINGS.

- §17C-3-4a. Obedience to traffic-control instructions at site of street or highway construction or maintenance.
- §17C-3-4b. Traffic violations in construction zones posting requirement; criminal penalties.

§17C-3-4a. Obedience to traffic-control instructions at site of street or highway construction or maintenance.

1 The driver of any vehicle shall obey the traffic-control
2 instructions of any law-enforcement officer or persons
3 authorized by the commissioner of highways or by
4 proper local authorities to operate traffic-control
5 devices, act as flagmen, or operate authorized vehicles
6 engaged in work at or near the site of street or highway
7 construction maintenance work, for the purpose of
8 regulating, warning or guiding traffic, subject to the
9 exceptions granted the driver of an authorized emer-
10 gency vehicle in this chapter. Any person failing to
11 comply with the requirements of this section is guilty
12 of a misdemeanor.

§17C-3-4b. Traffic violations in construction zones posting requirement; criminal penalties.

1 (a) At each and every location where street or
2 highway construction work is to be conducted a sign
3 shall be posted at least one thousand feet from the
4 construction site, or as close to one thousand feet from
5 the construction site as is practicable given the location
6 of the site when workers are present, notifying all
7 motorists as to the speed limit and displaying the words
8 "construction work".

9 (b) Any person who violates any posted speed restric-
10 tion or traffic restriction at such construction site
11 referred to in subsection (a) of this section is guilty of
12 a misdemeanor and, upon conviction thereof, shall be
13 fined not more than two hundred dollars or incarcerated
14 in a county or regional jail not more than twenty days,
15 or both.

16 (c) Nothing in this section shall be construed to
17 preclude prosecution of any operator of a motor vehicle
18 who commits a violation of any other provision of this
19 code for such violation.

CHAPTER 113

(H. B. 4335—By Delegate Love)

[Passed March 9, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting motor vehicles with a total outside width of one hundred two inches, exclusive of federally required safety equipment, to operate on highways with a minimum lane width of ten feet.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-2. Width of vehicles.

1 (a) The total outside width, exclusive of safety
2 equipment authorized by the United States department
3 of transportation, of any vehicle or the load thereon shall
4 not exceed ninety-six inches, except as otherwise
5 provided in this article: *Provided*, That any vehicle with
6 a total outside width of one hundred two inches,
7 exclusive of safety equipment authorized by the United
8 States department of transportation, may be operated on
9 any highway within the state designated by the United
10 States department of transportation or the commis-
11 sioner of the department of highways or on any highway
12 having a minimum lane width of ten feet.

13 (b) Motor buses and trackless trolley coaches with a
14 total outside width of one hundred two inches, excluding
15 safety equipment authorized by the United States
16 department of transportation, may operate on any
17 highway.

CHAPTER 114

(Com. Sub. for H. B. 4193—By Delegate Love)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article two-a, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to security upon motor vehicles; certificates of insurance; and including a copy of a motor carrier's registration issued by the public service commission as proof of insurance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§17D-2A-4. Certificate of insurance.

1 (a) All insurance carriers transacting insurance in
2 this state shall supply a certificate to the insured or to
3 any person subject to the registration provisions of
4 article three, chapter seventeen-a of this code, certifying
5 that there is in effect a motor vehicle liability policy
6 upon such motor vehicle in accordance with the provi-
7 sions of article three, chapter seventeen-a of this code.
8 The certificate shall give its effective date and the
9 effective date of the policy and, unless the policy is
10 issued to a person who is not the owner of a motor
11 vehicle, must designate by explicit description, in such
12 detail as the commissioner of the department of motor
13 vehicles shall by rule require, all motor vehicles covered
14 and all replacement vehicles of similar classification:
15 *Provided*, That on and after the first day of July, one
16 thousand nine hundred eighty-four, insurance compan-
17 ies shall supply a certificate of insurance in duplicate
18 for each policy term and for each vehicle included in a
19 policy, except for those listed in a fleet policy. Each such
20 certificate of insurance shall list the name of the
21 policyholder and the name of the vehicle owner if
22 different from the policyholder.

23 The certificate must specify for each vehicle listed
24 therein, that there is a minimum liability insurance
25 coverage not less than the requirements of section two,
26 article four, chapter seventeen-d of this code.

27 (b) The certificate provided pursuant to the provisions
28 of this section or other proof of insurance shall be
29 carried by the insured in the appropriate vehicle for use
30 as proof of security, and must be presented at the time
31 of vehicle inspection as required by article sixteen,
32 chapter seventeen-c of this code: *Provided*, That an
33 insured shall not be guilty of a violation of this
34 subsection (b) if he furnishes proof that such insurance
35 was in effect within seven days of being cited for not
36 carrying such certificate or other proof in such vehicle.
37 As used in this section, proof of insurance means a
38 certificate of insurance, an insurance policy, a mechan-
39 ically reproduced copy of an insurance policy, a
40 certificate of self-insurance, or a copy of the current
41 registration issued to a motor carrier by the public
42 service commission (1) through the single state registra-
43 tion system established pursuant to section fourteen,
44 article six-a, chapter twenty-four-a of this code; or (2)
45 pursuant to the provisions of section four, article six,
46 chapter twenty-four-a of this code.

CHAPTER 115

(H. B. 4333—By Delegates Campbell, Higgins and Love)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and thirteen, article one, chapter seventeen-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to commercial driver's licenses; changing and adding certain definitions; and clarifying that felony convictions for drug-related crimes result in commercial driver's license disqualification for life.

Be it enacted by the Legislature of West Virginia:

That sections three and thirteen, article one, chapter

seventeen-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-3. Definitions.

§17E-1-13. Disqualification and cancellation.

§17E-1-3. Definitions.

1 Notwithstanding any other provision of this code, the
2 following definitions apply to this article:

3 "Alcohol" means:

4 (a) Any substance containing any form of alcohol,
5 including, but not limited to, ethanol, methanol,
6 propanol and isopropanol;

7 (b) Beer, ale, port or stout and other similar fer-
8 mented beverages (including sake or similar products)
9 of any name or description containing one half of one
10 percent or more of alcohol by volume, brewed or
11 produced from malt, wholly or in part, or from any
12 substitute therefor;

13 (c) Distilled spirits or that substance known as ethyl
14 alcohol, ethanol, or spirits of wine in any form (including
15 all dilutions and mixtures thereof from whatever source
16 or by whatever process produced); or

17 (d) Wine of not less than one half of one percent of
18 alcohol by volume.

19 "Alcohol concentration" means:

20 (a) The number of grams of alcohol per one hundred
21 milliliters of blood; or

22 (b) The number of grams of alcohol per two hundred
23 ten liters of breath; or

24 (c) The number of grams of alcohol per sixty-seven
25 milliliters of urine.

26 "Commercial driver license" means a license issued in
27 accordance with the requirements of this article to an
28 individual which authorizes the individual to drive a
29 class of commercial motor vehicle.

30 "Commercial driver license information system" is the
31 information system established pursuant to the federal
32 commercial motor vehicle safety act to serve as a
33 clearinghouse for locating information related to the
34 licensing and identification of commercial motor vehicle
35 drivers.

36 "Commercial driver instruction permit" means a
37 permit issued pursuant to subsection (e), section nine of
38 this article.

39 "Commercial motor vehicle" means a motor vehicle
40 designed or used to transport passengers or property:

41 (a) If the vehicle has a gross vehicle weight rating as
42 determined by federal regulation;

43 (b) If the vehicle is designed to transport sixteen or
44 more passengers, including the driver; or

45 (c) If the vehicle is transporting hazardous materials
46 and is required to be placarded in accordance with 49
47 C.F.R. part 172, sub-part F.

48 "Commissioner" means the commissioner of motor
49 vehicles of this state.

50 "Controlled substance" means any substance so
51 classified under the provisions of chapter sixty-a of this
52 code (uniform controlled substances act) and includes all
53 substances listed on Schedules I through V, article two
54 of said chapter sixty-a, as they may be revised from time
55 to time.

56 "Conviction" means the final judgment in a judicial
57 or administrative proceeding or a verdict or finding of
58 guilty, a plea of guilty, a plea of nolo contendere, an
59 implied admission of guilt or a forfeiture of bond or
60 collateral upon a charge of a disqualifying offense, as
61 a result of proceedings upon any violation of the
62 requirement of this article.

63 "Department" means the department of motor
64 vehicles.

65 "Disqualification" means a prohibition against driv-
66 ing a commercial motor vehicle.

67 "Drive" means to drive, operate or be in physical
68 control of a motor vehicle in any place open to the
69 general public for purposes of vehicular traffic. For
70 purposes of sections twelve, thirteen and fourteen of this
71 article "drive" includes operation or physical control of
72 a motor vehicle anywhere in this state.

73 "Driver" means any person who drives, operates or is
74 in physical control of a commercial motor vehicle, in any
75 place open to the general public for purposes of
76 vehicular traffic, or who is required to hold a commer-
77 cial driver license.

78 "Driver license" means a license issued by a state to
79 an individual which authorizes the individual to drive
80 a motor vehicle of a specific class.

81 "Employee" means a person who is employed by an
82 employer to drive a commercial motor vehicle, including
83 independent contractors. An employee who is employed
84 by himself or herself as a commercial motor vehicle
85 driver must comply with both the requirements of this
86 article pertaining to employees and employers.

87 "Employer" means any person, including the United
88 States, a state, or a political subdivision of a state, who
89 owns or leases a commercial motor vehicle, or assigns
90 a person to drive a commercial motor vehicle.

91 "Farm vehicle" includes a motor vehicle or combina-
92 tion vehicle registered to the farm owner or entity
93 operating the farm and used exclusively in the transpor-
94 tation of agricultural or horticultural products, live-
95 stock, poultry and dairy products from the farm or
96 orchard on which they are raised or produced to
97 markets, processing plants, packing houses, canneries,
98 railway shipping points and cold storage plants and in
99 the transportation of agricultural or horticultural
100 supplies and machinery to such farms or orchards to be
101 used thereon.

102 "Farmer" includes owner, tenant, lessee, occupant or
103 person in control of the premises used substantially for
104 agricultural or horticultural pursuits, who is at least
105 eighteen years of age with two years licensed driving

106 experience.

107 "Farmer vehicle driver" means the person employed
108 and designated by the "farmer" to drive a "farm vehicle"
109 as long as driving is not his sole or principal function
110 on the farm, who is at least eighteen years of age with
111 two years licensed driving experience.

112 "Gross combination weight rating (GCWR)" means
113 the value specified by the manufacturer as the loaded
114 weight of a combination (articulated) vehicle. In the
115 absence of a value specified by the manufacturer,
116 GCWR will be determined by adding the GVWR of the
117 power unit and the total weight of the towed unit and
118 any load thereon.

119 "Gross vehicle weight rating (GVWR)" means the
120 value specified by the manufacturer as the loaded
121 weight of a single vehicle. In the absence of a value
122 specified by the manufacturer the GVWR will be
123 determined by the total weight of the vehicle and any
124 load thereon.

125 "Hazardous materials" has the meaning as that found
126 in Section 103 of the Hazardous Materials Transporta-
127 tion Act (49 App. U.S.C. 1801 et seq.).

128 "Motor vehicle" means every vehicle which is self-
129 propelled, and every vehicle which is propelled by
130 electric power obtained from overhead trolley wires but
131 not operated upon rails.

132 "Out-of-service order" means a temporary prohibition
133 against driving a commercial motor vehicle.

134 "Serious traffic violation" means:

135 (a) Operating a motor vehicle under the influence of
136 alcohol or a controlled substance in violation of the
137 provisions of section two, article five, chapter seventeen-
138 c of this code;

139 (b) Failure to stop and render aid and provide
140 required information after involvement in a motor
141 vehicle accident resulting in death, injury or property
142 damage, as provided in section five, article three,
143 chapter seventeen-b and sections one through five,

144 inclusive, article four, chapter seventeen-c of this code;

145 (c) A felony in the commission of which a motor
146 vehicle is used; as stated in subsection (2), section five,
147 article three, chapter seventeen-b of this code;

148 (d) Excessive speeding defined as fifteen miles per
149 hour in excess of all posted limits;

150 (e) Reckless driving as defined in section three,
151 article five, chapter seventeen-c of this code including
152 erratic lane changes and following the vehicle ahead too
153 closely;

154 (f) A violation of state or local law relating to motor
155 vehicle traffic control (other than a parking violation)
156 arising in connection with a fatal traffic accident.
157 Vehicle weight and vehicle defects are excluded as
158 serious traffic violations;

159 (g) Violation of an out-of-service order; or

160 (h) Any other serious violations as may be determined
161 by the U. S. Secretary of Transportation.

162 "State" means a state of the United States and the
163 District of Columbia.

164 "Tank vehicle" means any commercial motor vehicle
165 that is designed to transport any liquid or gaseous
166 materials within a tank that is either permanently or
167 temporarily attached to the vehicle or the chassis. Such
168 vehicles include, but are not limited to, cargo tanks and
169 portable tanks, as defined in Part 171 of Title 49, C.F.R.
170 Part 171. However, this definition does not include
171 portable tanks having a rated capacity under one
172 thousand gallons.

173 "At fault traffic accident" means for the purposes of
174 waiving the road test, a determination, by the official
175 filing the accident report, of fault as evidenced by an
176 indication of contributing circumstances in the accident
177 report.

§17E-1-13. Disqualification and cancellation.

1 (a) *Disqualification offenses.* — On or after the first
2 day of April, one thousand nine hundred ninety-two, any

3 person is disqualified from driving a commercial motor
4 vehicle for a period of not less than one year if convicted
5 of a first violation of:

6 (1) Driving a commercial motor vehicle under the
7 influence of alcohol or a controlled substance;

8 (2) Driving a commercial motor vehicle while the
9 alcohol concentration of the person's blood or breath is
10 four hundredths or more;

11 (3) Leaving the scene of an accident involving a
12 commercial motor vehicle driven by the person;

13 (4) Using a commercial motor vehicle in the commis-
14 sion of any felony as defined in this article: *Provided,*
15 That the commission of any felony involving the
16 manufacture, distribution, or dispensing of a controlled
17 substance, or possession with intent to manufacture,
18 distribute or dispense a controlled substance falls under
19 the provisions of subsection (d) of this section.

20 (5) Refusal to submit to a test to determine the
21 driver's alcohol concentration while driving a commer-
22 cial motor vehicle.

23 In addition, the conviction of any of the following
24 offenses as an operator of any vehicle is a disqualifica-
25 tion offense:

26 (1) Manslaughter or negligent homicide resulting
27 from the operation of a motor vehicle as defined under
28 the provisions of section five, article three, chapter
29 seventeen-b, and section one, article five, chapter
30 seventeen-c of this code;

31 (2) Driving while license is suspended or revoked, as
32 defined under the provisions of section three, article
33 four, chapter seventeen-b of this code;

34 (3) Perjury or making a false affidavit or statement
35 under oath to the department of motor vehicles, as
36 defined under the provisions of subsection (4), section
37 five, article three, and section two, article four, chapter
38 seventeen-b of this code.

39 If any of the above violations occurred while trans

40 porting a hazardous material required to be placarded,
41 the person is disqualified for a period of not less than
42 three years.

43 (b) A person is disqualified for life if convicted of two
44 or more violations of any of the offenses specified in
45 subsection (a) of this section, or any combination of those
46 offenses, arising from two or more separate incidents.

47 (c) The commissioner may issue rules establishing
48 guidelines, including conditions, under which a disqual-
49 ification for life under subsection (b) of this section may
50 be reduced to a period of not less than ten years.

51 (d) A person is disqualified from driving a commer-
52 cial motor vehicle for life who uses a commercial motor
53 vehicle in the commission of any felony involving the
54 manufacture, distribution or dispensing of a controlled
55 substance, or possession with intent to manufacture,
56 distribute or dispense a controlled substance.

57 (e) A person is disqualified from driving a commer-
58 cial motor vehicle for a period of not less than sixty days
59 if convicted of two serious traffic violations, or one
60 hundred twenty days if convicted of three serious
61 violations, committed in a commercial motor vehicle
62 arising from separate incidents occurring within a
63 three-year period.

64 (f) After suspending, revoking or cancelling a com-
65 mercial driver's license, the department shall update its
66 records to reflect that action within ten days.

CHAPTER 116

(S. B. 515—By Senators Wooton, Minard, Yoder,
Holliday, Dittmar, Claypole and Ross)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five, relating to creating an alternative prejudgment disposition procedure for traffic offenses in

municipal courts; conditions of alternative disposition; preemptive provisions; and offenses for which alternative disposition is not available.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. POWERS AND DUTIES WITH RESPECT TO ORDINANCES AND ORDINANCE PROCEDURES.

§8-11-5. Prejudgment alternative disposition of certain traffic offenses.

1 (a) Municipal courts are hereby authorized to estab-
2 lish a prejudgment alternative disposition procedure for
3 traffic offenses over which the court has jurisdiction.

4 (b) Under a prejudgment disposition procedure
5 authorized by subsection (a) of this section, if a person
6 is found guilty of a traffic offense the municipal court
7 may, with the person's consent, withhold for a reasona-
8 ble time not to exceed ninety days the entry of a judg-
9 ment of conviction so that the person may attend a
10 driver safety education course designated by the
11 municipal court. If the person attends said course, the
12 municipal court, if satisfied with the person's participa-
13 tion in the course, shall, without entering a judgment
14 of conviction, dismiss the proceeding against the person.

15 (c) It shall be a condition of any prejudgment
16 alternative disposition authorized by the provisions of
17 this section that the person pay any fine assessed by the
18 court and pay all fees and costs required to be paid by
19 any provision of this code where a person is convicted
20 of a criminal traffic offense. No municipal court shall
21 utilize any prejudgment alternative disposition proce-
22 dure unless it collects such fees and costs as are required
23 by any provision of this code and transmits the moneys
24 collected as required by law. No municipal court shall
25 utilize any prejudgment alternative disposition proce-
26 dure unless it conforms with the requirements of this
27 section.

28 (d) The procedure authorized by the provisions of this
29 section shall not be available to any person arrested for
30 driving under the influence of alcohol or drugs or any
31 other offense for which a mandatory period of confine-
32 ment in jail is required.

CHAPTER 117

(H. B. 4168—By Delegates Kessel, Brown, Smith,
Spencer, Sorah and Wallers)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen-a, relating to the authority of municipalities to create business improvement districts to foster economic growth and development and providing procedures therefor; legislative findings and declaration of purpose; definitions; providing authorization to municipalities to create business improvement districts; types of services that a municipality may provide to a business improvement district; the petition that initiates procedures to be used to organize, develop and designate a business improvement district; the appointment of a planning committee which issues a report; provision of notice and hearing; the creation of a business improvement district; certain uses of fees to be prohibited; the petition to appeal an ordinance creating a business improvement district; the establishment of a district board and its duties; the levy of service fees; the classification of properties within a business improvement district; the creation of a special business improvement district fund and its funding sources; the petition to include additional property in an existing business improvement district; the procedure used to abolish and dissolve a business improvement district.

Be it enacted by the Legislature of West Virginia:

That chapter eight of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirteen-a, to read as follows:

ARTICLE 13A. BUSINESS IMPROVEMENT DISTRICTS.

- §8-13A-1. Short title.
- §8-13A-2. Legislative findings and declaration of purpose.
- §8-13A-3. Definitions.
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- §8-13A-15. Abolishment and dissolution of district; notice; hearing.

§8-13A-1. Short title.

- 1 This article is known and may be cited as the
- 2 "Business Improvement District Act."

§8-13A-2. Legislative findings and declaration of purpose.

- 1 The Legislature finds that many business districts
- 2 within the municipalities of this state are economically
- 3 depressed. This adversely affects the economic and
- 4 general well-being of the citizens of those municipalities.
- 5 Establishment of business improvement districts within
- 6 municipalities of the state, in accordance with the
- 7 purpose and powers set forth in this article, will serve
- 8 a public purpose, promote the health, safety, prosperity,
- 9 security and general welfare of all citizens in the state.
- 10 It will also promote the vitality of commercial business
- 11 areas within municipalities, while serving as an
- 12 effective means for restoring and promoting commercial
- 13 and other business activity within the business improve-
- 14 ment districts created herein. This will be of special
- 15 benefit to the property within the boundaries of any
- 16 business improvement district created under this article

17 and will stimulate economic growth and job creation.

§8-13A-3. Definitions.

1 For purposes of this article, the term:

2 (a) "Commercial property" means the surface of any
3 taxable real property which is classified for ad valorem
4 real property tax purposes as Class IV. Excluded from
5 the meaning of such term is all real property owned or
6 used exclusively for state, county, municipal, literary,
7 educational, scientific, religious, benevolent or charita-
8 ble purposes, or real property owned or used by public
9 port authorities or wayport authorities;

10 (b) "District board" means a district board created
11 pursuant to section eleven of this article;

12 (c) "Property owner" or "owner" means the owner of
13 commercial property as shown by the transfer records
14 in the office of the county clerk of the county in which
15 the property is located. If an owner owns more than one
16 commercial property, that owner is counted as a
17 separate owner for each such commercial property
18 owned. If commercial property is owned by more than
19 one owner, the majority in ownership is treated as the
20 owner for the purpose of this article;

21 (d) "Services" means governmental functions, pro-
22 grams, activities, facility improvements and other
23 services which a district board is authorized to perform
24 or provide under section five of this article.

§8-13A-4. Authorization.

1 The governing body of any municipality may, in
2 accordance with the procedures and subject to the
3 limitations set forth in this article, establish one or more
4 business improvement districts within the municipality.
5 The municipality may provide for the administration
6 and financing of additional and extended services to
7 businesses within the districts and for the administra-
8 tion and financing of a continuing program of services
9 within the districts.

§8-13A-5. Services.

1 Any municipality which has established a business
2 improvement district under this article may provide or
3 cause to be provided such services as will restore or
4 promote the economic vitality of the district and the
5 general welfare of the municipality, including, but not
6 limited to, the following:

7 (a) Beautification of the district, by means such as
8 landscaping and construction and erection of fountains,
9 shelters, benches, sculptures, signs, lighting, decorations
10 and similar amenities;

11 (b) Provision of special or additional public services,
12 such as sanitation, security for persons and property and
13 the construction and maintenance of public facilities
14 including sidewalks and other public areas;

15 (c) Making principal or interest payments on bonds
16 issued by the municipality for public improvements
17 located within and designated to improve the economic
18 viability of the district;

19 (d) Providing financial support for public transporta-
20 tion and vehicle parking facilities open to the general
21 public;

22 (e) Constructing, operating and maintaining parking
23 facilities;

24 (f) Developing plans for the general architectural
25 design of public areas and developing plans and
26 programs for the future development of the district;

27 (g) Developing, promoting and supporting community
28 events and activities open to the general public;

29 (h) Providing the administrative costs for a district
30 management program; and

31 (i) Providing any other services which the municipal-
32 ity or district board is authorized to perform and which
33 the municipality does not also perform to the same
34 extent on a municipality-wide basis.

**§8-13A-6. Petition to initiate the procedure for organiza-
tion, development and designation.**

1 (a) The organization, development and designation of
2 a business improvement district shall be initiated by a
3 petition filed in the office of the clerk of the governing
4 body of the municipality. The petition shall be signed
5 by not less than four owners who own commercial
6 property in the proposed business improvement district
7 having an assessed value as reflected on the county
8 assessor's land books of not less than fifty-one percent
9 of the value of all commercial property in the proposed
10 business improvement district.

11 (b) The petition shall set forth:

12 (1) The name of the proposed district, including a
13 descriptive name thereof and the words "business
14 improvement district";

15 (2) A general description of the boundaries and
16 service area of the proposed district;

17 (3) A general description of the additional or extended
18 services needed within the district; and

19 (4) A request for the organization of a business
20 improvement district.

**§8-13A-7. Appointment of planning committee, issuance
of report.**

1 (a) Upon receipt of a petition for the initiation of a
2 business improvement district, the governing body of
3 the municipality shall, within ninety days, appoint a
4 district planning committee consisting of seven
5 members. A majority of the members shall be owners
6 of commercial property situated within the proposed
7 district of the municipality. The committee shall study
8 and develop preliminary plans for the establishment and
9 operation of the proposed district and shall consult with
10 the appropriate officials and agencies of the municipal-
11 ity prior to completing such preliminary plans. Upon
12 completion of the study and development of preliminary
13 plans and, in no event, later than two hundred seventy-
14 five days after its establishment, the committee shall
15 submit to the governing body a written report which:

16 (1) Describes the boundaries of the proposed district

17 with sufficient specificity to enable the owner of any
18 commercial property in the municipality to determine
19 whether his or her property is located therein. The area
20 proposed for any district must be contiguous with and
21 situated fully within the boundaries of the municipality;

22 (2) A description of any additional or extended
23 services needed within the district;

24 (3) A description of the proposed method of financing
25 any planned improvements, including the maximum
26 rate of annual fees that may be imposed upon properties
27 within the proposed district and the manner in which
28 the rate will be imposed. The amount of annual fees may
29 be based upon gross leasable square footage, street
30 front-footage, total gross building or land square
31 footage, or any combination thereof, or on such basis as
32 can reasonably be determined based upon the value of
33 the improvements to the commercial property situated
34 in the district and upon whatever benefits exist relative
35 to the various owners of property situated therein. For
36 the purpose of levying fees, the committee shall make
37 a reasonable classification of all properties within the
38 proposed district;

39 (4) A recommendation concerning the feasibility and
40 desirability of the proposed business improvement
41 district and any alternative proposal, in the event the
42 committee's recommendation is not in accordance with
43 the original petition: *Provided*, That, in the event the
44 boundaries of the proposed business improvement
45 district recommended by the committee differs from the
46 boundaries contained in the original petition, the report
47 must also contain an additional petition signed by at
48 least four persons who own commercial property in the
49 proposed business improvement district recommended
50 by the committee. Such commercial property must have
51 an assessed value as reflected on the county assessor's
52 landbooks of not less than fifty-one percent of the value
53 of all commercial property in the proposed business
54 improvement district;

55 (5) Such other information as may be requested by the
56 governing body. The municipality may provide staff and

57 technical assistance to the committee.

§8-13A-8. Notice; hearing.

1 Upon receipt of the planning committee's report, the
2 governing body of the municipality shall set a time and
3 place for a public hearing regarding the creation of any
4 business improvement district. The notice of the public
5 hearing shall be published as a Class I-O legal adver-
6 tisement in compliance with article three, chapter fifty-
7 nine of this code at least twenty days prior to the
8 scheduled hearing. A copy of the notice shall be sent by
9 certified mail, return receipt requested, not less than
10 twenty days before the hearing, to all owners of
11 commercial property within the proposed district. If any
12 property is shown to be in the name of more than one
13 owner at the same mailing address, a single notice may
14 be mailed, addressed to all owners at that address. In
15 addition to the time and place of the hearing, the notice
16 must also state:

17 (a) The purpose of the hearing;

18 (b) The name of the proposed district;

19 (c) The purpose of the proposed district;

20 (d) The property proposed to be included in the
21 district; and

22 (e) The proposed method of financing any costs
23 involved, including the maximum rate of annual fees
24 that may be imposed upon any properties situated
25 within the proposed district.

26 The hearing shall be held not later than sixty days
27 after receipt of the planning committee's report.

28 At the time and place set forth in the notice, the
29 governing body shall afford the opportunity to be heard
30 to any owner of real property situated in the proposed
31 district and any residents of the municipality.

**§8-13A-9. Creation of district; statement of prohibition on
use of fees.**

1 (a) If the governing body of the municipality, follow-
2 ing the public hearing, determines it advisable and in
3 the public interest to establish an improvement district,
4 it shall create the district by ordinance as provided for
5 in article eleven of this chapter: *Provided*, That the
6 governing body may not amend, alter or change in any
7 manner the boundaries of the improvement district as
8 recommended by the planning committee. In addition to
9 all other requirements, the ordinance shall contain the
10 following:

11 (1) The name of the district and a description of its
12 boundaries;

13 (2) A summary of any proposed services to be
14 provided within the district and a reasonable estimate
15 of any attendant cost;

16 (3) The maximum rate of any annual fees that may
17 be imposed upon the commercial properties and the
18 manner in which the rate will be imposed; and

19 (4) The district boardmembers' terms, their method
20 of appointment and a full description of their powers
21 and duties.

22 (b) The ordinance shall also state the general intention
23 of the municipality to increase services within the
24 business improvement district and that no fees collected
25 under the authority of the ordinance may be used to
26 reduce, replace or supplant existing funds or services.

§8-13A-10. Petition to repeal ordinance.

1 Within thirty days following passage of an ordinance
2 creating a business improvement district, the owners of
3 any real property situated in the district may file a
4 petition with the governing body of the municipality in
5 opposition to the continuation of the district. Upon a
6 finding that the petition was signed by owners of
7 commercial property situated in the proposed business
8 improvement district having an assessed value as
9 reflected on the county assessor's land books of not less
10 than fifty-one percent of the value of all commercial

11 property in the business improvement district, the
12 governing body shall repeal the ordinance which
13 established the district, thereby rescinding its creation
14 and development.

§8-13A-11. District board; duties.

1 (a) The governing body of any municipality that
2 intends to establish a business improvement district, in
3 accordance with this article, shall provide by ordinance
4 for the appointment of a district board to oversee the
5 operations of the improvement district. The board shall
6 be made up of at least seven members, the majority of
7 which shall be owners of commercial property situated
8 in the improvement district.

9 (b) The district board, in addition to the duties
10 prescribed by the ordinance creating the improvement
11 district, shall submit an annual report to the governing
12 body containing:

13 (1) An itemized statement of its receipts and disbur-
14 sements for the preceding fiscal year;

15 (2) A description of its activities for the preceding
16 fiscal year;

17 (3) A recommended program of services to be per-
18 formed or provided within the district for the coming
19 fiscal year; and

20 (4) A proposed budget to accomplish its objectives.

21 (c) Nothing in this article prohibits any member of the
22 district board from also serving on the board of
23 directors of a nonprofit corporation with which the
24 municipality may contract to provide specified services
25 within the district.

26 (d) No member of the district board may receive,
27 either directly or indirectly, compensation for service on
28 the board.

**§8-13A-12. Levy of service fees; classification of proper-
ties; factors to consider.**

1 (a) Upon receipt of a recommended program of
2 services and a proposed budget from the district board,
3 the governing body of the municipality may annually,
4 by ordinance, levy business improvement service fees
5 which may only be applicable to properties located
6 within the improvement district and only to the extent
7 necessary to fund the budget proposed by the district
8 board. All revenue from the fees shall be placed in a
9 special business improvement district fund and may
10 only be used to fund the services provided under this
11 article. Any surplus in the fund in a fiscal year shall
12 be applied to reduce the amount of service fees required
13 for the next fiscal year.

14 (b) The ordinance creating a business improvement
15 district may provide for the division of property within
16 the district into two or more zones or uses in the event
17 significant differences exist relative to the property and
18 the improvements. The ordinance may establish differ-
19 ent rates of assessment for each zone or use, or may
20 provide that the rate be a certain percentage of the
21 assessment levied in the zone or on the use, subject to
22 the highest rate of assessment.

23 (c) The amount of the business improvement service
24 fee shall be in addition to any municipality-wide license
25 fees or any other tax, fee or charge levied for the general
26 benefit and use of the municipality.

27 (d) Each assessment is a lien on the commercial
28 property that is assessed, second only to any state,
29 federal or county taxes levied on that property.

§8-13A-13. Special business improvement district fund.

1 Any municipality that has established a business
2 improvement district shall establish a special business
3 improvement district fund for each district created
4 within such municipality. Revenue derived from any
5 special assessment fees, gifts, grants, appropriations
6 from the municipality or other sources shall be paid into
7 the fund. Moneys in another municipal fund or funds
8 may be advanced to the special fund only if reimbur-

9 sement is made to such other fund or funds prior to the
10 end of the fiscal year.

**§8-13A-14. Modification of included area; notice;
hearing.**

1 (a) The ordinance creating a business improvement
2 district may be amended to include additional property
3 if a petition is filed with the governing body requesting
4 such inclusion. Such petition must be signed by the
5 owners of the commercial property that is being
6 proposed for inclusion in the improvement district. Such
7 property must have an assessed value, as reflected on
8 the assessor's land books, of not less than fifty-one
9 percent of the value of all the property proposed for
10 inclusion.

11 (b) Upon receipt of the petition, the governing body
12 shall refer the petition to the appropriate district board
13 for which the amendment is sought. The board shall
14 review the petition and, within sixty days, file a report
15 with the governing body recommending either accep-
16 tance of the proposed inclusion or rejection of the
17 petition. Additional property may not be included unless
18 it is contiguous with the existing district and situated
19 within the boundaries of the municipality.

20 (c) Upon receipt of the recommendation from the
21 district board, the governing body shall designate a time
22 and place for a public hearing upon the petition to
23 include additional property. The notice shall meet the
24 requirements set forth in section eight of this article.

25 (d) At the time and place set forth in the notice, the
26 governing body shall afford the opportunity to be heard
27 to any owners of real property either currently included
28 in or proposed to be added to the existing improvement
29 district and to any other residents of the municipality.
30 The hearing shall be held within sixty days after the
31 governing body's receipt of the district board's
32 recommendation.

33 (e) All additional property included in a district shall

34 be subject to all fees whether currently existing or
35 thereafter levied.

**§8-13A-15. Abolishment and dissolution of district; notice;
hearing.**

1 (a) A district may be abolished by the governing body
2 of the municipality following a public hearing upon the
3 proposed abolishment. Notice of such hearing must be
4 provided by first class mail to all property owners
5 within the district and shall be published as a Class I-
6 O legal advertisement in compliance with article three,
7 chapter fifty-nine of this code at least twenty days prior
8 to the public hearing. Upon the abolishment of any
9 improvement district, any funds or other assets,
10 contractual rights or obligations, claims against holders
11 of indebtedness or other financial benefits, liabilities or
12 obligations existing after full payment has been made
13 on all existing contracts, bonds, notes or other obliga-
14 tions of the district, shall be transferred to the munic-
15 ipality. Any funds or other assets so transferred shall
16 be used for the benefit of the area included in the
17 improvement district being abolished.

18 (b) Notwithstanding any other provision of this
19 article, no business improvement district may exist for
20 a period exceeding ten years unless reinstated pursuant
21 to the provisions of this article. Reinstatement requires
22 compliance with all requirements and procedures set
23 forth herein for the initial development and establish-
24 ment of a district. No district may issue notes or bonds
25 for funding district projects or improvements that
26 exceed a repayment schedule of ten years. Upon the
27 dissolution of any business improvement district, any
28 funds or other assets, contractual rights or obligations,
29 claims against holders of indebtedness, or other finan-
30 cial benefits, liabilities or obligations existing after full
31 payment has been made on all contracts, bonds, notes
32 or other obligations of the district, shall be transferred
33 to the municipality. Any funds or other assets so
34 transferred shall be used for the benefit of the area
35 included in the improvement district being dissolved.

CHAPTER 118

(S. B. 312—By Senators Schoonover and Holliday)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing municipalities to offer fire protection services to property within the county; and providing that when a municipality provides fire services to any property outside the corporate limits, it may provide the same fire services under contract to other property within the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-3. Municipalities empowered and authorized to contract for prevention and extinguishment of fires beyond the corporate limits.

1 (a) Any municipality may contract to render services
2 in the prevention and extinguishment of fires upon
3 property located within the state. A municipality may
4 contract beyond its immediate boundary limit for fire
5 service protection if fire protection is provided in
6 accordance with and under a rural fire protection
7 district plan based upon the fire suppression rating
8 schedule approved by the state insurance commissioner.
9 All rural fire protection district plans shall be approved
10 by the state fire commission. No rural fire protection
11 district plan providing for a municipality to contract
12 beyond its boundary may infringe upon an existing fire
13 department's response area without the written consent
14 of the fire department providing fire services for that
15 area.

16 No contract entered into under the authority of this
17 section may operate to impose any greater obligation or
18 liability upon the municipality than that with respect to
19 property within its corporate limits. Nothing contained
20 in this section may be construed as requiring any
21 municipality to contract to render such services. A
22 municipality providing fire services under contract to
23 any property outside its corporate limits may offer fire
24 service under contract to any property within the county
25 if the property owner requests the protection.

26 Any contract entered into under the authority of this
27 section, on or after the first day of July, one thousand
28 nine hundred sixty-nine, shall require the property
29 owner to pay as consideration for said services an annual
30 payment, determined as provided in the remainder of
31 this subsection. If the municipality does not impose a
32 fire service fee on the users of such service within the
33 municipality as authorized in section thirteen, article
34 thirteen of this chapter, the annual payment shall be
35 equivalent to eighty percent of the annual tax levied for
36 current municipal purposes upon property within said
37 municipality of like assessed valuation to the property
38 under contract. If the municipality does impose a fire
39 service fee on the users of such service within the
40 municipality, as authorized in said section, the annual
41 payment shall be equivalent to the amount of fire service
42 fee which would be imposed if the property under
43 contract were located within the municipality plus at
44 least fifty percent of the annual tax levied for current
45 municipal purposes upon property within said municipi-
46 pality of like assessed valuation to the property under
47 contract. No contract entered into under the authority
48 of this section, and nothing herein contained, may be
49 construed as requiring or permitting any municipality
50 to install or maintain any special additional apparatus
51 or equipment beyond that necessary for the protection
52 of property within its corporate limits.

53 (b) The annual payments due under any such contract
54 are payable on or before the first day of October of each
55 calendar year in which such contract remains in effect,
56 or upon such day as may be hereinafter provided as the
57 due date of the first installment of ad valorem taxes. If

58 any annual payment is in default for a period of more
59 than thirty days, it shall bear interest at the same rate
60 as that provided for delinquent property taxes and shall
61 be a lien upon the property under contract if a notice
62 of such lien is recorded in the proper deed of trust book
63 in the office of the clerk of the county commission of the
64 county in which such property or the major portion
65 thereof is located. Such lien is void at the expiration of
66 two years after such defaulted annual payment became
67 due, unless within such two-year period a civil action
68 seeking equitable relief to enforce the lien was instituted
69 by the municipality. The municipality may by civil
70 action collect any annual payment and the interest
71 thereon at any time within five years after such
72 payment became due; and upon default in any annual
73 payment, the municipality may cancel the contract
74 involved.

75 (c) Any contract made under the authority of this
76 section shall inure to the benefit of and be binding upon
77 the successors in title of the person making the same
78 contract; and such person, upon conveying the property
79 subject to such contract, is no longer liable under such
80 contract, except as to annual payments which were due
81 prior to the conveyance and which remain unpaid.

82 (d) Any property owner may cancel any such contract
83 with respect to the property of such owner upon giving
84 a thirty-day written notice to the municipality, if the
85 owner is not in default with respect to any annual
86 payment due thereunder, except that if such notice is
87 given subsequent to the first day of July of any calendar
88 year, the next succeeding annual payment shall be made
89 by the property owner as soon as the amount thereof is
90 ascertainable. Upon cancellation as aforesaid, the
91 municipality shall deliver to the property owner a
92 recordable release discharging such owner and such
93 property from any further lien or obligation with
94 respect to the annual payments. The annual payments
95 due under any such contract shall be made to the
96 officials as the municipality, in the contract, designates
97 to receive them, who likewise may receive notice of
98 cancellation and execute upon behalf of the municipality
99 the release for which provision is hereinbefore made.

CHAPTER 119

(Com. Sub. for H. B. 4402—By Mr. Speaker, Mr. Chambers, and
Delegates Martin, Mezzatesta, Kiss, Rowe, Douglas and Burk)

[Passed March 12, 1994; in effect from passage. Approved by the Governor.]

AN ACT to repeal section six, article one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section one, article three, chapter twenty of said code; to amend and reenact section twenty-a, article thirteen-a, chapter eleven of said code; to amend and reenact section three, article one-a, chapter nineteen of said code; and to amend and reenact sections three and six, article one-b of said chapter, all relating to forest and wildlife protection and funding; repealing provisions relating to an annual fee to benefit the division of forestry assessed owners of woodlots, woodlands and timberland; creating a special revenue account to be appropriated by the Legislature; designating certain proceeds from the timber severance tax to benefit the division of forestry; continuing the division of forestry; jurisdiction of division; moneys from sale of timber; appointment of director; defining terms; notification of timbering operations; and exempting certain noncommercial timber harvesting from specified regulatory control.

Be it enacted by the Legislature of West Virginia:

That section six, article one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section one, article three, chapter twenty of said code be repealed; that section twenty-a, article thirteen-a, chapter eleven of said code be amended and reenacted; that section three, article one-a, chapter nineteen of said code be amended and reenacted; and that sections three and six, article one-b of said chapter be amended and reenacted, all to read as follows:

Chapter**11. Taxation.****19. Agriculture.****CHAPTER 11. TAXATION.****ARTICLE 13A. SEVERANCE TAXES.****§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 on the privilege of severing
20 timber collected under section three-b of this article,
21 including any interest, additions to tax and penalties
22 collected under article ten of this chapter, less the
23 amount of allowable refunds and any interest payable
24 with respect to such refunds, shall be paid into a special
25 revenue account in the state treasury to be appropriated
26 by the Legislature for purposes of the division of
27 forestry.

28 (d) The amount of taxes collected under this article
29 from all other persons, including any interest, additions
30 to tax and penalties collected under article ten of this
31 chapter, less the amount of allowable refunds and any
32 interest payable with respect to such refunds, shall be

33 deposited into the general revenue fund.

CHAPTER 19. AGRICULTURE.

Article

1A. Division of Forestry.

1B. Sediment Control During Commercial Timber Harvesting Operations.

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-3. Division of forestry; division director; duties, powers, dedication of certain moneys; creation of a special revenue account.

1 The division of forestry heretofore created is hereby
2 continued. And, except as otherwise provided in this
3 article, all powers and duties previously exercised by the
4 director of natural resources under subsection (13),
5 section seven, article one and article three, chapter
6 twenty of this code, except those powers and duties
7 relating solely to wildlife areas as described in section
8 three, article three, chapter twenty of this code,
9 heretofore transferred to the division of forestry, are
10 hereby continued in the division of forestry. The division
11 of forestry has within its jurisdiction and supervision the
12 state forests, other forests and woodland areas, the
13 protection of forest areas from injury and damage by
14 fire, disease, insects and other pestilences and forces, the
15 management of forest areas for natural resources,
16 conservation and undeveloped recreational activities,
17 administration of the southeastern interstate forest fire
18 protection compact and other compacts and agreements
19 relating to forest management and husbandry, and the
20 administration and enforcement of laws relating to the
21 conservation, development, protection, use and enjoy-
22 ment of all forest land areas of the state consistent with
23 the provisions of sections one and two of this article. All
24 moneys collected from the sale of timber realized
25 through management of the state-owned forests and the
26 sale of seedlings from the tree nurseries shall be paid
27 into the state treasury and shall be credited to a special
28 account within the division of forestry and used
29 exclusively for the purposes of this article and article
30 three, chapter twenty of this code.

31 The division of forestry has jurisdiction to regulate
32 the digging, possession and sale of native, wild or
33 cultivated ginseng as provided in section three-a, article
34 one-a, chapter nineteen of this code.

35 The chief of the division is the director of the division
36 of forestry who shall be appointed and qualified as
37 provided in section five of this article.

38 The director of the division of forestry shall study
39 means and methods of implementing the provisions of
40 section fifty-three, article VI of the constitution of West
41 Virginia, relating to forest lands, and shall prepare and
42 recommend legislation thereon.

43 The division lines within the state forests between
44 improved recreation areas under the management of the
45 division of tourism and parks and the demonstration
46 forests under the management of the division of forestry,
47 heretofore established by agreement, are hereby
48 continued.

49 In the event of disagreement over the placement of a
50 division line or dual occupancy of a building, the
51 disposition shall be decided by the Legislature's joint
52 committee on government and finance at a regularly
53 scheduled meeting.

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

§19-1B-3. Definitions.

§19-1B-6. Notification of duration of timbering operations or harvesting of
timber for sale; requirements thereof.

*§19-1B-3. Definitions.

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

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

* Clerk's Note: This section was also amended by H. B. 4065 (Chapter 61),
which passed subsequent to this act.

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

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

15 (e) "Timbering operations" means activities directly
16 related to the severing or removal of standing trees from
17 the forest as a raw material for commercial processes
18 or purposes. For the purpose of this article, timbering
19 operations shall not include the severing of evergreens
20 grown for and severed for the traditional Christmas
21 holiday season, nor the severing of trees incidental to
22 ground-disturbing construction activities, including well
23 sites, access roads and gathering lines for oil and
24 natural gas operations, nor the severing of trees for
25 maintaining existing, or during construction of, rights-
26 of-way for public highways or public utilities or any
27 company subject to the jurisdiction of the federal energy
28 regulatory commission unless the trees severed are
29 being sold or provided as raw material for commercial
30 wood product purposes, nor the severing of trees by an
31 individual on the individual's own property for his or
32 her individual use provided that the individual does not
33 have the severing done by a person whose business is
34 the severing or removal of trees. Individuals severing or
35 removing standing trees for sale occasionally, whether
36 on their own property or the property of another, where
37 the aggregate gross income realized for all sales within
38 any calendar year of the logs, props, posts, firewood,
39 rails or other products does not exceed fifteen thousand
40 five hundred twenty-eight dollars, are to be considered
41 engaged in the harvesting of timber and not engaged in
42 severing timber for commercial purposes. Harvesting of
43 timber is specifically excluded from the definition of
44 timbering operations.

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

§19-1B-6. Notification of duration of timbering operations or harvesting of timber for sale; requirements thereof.

1 (a) In addition to any other requirement of this article,
2 no person may conduct timbering operations and no
3 person may sever trees for sale unless the person notifies
4 the director of the specific location on which the
5 timbering operations or harvesting of timber are to be
6 conducted. The notification shall be made in a manner
7 designated by the director.

8 (1) The notification of harvesting of timber shall
9 include:

10 (A) The name and address of the harvester of timber;

11 (B) The name and addresses of the owner or owners
12 of the property upon which the timber is located;

13 (C) The business tax number or social security
14 number of the harvester of timber; and

15 (D) An acknowledgment that the harvester of timber
16 will conduct the harvest according to best management
17 practices.

18 (2) The notification of timbering operations shall
19 include, at a minimum, the following:

20 (A) The specific topographic location where the
21 timbering operations are to be conducted;

22 (B) The approximate dates that the timbering oper-
23 ation will begin and end;

24 (C) The approximate acreage over which timbering
25 operations are contemplated;

26 (D) The names and addresses of the owner or owners
27 of the timber to be harvested and, if different, the names
28 and addresses of the owner or owners of the property
29 upon which the timber is located;

30 (E) A sketch map of the proposed logging operation,
31 including haul roads, landings and stream crossings;

32 (F) A description of the sediment control practices to
33 be used by the logger during the timber harvesting
34 operation;

35 (G) An acknowledgement that the operator will
36 conduct the operations in compliance with the provisions
37 of this article and any applicable rules promulgated
38 pursuant to this article;

39 (H) A certification satisfactory to the director that all
40 permits required under state law have been obtained or
41 applied for and that all pertinent requirements for
42 obtaining any permit applied for, but not yet obtained,
43 have been complied with; and

44 (I) The name or names of the person or persons who
45 will be supervising the timbering operations at the site
46 of the operations and his or her logger certification
47 numbers.

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

50 (c) Further notice shall be given if the operation is to
51 be, for any reason, closed more than seven days before
52 the estimated date for closing provided under para-
53 graph (B), subdivision (2), subsection (a) of this section.

CHAPTER 120

(S. B. 334—By Senators Dittmar, Chernenko and Anderson)

[Passed March 11, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to natural resources; and including reptiles, mollusks and crustaceans in the definition of "wildlife".

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

***§20-1-2. Definitions.**

1 As used in this chapter, unless the context clearly
2 requires a different meaning:

3 "Agency" means any branch, department or unit of
4 the state government, however designated or
5 constituted.

6 "Alien" means any person not a citizen of the United
7 States.

8 "Bag limit" or "creel limit" means the maximum
9 number of wildlife which may be taken, caught, killed
10 or possessed by any licensee.

11 "Board" means the water resources board of the
12 division of natural resources.

13 "Bona fide resident, tenant or lessee" means a person
14 who permanently resides on the land.

15 "Citizen" means any native born citizen of the United
16 States, and foreign born persons who have procured
17 their final naturalization papers.

18 "Closed season" means the time or period during
19 which it shall be unlawful to take any wildlife as
20 specified and limited by the provisions of this chapter.

21 "Commission" means the natural resources
22 commission.

23 "Commissioner" means a member of the advisory
24 commission of the natural resources commission.

25 "Director" means the director of the division of
26 natural resources.

27 "Fishing" or "to fish" means the taking, by any means,
28 of fish, minnows, frogs or other amphibians, aquatic
29 turtles and other forms of aquatic life used as fish bait.

30 "Fur-bearing animals" shall include: (a) The mink; (b)
31 the weasel; (c) the muskrat; (d) the beaver; (e) the
32 opossum; (f) the skunk and civet cat, commonly called
33 polecat; (g) the otter; (h) the red fox; (i) the gray fox;

* Clerk's Note: This section was also amended by H. B. 4065 (Chapter 61), which passed subsequent to this act.

34 (j) the wildcat, bobcat or bay lynx; (k) the raccoon; and
35 (l) the fisher.

36 "Game" means game animals, game birds and game
37 fish as herein defined.

38 "Game animals" shall include: (a) The elk; (b) the
39 deer; (c) the cottontail rabbits and hares; (d) the fox
40 squirrels, commonly called red squirrels, and gray
41 squirrels and all their color phases — red, gray, black
42 or albino; (e) the raccoon; (f) the black bear; and (g) the
43 wild boar.

44 "Game birds" shall include: (a) The Anatidae, com-
45 monly known as swan, geese, brants and river and sea
46 ducks; (b) the Rallidae, commonly known as rails, sora,
47 coots, mudhens and gallinales; (c) the Limicolae,
48 commonly known as shorebirds, plover, snipe, woodcock,
49 sandpipers, yellow legs and curlews; (d) the Galli,
50 commonly known as wild turkey, grouse, pheasants,
51 quails and partridges (both native and foreign species);
52 and (e) the Columbidae, commonly known as doves, and
53 the Icteridae, commonly known as blackbirds, redwings
54 and grackle.

55 "Game fish" shall include: (a) Brook trout; (b) brown
56 trout; (c) rainbow trout; (d) golden rainbow trout; (e)
57 Kokanee salmon; (f) largemouth bass; (g) smallmouth
58 bass; (h) Kentucky or spotted bass; (i) striped bass; (j)
59 pickerel; (k) muskellunge; (l) walleye pike or pike perch;
60 (m) northern pike; (n) rock bass; (o) white bass; (p) white
61 and black crappie; (q) all sunfish; (r) channel and
62 flathead catfish; and (s) sauger.

63 "Hunt" means to pursue, chase, catch or take any wild
64 birds or wild animals.

65 "Lands" means land, waters and all other appurtenan-
66 ces connected therewith.

67 "Migratory birds" means any migratory game or
68 nongame birds included in the terms of conventions
69 between the United States and Great Britain and
70 between the United States and United Mexican States,
71 known as the "Migratory Bird Treaty Act", for the
72 protection of migratory birds and game mammals

73 concluded, respectively, the sixteenth day of August, one
74 thousand nine hundred sixteen, and the seventh day of
75 February, one thousand nine hundred thirty-six.

76 "Nonresident" means any person who is a citizen of
77 the United States and who has not been a domiciled
78 resident of the state of West Virginia for a period of
79 thirty consecutive days immediately prior to the date of
80 his or her application for a license or permit except any
81 full-time student of any college or university of this
82 state, even though he or she is paying a nonresident
83 tuition.

84 "Open season" means the time during which the
85 various species of wildlife may be legally caught, taken,
86 killed or chased in a specified manner, and shall include
87 both the first and the last day of the season or period
88 designated by the director.

89 "Person" except as otherwise defined elsewhere in this
90 chapter, means the plural "persons" and shall include
91 individuals, partnerships, corporations or other legal
92 entities.

93 "Preserve" means all duly licensed private game
94 farmlands, or private plants, ponds or areas, where
95 hunting or fishing is permitted under special licenses or
96 seasons other than the regular public hunting or fishing
97 seasons.

98 "Protected birds" means all wild birds not included
99 within the definition of "game birds" and "unprotected
100 birds".

101 "Resident" means any person who is a citizen of the
102 United States and who has been a domiciled resident of
103 the state of West Virginia for a period of thirty
104 consecutive days or more immediately prior to the date
105 of his application for a license or permit: *Provided*, That
106 a member of the armed forces of the United States who
107 is stationed beyond the territorial limits of this state, but
108 who was a resident of this state at the time of his entry
109 into such service, and any full-time student of any
110 college or university of this state, even though he or she

111 is paying a nonresident tuition, shall be considered a
112 resident under the provisions of this chapter.

113 "Roadside menagerie" means any place of business,
114 other than commercial game farm, commercial fish
115 preserve, place or pond, where any wild bird, game
116 bird, unprotected bird, game animal or fur-bearing
117 animal is kept in confinement for the attraction and
118 amusement of the people for commercial purposes.

119 "Take" means to hunt, shoot, pursue, lure, kill,
120 destroy, catch, capture, keep in captivity, gig, spear,
121 trap, ensnare, wound or injure any wildlife, or attempt
122 to do so.

123 "Unprotected birds" shall include: (a) The English
124 sparrow; (b) the European starling; (c) the cowbird; and
125 (d) the crow.

126 "Wild animals" means all mammals native to the state
127 of West Virginia occurring either in a natural state or
128 in captivity, except house mice or rats.

129 "Wild birds" shall include all birds other than: (a)
130 Domestic poultry — chickens, ducks, geese, guinea fowl,
131 peafowls and turkeys; (b) psittacidae, commonly called
132 parrots and parakeets; and (c) other foreign cage birds
133 such as the common canary, exotic finches and ring
134 dove. All wild birds, either: (a) Those occurring in a
135 natural state in West Virginia; or (b) those imported
136 foreign game birds, such as waterfowl, pheasants,
137 partridges, quail and grouse, regardless of how long
138 raised or held in captivity, shall remain wild birds
139 under the meaning of this chapter.

140 "Wildlife" means wild birds, wild animals, game and
141 fur-bearing animals, fish (including minnows), reptiles,
142 amphibians, mollusks, crustaceans and all forms of
143 aquatic life used as fish bait, whether dead or alive.

144 "Wildlife refuge" means any land set aside by action
145 of the director as an inviolate refuge or sanctuary for
146 the protection of designated forms of wildlife.

CHAPTER 121

(Com. Sub. for S. B. 325—By Senator Dittmar)

[Passed March 10, 1994: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and thirty-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the regulation of wildlife resources; removing prohibitions against possession of certain fishing equipment; obtaining certain training prior to the issuance of hunting license; prohibiting certain misrepresentations or uses of documents regarding the training requirement; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.

§20-2-30a. Certificate of training; falsifying, altering, forging, counterfeiting or uttering training certificate; penalties.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.

1 Except as authorized by the director, it is unlawful
2 at any time for any person to:

3 (1) Shoot at or to shoot any wild bird or animal unless
4 it is plainly visible to him;

5 (2) Dig out, cut out or smoke out, or in any manner
6 take or attempt to take, any live wild animal or wild
7 bird out of its den or place of refuge, except as may be
8 authorized by regulations promulgated by the director
9 or by law;

10 (3) Make use of, or take advantage of, any artificial
11 light in hunting, locating, attracting, taking, trapping
12 or killing any wild bird or wild animal, or to attempt

13 to do so, while having in his possession or subject to his
14 control, or for any person accompanying him to have in
15 his possession or subject to his control, any firearm,
16 whether cased or uncased, bow, arrow, or both, or other
17 implement or device suitable for taking, killing or
18 trapping a wild bird or animal: *Provided*, That it shall
19 not be unlawful to hunt or take raccoon, opossum or
20 skunk by the use of artificial lights. No person shall be
21 guilty of a violation of this subdivision merely because
22 he looks for, looks at, attracts or makes motionless a wild
23 bird or wild animal with or by the use of an artificial
24 light, unless at such time he has in his possession a
25 firearm, whether cased or uncased, bow, arrow, or both,
26 or other implement or device suitable for taking, killing
27 or trapping a wild bird or wild animal, or unless such
28 artificial light (other than the head lamps of an
29 automobile or other land conveyance) is attached to, a
30 part of, or used from within or upon an automobile or
31 other land conveyance.

32 Any person violating the provisions of this subdivision
33 shall be guilty of a misdemeanor, and, upon conviction
34 thereof, shall for each offense be fined not less than one
35 hundred dollars nor more than five hundred dollars and
36 shall be imprisoned in the county jail for not less than
37 ten days nor more than one hundred days;

38 (4) Hunt for, take, kill, wound or shoot at wild animals
39 or wild birds from an airplane, or other airborne
40 conveyance, an automobile, or other land conveyance, or
41 from a motor-driven water conveyance, except as may
42 be authorized by regulations promulgated by the
43 director;

44 (5) Take any beaver or muskrat by any means other
45 than by trap;

46 (6) Catch, capture, take or kill by seine, net, bait, trap
47 or snare or like device of any kind, any wild turkey,
48 ruffed grouse, pheasant or quail;

49 (7) Destroy or attempt to destroy needlessly or
50 willfully the nest or eggs of any wild bird or have in
51 his possession such nest or eggs unless authorized to do
52 so under regulations or under a permit by the director;

53 (8) Except as provided in section six of this article,
54 carry an uncased or loaded gun in any of the woods of
55 this state except during the open firearms hunting
56 season for wild animals and nonmigratory wild birds
57 within any county of the state, unless he has in his
58 possession a permit in writing issued to him by the
59 director: *Provided*, That this section shall not prohibit
60 hunting or taking of unprotected species of wild animals
61 and wild birds and migratory wild birds, during the
62 open season, in the open fields, open water and open
63 marshes of the state;

64 (9) Except as provided in subdivision (11) below or in
65 section six of this article, carry an uncased or loaded
66 gun after the hour of five o'clock antemeridian on
67 Sunday in any woods or on any highway, railroad right-
68 of-way, public road, field or stream of this state, except
69 at a regularly used rifle, pistol, skeet, target or
70 trapshooting ground or range;

71 (10) Have in his possession a loaded firearm or a
72 firearm from the magazine of which all shells and
73 cartridges have not been removed, in or on any vehicle
74 or conveyance, or its attachments, within the state,
75 except as may otherwise be provided by law or regu-
76 lation. Except as hereinafter provided, between five
77 o'clock postmeridian of one day and seven o'clock
78 antemeridian, eastern standard time of the day follow-
79 ing, any unloaded firearm, being lawfully carried in
80 accordance with the foregoing provisions, shall be so
81 carried only when in a case or taken apart and securely
82 wrapped. During the period from the first day of July
83 to the thirtieth day of September, inclusive, of each year,
84 the foregoing requirements relative to carrying certain
85 unloaded firearms shall be permissible only from eight-
86 thirty o'clock postmeridian to five o'clock antemeridian,
87 eastern standard time;

88 (11) Hunt, catch, take, kill, trap, injure or pursue with
89 firearms or other implement by which wildlife may be
90 taken after the hour of five o'clock antemeridian on
91 Sunday any wild animals or wild birds: *Provided*, That
92 traps previously and legally set may be tended after the
93 hour of five o'clock antemeridian on Sunday, and the

- 94 person so doing may carry only a twenty-two caliber
95 firearm for the purpose of humanely dispatching
96 trapped animals;
- 97 (12) Hunt with firearms or long bow while under the
98 influence of intoxicating liquor;
- 99 (13) Hunt, catch, take, kill, injure or pursue a wild
100 animal or bird with the use of a ferret;
- 101 (14) Buy raw furs, pelts or skins of fur-bearing
102 animals unless licensed to do so;
- 103 (15) Catch, take, kill or attempt to catch, take or kill
104 any fish at any time by any means other than by rod,
105 line and hooks with natural or artificial lures unless
106 otherwise authorized by law or regulation issued by the
107 director: *Provided*, That snaring of any species of
108 suckers, carp, fallfish and creek chubs shall at all times
109 be lawful;
- 110 (16) Employ or hire, or induce or persuade, by the use
111 of money or other things of value, or by any means, any
112 person to hunt, take, catch or kill any wild animal or
113 wild bird except those species on which there is no
114 closed season, or to fish for, catch, take or kill any fish,
115 amphibian or aquatic life which is protected by the
116 provisions of this chapter or regulations of the director,
117 or the sale of which is prohibited;
- 118 (17) Hunt, catch, take, kill, capture, pursue, transport,
119 possess or use any migratory game or nongame birds
120 included in the terms of conventions between the United
121 States and Great Britain and between the United States
122 and United Mexican States for the protection of
123 migratory birds and wild mammals concluded, respec-
124 tively, the sixteenth day of August, one thousand nine
125 hundred sixteen, and the seventh day of February, one
126 thousand nine hundred thirty-six, except during the
127 time and in the manner and numbers prescribed by the
128 Federal Migratory Bird Treaty Act and regulations
129 made thereunder;
- 130 (18) Kill, take, catch or have in his possession, living
131 or dead, any wild bird, other than a game bird; or
132 expose for sale, or transport within or without the state

133 any such bird, except as aforesaid. No part of the
134 plumage, skin or body of any protected bird shall be sold
135 or had in possession for sale, except mounted or stuffed
136 plumage, skin, bodies or heads of such birds legally
137 taken and stuffed or mounted, irrespective of whether
138 such bird was captured within or without this state,
139 except the English or European sparrow (*Passer*
140 *domesticus*), starling (*Sturnus vulgaris*), crow (*Corvus*
141 *brachyrhynchus*) and cowbird (*Molothrus ater*), which
142 shall not be protected and the killing thereof at any time
143 is lawful;

144 (19) Use dynamite or any like explosive or poisonous
145 mixture placed in any waters of the state for the purpose
146 of killing or taking fish. Any person violating the
147 provisions of this subdivision shall be guilty of a felony,
148 and, upon conviction thereof, shall be fined not more
149 than five hundred dollars or imprisoned for not less than
150 six months nor more than three years, or both fined and
151 imprisoned;

152 (20) Have a bow and gun, or have a gun and any
153 arrow or arrows, in the fields or woods at the same time;

154 (21) Have a crossbow in the woods or fields or use a
155 crossbow to hunt for, take or attempt to take any
156 wildlife;

157 (22) Take or attempt to take turkey, bear, elk or deer
158 with any arrow unless the same is equipped with a point
159 having at least two sharp cutting edges measuring in
160 excess of three fourths of an inch wide;

161 (23) Take or attempt to take any wildlife with an
162 arrow having an explosive head or shaft, a poisoned
163 arrow or an arrow which would affect wildlife by any
164 chemical action;

165 (24) Shoot an arrow across any public highway or
166 from aircraft, motor-driven watercraft, motor vehicle or
167 other land conveyance;

168 (25) Permit any dog owned by him or under his
169 control to chase, pursue or follow upon the track of any
170 wild animal or wild bird, either day or night, between
171 the first day of May and the fifteenth day of August next

172 following: *Provided*, That dogs may be trained on wild
173 animals and wild birds, except deer and wild turkeys,
174 and field trials may be held or conducted on the grounds
175 or lands of the owner or by his bona fide tenant or
176 tenants or upon the grounds or lands of another person
177 with his written permission or on public lands, at any
178 time: *Provided, however*, That notwithstanding any of
179 the above provisions, no person may train a dog in any
180 county, or portion thereof, in which a legal bear hunting
181 season has been established prior to the first day of July,
182 one thousand nine hundred eighty-eight, except that
183 residents may train dogs in such counties after the
184 twenty-fourth day of August through the end of the legal
185 small game hunting season: *Provided further*, That
186 nonresidents shall not train dogs in this state at any time
187 except during the legal small game hunting season: *And*
188 *provided further*, That the person training said dogs does
189 not have firearms or other implements in his possession
190 during the closed season on such wild animals and wild
191 birds, whereby wild animals or wild birds could be
192 taken or killed;

193 (26) Conduct or participate in a field trial, shoot-to-
194 retrieve field trial, water race or wild hunt hereafter
195 referred to as trial: *Provided*, That any person, group
196 of persons, club or organization may hold such trial at
197 any time of the year upon obtaining such permit as is
198 provided for in section fifty-six of this article. The
199 person responsible for obtaining said permit shall
200 prepare and keep an accurate record of the names and
201 addresses of all persons participating in said trial, and
202 make same readily available for inspection by any
203 conservation officer upon request; and

204 (27) Except as provided in section four of this article,
205 hunt, catch, take, kill or attempt to hunt, catch, take or
206 kill any wild animal, wild bird or wild fowl except
207 during the open season established by regulation of the
208 director as authorized by subdivision (6), section seven,
209 article one of this chapter.

**§20-2-30a. Certificate of training; falsifying, altering,
forging, counterfeiting or uttering training
certificate; penalties.**

1 (a) Notwithstanding any other provisions of this
2 article, no hunting license may be issued to any person
3 who was born on or after the first day of January, one
4 thousand nine hundred seventy-five, unless the person
5 submits to the person authorized to issue hunting
6 licenses a certificate of training as provided for in this
7 section or proof of completion of any course which
8 promotes as a major objective safety in the handling of
9 firearms and of bow and arrows and which course is
10 approved by the hunter education association or the
11 director.

12 (b) The director shall establish a course in the safe
13 handling of firearms and of bows and arrows, such as
14 the course approved by the hunter education association.
15 This course shall be given at least once per year in each
16 county in this state and shall be taught by instructors
17 certified by the director. In establishing and conducting
18 this course, the director may cooperate with any
19 reputable association or organization which promotes as
20 a major objective safety in the handling of firearms and
21 of bows and arrows: *Provided*, That any person holding
22 a Class A-L or AB-L lifetime resident license obtained
23 prior to his or her fifteenth birthday shall be required
24 to obtain a certificate of training as provided for in this
25 section before hunting or trapping pursuant to said
26 license. This course of instruction shall be offered
27 without charge, except for materials or ammunition
28 consumed. Upon satisfactory completion of the course,
29 each person instructed in the course shall be issued a
30 certificate of training for the purposes of complying
31 with the requirements of subsection (a) of this section.
32 The certificate shall be in the form prescribed by the
33 director and shall be valid for hunting license applica-
34 tion purposes.

35 (c) (1) Upon satisfactory completion of this course, any
36 person whose hunting license has been revoked for a
37 violation of the provisions of this chapter may petition
38 the director for a reduction of his revocation time.
39 However, under no circumstances may the time be
40 reduced to less than one year.

41 (2) Successful completion of this course shall be

42 required to consider the reinstatement of a hunting
43 license of any person whose license has been revoked due
44 to a conviction for negligent shooting of a human being
45 or of livestock under the provisions of section fifty-seven
46 of this article or of section eleven, article seven, chapter
47 sixty-one of this code, and who petitions the director for
48 an early reinstatement of his hunting privileges. Such
49 a petitioner shall also comply with the other require-
50 ments for consideration of reinstatement contained in
51 section thirty-eight of this article.

52 (d) It is unlawful for any person to falsify, alter, forge,
53 counterfeit or utter a certificate of training. Any person
54 who violates the provisions of this subsection is guilty
55 of a misdemeanor, and, upon conviction thereof, shall be
56 fined not less than five hundred dollars nor more than
57 one thousand dollars, or confined in jail for a period not
58 to exceed one year, or both fined and imprisoned.

59 (e) Nothing herein contained shall mandate that any
60 county school district in the state be responsible for
61 implementing hunter safety education programs.

CHAPTER 122

(Com. Sub. for H. B. 4053—By Mr. Speaker, Mr. Chambers,
and Delegates Martin, Michael and Mezzatesta)

[Passed March 2, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section five-c, all relating to protection of bald and golden eagles; establishing replacement values for bald and golden eagles and other game or protected species; making it unlawful at any time for any person to take, possess, transport, import, export, or process, sell or offer for sale, buy, barter or trade or offer to buy, barter or trade any bald eagle or any golden eagle, alive or dead, or any part, nest or egg

thereof, or to attempt to do any of these acts; criminal penalties; forfeitures; and license revocation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5a. Forfeiture by person causing injury, death or destruction of game or protected species of animal; replacement values thereof; forfeiture procedures.

§20-2-5c. Protection of bald eagles and golden eagles; unlawful acts; criminal penalties; forfeitures; license revocation.

§20-2-5a. Forfeiture by person causing injury, death or destruction of game or protected species of animal; replacement values thereof; forfeiture procedures.

1 Any person who is convicted of violating any criminal
2 law of this state and the violation causes or results in
3 the injury, death or destruction of game, as defined in
4 section two, article one of this chapter, or a protected
5 species of animal, in addition to any other penalty to
6 which he is subject, shall forfeit the cost of replacing
7 such game or protected species of animal to the state.
8 For such purpose, replacement values for game and
9 protected species of animals are as follows:

10 (1) For each game fish or each fish of a protected
11 species taken illegally other than by pollution kill, five
12 dollars for each pound and any fraction thereof;

13 (2) For each bear or elk, five hundred dollars;

14 (3) For each deer or raven, two hundred dollars;

15 (4) For each wild turkey, hawk or owl, one hundred
16 dollars;

17 (5) For each beaver, otter or mink, twenty-five dollars;

18 (6) For each muskrat, raccoon, skunk or fox, fifteen
19 dollars;

20 (7) For each rabbit, squirrel, opossum, duck, quail,
21 woodcock, grouse or pheasant, ten dollars;

22 (8) For each wild boar, two hundred dollars;

23 (9) For each bald eagle, five thousand dollars;

24 (10) For each golden eagle, five thousand dollars; and

25 (11) For any other game or protected species of
26 animal, one hundred dollars each.

27 The court upon convicting such person shall order
28 him to forfeit to the state the proper amount based on
29 the values set forth herein for the game or protected
30 species of animal the injury, death or destruction of
31 which he caused or which resulted from his criminal
32 act. If two or more defendants are convicted for the
33 same violation causing, or resulting in, the injury, death
34 or destruction of game or protected species of animal,
35 the forfeiture shall be declared against them jointly and
36 equally. The forfeiture shall be paid by the person so
37 convicted and ordered to pay the forfeiture within the
38 time prescribed by the court, but not exceeding sixty
39 days. In each instance, the court shall pay such
40 forfeiture to the state treasury where it shall be credited
41 to the division of natural resources to be used only for
42 the replacement, habitat management or enforcement
43 programs for injured, killed or destroyed game or
44 protected species of animal.

**§20-2-5c. Protection of bald eagles and golden eagles;
unlawful acts; criminal penalties; forfeitures;
license revocation.**

1 (a) It is unlawful at any time for any person to take,
2 possess, transport, import, export or process, sell or offer
3 for sale, buy, barter or trade or offer to buy, barter or
4 trade at any time or in any manner, any bald eagle, also
5 commonly known as the American eagle, or any golden
6 eagle, alive or dead, or any part, nest or egg thereof
7 the foregoing eagles, or to attempt to do any of these
8 acts.

9 (b) Anyone who violates the provisions of this section
10 is guilty of a misdemeanor, and, upon conviction thereof,

11 shall be fined not less than five hundred dollars nor
12 more than five thousand dollars or imprisoned in the
13 county jail not less than sixty days nor more than one
14 year, or both fined and imprisoned. One half of any fine
15 imposed shall be paid to any person or persons providing
16 information that leads to the arrest and conviction of
17 anyone violating the provisions of this section.

18 (c) For a second or subsequent conviction for a
19 violation of this section, a person is guilty of a felony and
20 shall be fined not less than five thousand dollars nor
21 more than ten thousand dollars and imprisoned in the
22 penitentiary for not less than one year nor more than
23 two years. An amount equal to one half of the fine
24 imposed, not exceeding two thousand five hundred
25 dollars, shall be paid to the person or persons providing
26 information that leads to the arrest and conviction of
27 anyone for a second or subsequent violation of the
28 provisions of this section.

29 (d) "Take" is defined as including any means to
30 pursue, hunt, wound, kill, capture, collect, poison, or
31 molest any bald eagle or golden eagle, or any part, nest
32 or egg thereof, or to knowingly and willfully destroy the
33 nest or eggs of any such eagles.

34 (e) Nothing in this section may be construed to
35 prohibit the taking, possession or transportation of bald
36 or golden eagles legally under the current federal Eagle
37 Protection Act, 16 USC § 668a, and the current federal
38 regulations, 50 CFR 22.1 et seq.

39 (f) All wildlife, merchandise, guns, traps, nets and
40 other equipment, vessels, vehicles, aircraft and other
41 means of transportation used in taking, possessing,
42 transporting, importing, exporting, selling or offering
43 for sale, purchasing or bartering or offering to purchase
44 or barter any bald or golden eagle or part, nest, or egg
45 thereof, or in attempting to do any of these acts in
46 violation of this section shall be forfeited, at the time of
47 conviction, to the state.

48 (g) Upon conviction of taking, possessing, transport-
49 ing, importing, exporting or processing, selling or
50 offering for sale, buying, bartering or trading or

51 offering to buy, barter or trade any bald or golden eagle,
52 alive or dead, or any part, nest or egg thereof of the
53 foregoing eagles, or of attempting to do any of these acts,
54 the hunting licenses of such person or persons may be
55 revoked and such person or persons shall not be issued
56 any new hunting licenses for a period of ten years from
57 the date of conviction.

CHAPTER 123

(S. B. 337—By Senator Dittmar)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to sale of wildlife; and transportation of same.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-11. Sale of wildlife; transportation of same.

1 No person, except those legally licensed to operate
2 private game preserves for the purpose of propagating
3 game for commercial purposes, and those legally
4 licensed to propagate or sell fish, amphibians and other
5 forms of aquatic life, shall purchase or offer to purchase,
6 sell or offer to sell, expose for sale, or have in his
7 possession for the purpose of sale any wildlife, or part
8 thereof, which has been designated as game animals,
9 fur-bearing animals, game birds, game fish or amphi-
10 bians, or any of the song or insectivorous birds of the
11 state, or any other species of wildlife which the director
12 may designate: *Provided*, That pelts of game or fur-
13 bearing animals taken during the legal season may be
14 sold and live red and gray foxes and raccoon taken by
15 legal methods during legal and established trapping

16 seasons may be sold within the state: *Provided, however,*
17 That hide, head, antlers and feet of a legally killed deer
18 and the hide, head, skull, organs and feet of a legally
19 killed black bear may be sold.

20 No person, including a common carrier, shall trans-
21 port, carry or convey, or receive for such purposes any
22 wildlife, the sale of which is prohibited, if such person
23 knows or has reason to believe that such wildlife has
24 been or is to be sold in violation of this section.

25 The selling or exposing for sale, having in possession
26 for sale, transporting or carrying in violation of this
27 section shall each constitute a separate misdemeanor
28 offense. Notwithstanding the provisions of this or any
29 other section of this chapter, any game birds or game
30 bird meats sold by licensed retailers may be served at
31 any hotel, restaurant or other licensed eating place in
32 this state.

33 The director shall have authority to promulgate rules
34 and regulations in accordance with chapter twenty-nine-
35 a of this code, dealing with the sale of wildlife and the
36 skins thereof.

CHAPTER 124

(H. B. 4153—By Delegate Love)

[Passed February 23, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twenty-nine, article two, chapter
twenty of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to licensing
aliens.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§1. Repeal of section relating to licensing aliens.

1 Section twenty-nine, article two, chapter twenty of the
2 code of West Virginia, one thousand nine hundred
3 thirty-one, as amended, is hereby repealed.

CHAPTER 125

(S. B. 101—By Senators Dittmar, Anderson, Sharpe and Withers)

[Passed February 21, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, permitting the commissioner of the division of tourism and parks to exempt designated state parks from twenty-four hour deposit requirements for certain bank deposits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF TOURISM AND PARKS.

§5B-1-13. Division of parks and recreation; purpose; powers and duties generally.

1 It shall be the duty of the section of parks and
2 recreation to have within its jurisdiction and
3 supervision:

4 (a) All state parks and state recreation areas,
5 including all lodges, cabins, swimming pools, motorboat-
6 ing and all other recreational facilities therein, except
7 the roads therein which, by reason of section one, article
8 four, chapter seventeen of this code, are transferred to
9 the state road system and to the responsibility of the
10 commissioner of highways with respect to the construc-
11 tion, reconstruction and maintenance of the roads or any
12 future roads for public usage on publicly owned lands
13 in future state parks, state forests and public hunting
14 and fishing areas;

15 (b) The authority and responsibility to do the neces-
16 sary cutting and planting of vegetation along road
17 rights-of-way in state parks and recreational areas;

18 (c) The administration of all laws and regulations
19 relating to the establishment, development, protection,
20 use and enjoyment of all state parks and state recrea-

21 tional facilities consistent with the provisions of this
22 article: *Provided*, That nothing herein shall be construed
23 to assign to the section of parks and recreation of the
24 division of tourism and parks the law-enforcement
25 duties set forth in article seven, chapter twenty of this
26 code, which duties shall remain the responsibility of the
27 division of natural resources;

28 (d) The Berkeley Springs sanitarium in Morgan
29 County shall be continued as a state recreational facility
30 under the jurisdiction and supervision of the division of
31 tourism and parks and shall be managed, directed and
32 controlled as prescribed in this article and in article one,
33 chapter twenty of this code.

34 The commissioner shall have and is hereby granted
35 all of the powers and authority and shall perform all of
36 the functions and duties with regard to Berkeley
37 Springs sanitarium that were previously vested in and
38 performed by the director of the division of natural
39 resources, who shall no longer have such power and
40 authority and whose power and authority with regard
41 to Berkeley Springs sanitarium is hereby abolished;

42 (e) The Washington Carver camp in Fayette County
43 is hereby transferred from the division of natural
44 resources to the commissioner who shall have the
45 jurisdiction and supervision of the camp subject to the
46 jurisdiction and authority of the division of culture and
47 history as provided under section thirteen, article one,
48 chapter twenty-nine of this code. The commissioner shall
49 manage the Washington Carver camp as a state
50 recreational facility and a component of the state park
51 system;

52 (f) The improved recreational area of Camp Creek
53 state forest in Mercer County, as delineated according
54 to section three, article one-a, chapter nineteen of this
55 code, is hereby renamed as the Camp Creek state park
56 and under that name shall be managed as a state
57 recreational facility;

58 (g) The improved recreational area of Moncove lake
59 public hunting and fishing area, consisting of all
60 improved recreational facilities, including all land

61 between the lake and private property beginning at the
62 main entrance on secondary route eight to the first
63 stream on the southwest side of the improved recrea-
64 tional area, approximately two hundred feet southwest
65 of the private property corner where it meets the
66 Roxalia Springs trail, thence northwest to a stream and
67 along this stream northward to and across the Diamond
68 Hollow trail to the area boundary, thence continuing
69 around area boundary to the lake shore, thence follow-
70 ing the lake shore around the shoreline to meet the line
71 drawn from the main entrance where the boundary
72 begins. This area is hereby renamed as the Moncove
73 lake state park and under that name shall be managed
74 as a state recreational facility: *Provided*, That the
75 boundary, as herein described, shall be plainly marked
76 within ninety days of the effective date of this article;

77 (h) The commissioner of the division of tourism and
78 parks shall be primarily responsible for the execution
79 and administration of the provisions herein as an
80 integral part of the parks and recreation program of the
81 state and shall organize and staff his section for the
82 orderly, efficient and economical accomplishment of
83 these ends; and

84 (i) Notwithstanding any provision of this code to the
85 contrary, the commissioner may exempt designated
86 state parks for amounts less than two hundred fifty
87 dollars from the requirement that all payments must be
88 deposited in a bank within twenty-four hours.

CHAPTER 126

(Com. Sub. for S. B. 29—By Senators Burdette, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 12, 1994: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the board of probation and parole; changing the name

to the "West Virginia parole board"; increasing the number of board members from three to five; changing certain experience requirements for members; and providing for staggered appointments of the two new members.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. PROBATION AND PAROLE.

§62-12-12. Parole board generally.

1 There shall be a state board of parole, known as the
2 "West Virginia parole board". The board shall consist
3 of five members, each of whom shall have been a
4 resident of this state for at least five consecutive years
5 prior to his or her appointment. No more than three of
6 the board members may at any one time belong to the
7 same political party. The board shall be appointed by
8 the governor, by and with the advice and consent of the
9 Senate. Appointments following the effective date of this
10 section shall be made in such a manner so that no more
11 than one member of the board resides in any one
12 congressional district. Each member of the board shall
13 have a degree in criminal justice or like experience and
14 academic training and shall be otherwise competent to
15 perform the duties of his or her office. The members
16 shall be appointed for overlapping terms of six years.
17 Any member qualified under this section is eligible for
18 reappointment. The members of the board shall devote
19 their full time and attention to their board duties. Any
20 single member of the board is empowered to hold any
21 hearing provided for in this article, where a transcript
22 of the hearing, including exhibits and documentary
23 evidence, and the recommendation of the member
24 holding the hearing is submitted to the board for
25 decision.

CHAPTER 127

(H. B. 4209—By Delegates P. White, Riggs,
Martin, Everson, Bennett and Gallagher)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to unauthorized practice of medicine and surgery, podiatry or physicians assistants; criminal penalties; providing for use of computers or other electronic devices to order and obtain laboratory tests, medications and other patient orders; providing for use of electronic signature or unique electronic identification to effectively sign computer or electronically transmitted materials which require signature as part of authorized medical practice; and relating to limitations on practice.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-13. Unauthorized practice of medicine and surgery or podiatry; criminal penalties; limitations.

1 (a) A person shall not engage in the practice of
2 medicine and surgery or podiatry, hold himself or
3 herself out as qualified to practice medicine and surgery
4 or podiatry or use any title, word or abbreviation to
5 indicate to or induce others to believe that he or she is
6 licensed to practice medicine and surgery or podiatry in
7 this state unless he or she is actually licensed under the
8 provisions of this article. No person may practice as a
9 physician's assistant, hold himself or herself out as
10 qualified to practice as a physician's assistant, or use
11 any title, word or abbreviation to indicate to or induce
12 others to believe that he or she is licensed to practice
13 as a physician's assistant in this state unless he or she
14 is actually licensed under the provisions of this article.

15 Any person who violates the provisions of this subsection
16 is guilty of a misdemeanor, and, upon conviction thereof,
17 shall be fined not more than ten thousand dollars, or
18 imprisoned in the county jail not more than twelve
19 months, or both fined and imprisoned.

20 (b) The provisions of this section do not apply to:

21 (1) Persons who are duly licensed health care provid-
22 ers under other pertinent provisions of this code and are
23 acting within the scope of their license;

24 (2) Physicians or podiatrists licensed in other states
25 or foreign countries who are acting in a consulting
26 capacity with physicians or podiatrists duly licensed in
27 this state, for a period of not more than three months;

28 (3) Persons holding licenses granted by another state
29 or foreign country who are commissioned medical
30 officers of, a member of or employed by the armed
31 forces of the United States, the United States public
32 health service, the veterans' administration of the
33 United States, any federal institution or any other
34 federal agency while engaged in the performance of
35 their official duties;

36 (4) Any person providing first-aid care in emergency
37 situations;

38 (5) The practice of the religious tenets of any
39 recognized church in the administration of assistance to
40 the sick or suffering by mental or spiritual means;

41 (6) Visiting medical faculty engaged in teaching or
42 research duties at a medical school or institution
43 recognized by the board and who are in this state for
44 periods of not more than six months: *Provided*, That the
45 individuals do not otherwise engage in the practice of
46 medicine or podiatry outside of the auspices of their
47 sponsoring institutions;

48 (7) Persons enrolled in a school of medicine approved
49 by the liaison committee on medical education or by the
50 board, or persons enrolled in a school of podiatric
51 medicine approved by the council of podiatry education
52 or by the board, or persons enrolled in an undergraduate

53 or graduate physician assistant program approved by
54 the committee on allied health education and accredita-
55 tion or its successor on behalf of the American Medical
56 Association or by the board, or persons engaged in
57 graduate medical training in a program approved by
58 the liaison committee on graduate medical education or
59 the board, or engaged in graduate podiatric training in
60 a program approved by the council on podiatric medical
61 education or by the board, who are performing functions
62 in the course of training including with respect to
63 functions performed by medical residents or medical
64 students under the supervision of a licensed physician,
65 ordering and obtaining laboratory tests, medications
66 and other patient orders by computer or other electronic
67 means and no other provision of this code to the contrary
68 may be construed to prohibit or limit medical residents'
69 or medical students' use of computers or other electronic
70 devices in this manner;

71 (8) The fitting, recommending or sale of corrective
72 shoes, arch supports or similar mechanical appliances in
73 commercial establishments; and

74 (9) The fitting or sale of a prosthetic or orthotic device
75 not involving any surgical procedure, in accord with a
76 prescription of a physician, osteopathic physician, or
77 where chiropractors or podiatrists are authorized by law
78 to prescribe such a prosthetic or orthotic device, in
79 accord with a prescription of a chiropractor or podia-
80 trist, by a practitioner or registered technician certified
81 by the American Board for Certification of Orthotics
82 and Prosthetics in either prosthetics or orthotics:
83 *Provided*, That the sale of any prosthetic or orthotic
84 device by a partnership, proprietorship or corporation
85 which employs such a practitioner or registered techni-
86 cian who fitted the prosthetic or orthotic device shall not
87 constitute the unauthorized practice of medicine:
88 *Provided, however*, That the practitioner or registered
89 technician may, without a prescription, make recom-
90 mendation solely to a physician or osteopathic physician
91 or to a chiropractor or podiatrist otherwise authorized
92 by law to prescribe a particular prosthetic or orthotic
93 device, regarding any prosthetic or orthotic device to

94 be used for a patient upon a request for such
95 recommendation.

96 (c) This section shall not be construed as being in any
97 way a limitation upon the services of a physician's
98 assistant performed in accordance with the provisions of
99 this article.

100 (d) Persons covered under this article may be permit-
101 ted to utilize electronic signature or unique electronic
102 identification to effectively sign materials, transmitted
103 by computer or other electronic means, upon which
104 signature is required for the purpose of authorized
105 medical practice. Such signatures are deemed legal and
106 valid for purposes related to the provision of medical
107 services. This subsection does not confer any new
108 practice privilege or right on any persons covered under
109 this article.

CHAPTER 128

(H. B. 4469—By Delegates P. White, Gallagher, Martin,
Leach, Brown, Huntwork and Petersen)

[Passed March 9, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting nurses who are licensed in other states to provide nursing care to patients who are briefly visiting West Virginia or who are in transit through West Virginia.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-2. License required to practice.

1 In order to safeguard life and health, any person
2 practicing or offering to practice registered professional

3 nursing in this state for compensation shall hereafter be
4 required to submit evidence that he or she is qualified
5 so to practice, and shall be licensed as hereinafter
6 provided. After the thirtieth day of June, one thousand
7 nine hundred sixty-five, it shall be unlawful for any
8 person not licensed under the provisions of this article
9 to practice or to offer to practice registered professional
10 nursing in this state, or to use any title, sign, card or
11 device to indicate that such person is a registered
12 professional nurse: *Provided*, That any professional
13 nurse holding an active, unencumbered license to
14 practice in another state, who accompanies a patient to
15 whom he or she administers nursing care while such
16 patient is in transit or being transported into, out of, or
17 through this state, may practice without a license issued
18 under this article with the following limitations: (a)
19 Such nurse may only administer nursing care to the
20 patient whom they are accompanying in this state; and
21 (b) under no circumstances is any such nurse authorized
22 to practice nursing in this state for longer than forty-
23 eight hours within any three-month period; and (c)
24 under no circumstances shall any such nurse hold him
25 or herself out as a registered professional nurse licensed
26 in this state. Such forty-eight hour period shall com-
27 mence and run from the time such nurse first enters the
28 borders of this state in the company of his or her patient
29 and therefrom run continuously, whether or not such
30 nurse dispenses nursing care, until such forty-eight hour
31 period has elapsed.

CHAPTER 129

(Com. Sub. for H. B. 4590—By Delegates P. White, Phillips, Compton,
Mezzatesta, Martin, S. Williams and Ashcraft)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eleven and twelve,
article ten, chapter thirty of the code of West Virginia,
one thousand nine hundred thirty-one, as amended,
relating to veterinarians; the West Virginia board of

veterinary medicine; complaints and disciplinary action; and hearings.

Be it enacted by the Legislature of West Virginia:

That sections eleven and twelve, article ten, 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 10. VETERINARIANS.

§30-10-11. Complaints; disciplinary action.

§30-10-12. Hearings; administrative procedures act made applicable; grounds for suspension or revocation of license or disciplinary action.

§30-10-11. Complaints; disciplinary action.

1 The board may at any time upon its own motion, and
2 shall upon the written complaint of any person, conduct
3 an investigation to determine whether there are any
4 grounds for the board to suspend or revoke the license
5 of a veterinarian issued under the provisions of this
6 article or otherwise discipline a licensed veterinarian.

7 By a concurrence of four members, the board may
8 suspend for a certain time or revoke the license of or
9 otherwise discipline, for any of the following reasons:

10 (a) The employment of fraud, misrepresentation or
11 deception in obtaining his or her license;

12 (b) An adjudication of insanity;

13 (c) Chronic inebriety or the habitual use of drugs;

14 (d) The use of advertising or solicitation which is false,
15 misleading or is otherwise deemed unprofessional under
16 reasonable rules promulgated by the board;

17 (e) Conviction of a felony or other crime involving
18 moral turpitude;

19 (f) Incompetence, gross negligence or other malprac-
20 tice in the practice of veterinary medicine;

21 (g) Having professional association with or employing
22 any person practicing veterinary medicine unlawfully;

- 23 (h) Fraud or dishonesty in the application or reporting
24 of any test for disease in any animal or animals;
- 25 (i) Failure to keep veterinary premises and equipment
26 in a clean and sanitary condition;
- 27 (j) Failure to report, as required by law, or making
28 false report of, any contagious or infectious disease;
- 29 (k) Dishonesty or gross negligence in the inspection of
30 foodstuffs or the issuance of health or inspection
31 certificates;
- 32 (l) Cruelty to animals;
- 33 (m) Revocation of a license to practice veterinary
34 medicine by another state, territory or district of the
35 United States on grounds other than nonpayment of any
36 registration or license fee or fees; or
- 37 (n) Unprofessional conduct as defined in reasonable
38 rules promulgated by the board.

**§30-10-12. Hearings; administrative procedures act
made applicable; grounds for suspension
or revocation of license or disciplinary
action.**

1 Whenever the board denies an application for any
2 license or renewal of any license, or suspends or revokes
3 any license, or otherwise disciplines any licensed
4 veterinarian, it shall make and enter an order to that
5 effect and serve a copy thereof on the applicant or
6 licensed veterinarian, as the case may be, at his or her
7 last known address, by certified mail, return receipt
8 requested. The order shall state the grounds for action
9 taken and shall require that any license suspended or
10 revoked thereby shall be returned to the board by the
11 holder within twenty days after receipt of the copy of
12 the order.

13 Any person adversely affected by any such order is
14 entitled to a hearing thereon as to all issues not excluded
15 from the definition of a "contested case" as set forth in
16 article one, chapter twenty-nine-a of this code if, within
17 twenty days after receipt of a copy thereof, he or she
18 files with the board a written demand for such a

19 hearing. A demand for hearing shall operate automat-
20 ically to stay or suspend the execution of any order
21 placing a licensed veterinarian on probation, suspending
22 or revoking a license or denying an application for a
23 renewal license. The board may require the person
24 demanding the hearing to give reasonable security for
25 the costs thereof and if the person does not substantially
26 prevail at the hearing, such security shall be forfeited
27 or the cost shall be assessed against him or her and may
28 be collected by an action at law or other proper remedy.

29 Upon receipt of a written demand for a hearing, the
30 board shall set a time and place therefor not less than
31 ten and not more than thirty days thereafter.

32 All of the pertinent provisions of article five, chapter
33 twenty-nine-a of this code shall apply to and govern any
34 hearing and the administrative procedures in connection
35 with and following the hearing.

36 Any hearing shall be conducted by a quorum of the
37 board. For the purpose of conducting the hearing, any
38 member of the board may issue subpoenas and subpo-
39 enas duces tecum in the name of the board, in accor-
40 dance with the provisions of section one, article five,
41 chapter twenty-nine-a of this code. All subpoenas and
42 subpoenas duces tecum shall be issued and served
43 within the time and for the fees and shall be enforced,
44 as specified in said section and all of the section one
45 provisions dealing with subpoenas and subpoenas duces
46 tecum apply to subpoenas and subpoenas duces tecum
47 issued for the purpose of a hearing hereunder.

48 The board may postpone or continue any hearing on
49 its own motion or for good cause shown upon the
50 application of the applicant or licensee, as the case may
51 be. At the hearing the applicant or licensee, as the case
52 may be, has the right to be heard in person and by any
53 attorney at law admitted to practice before any circuit
54 court of this state.

55 After any hearing and consideration of all the
56 testimony, evidence and record in the case, the board
57 shall render its decision in writing.

58 The written decision of the board shall be accompan-
59 ied by findings of fact and conclusions of law as
60 specified in section three, article five, chapter twenty-
61 nine-a of this code, and a copy of the decision and
62 accompanying findings and conclusions shall be served
63 upon the applicant or licensee, as the case may be, and
64 his or her attorney of record, if any.

65 The decision of the board shall be final unless vacated
66 or modified upon judicial review thereof in accordance
67 with the provisions of section thirteen of this article.

CHAPTER 130

(H. B. 4195—By Delegates Martin and Michael)

[Passed February 23, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twelve, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the board of architects; authorizing the board to establish a schedule of fees by legislative rule.

Be it enacted by the Legislature of West Virginia:

That section three, 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.

§30-12-3. Fees.

1 (a) Notwithstanding any other provision of the law to
2 the contrary, the board is authorized and empowered to
3 establish by legislative rule in accordance with the
4 provisions of article three, chapter twenty-nine-a of this
5 code a schedule of fees to be charged to applicants. The
6 board shall charge for: Examination, reexamination,
7 renewal of certificates, restoration of expired certifi-
8 cates, reciprocal registration and for any other matters
9 deemed appropriate by the board.

10 (b) Until such time as the board establishes otherwise,
11 the fees previously set by legislative rule remain in
12 effect.

CHAPTER 131

(H. B. 4690—By Delegates Sorah, Faircloth, Collins,
Huntwork, Brown, Linch and L. White)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article eighteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to licensing private detectives or investigators, private detective or investigative firms, security guards and security guard firms; defining certain terms; establishing the eligibility requirements for license to conduct private investigation business; prescribing application requirements for license to conduct private investigation business; establishing requirements for employees of private detective firm or investigative firm; establishing the eligibility requirements for license to conduct security guard business; prescribing application requirements for license to conduct security guard business; establishing requirements for employees of security guard firm; prohibiting certain acts; providing for renewal of license; authorizing secretary of state to issue license; providing for revocation or suspension of license; defining a misdemeanor offense for violation of the article, and prescribing penalties therefor; creating a private cause of action for violation of the article; and providing for the disposition of fees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. PRIVATE INVESTIGATIVE AND SECURITY SERVICES.

- §30-18-1. Definitions.
- §30-18-2. Eligibility requirements for license to conduct the private investigation business.
- §30-18-3. Application requirements for a license to conduct the private investigation business.
- §30-18-4. Requirements for employees conducting the private investigation business under a firm license.

- §30-18-5. Eligibility requirements to be licensed to conduct security guard business.
- §30-18-6. Application requirements for a license to conduct security guard business.
- §30-18-7. Requirements for employees conducting security guard business under a firm license.
- §30-18-8. Prohibitions.
- §30-18-9. Renewal of license.
- §30-18-10. Authority of secretary of state.
- §30-18-11. Penalties.
- §30-18-12. Action for damages.
- §30-18-13. Disposition of fees.

§30-18-1. Definitions.

1 For the purposes of this article, except where the
2 context clearly requires otherwise, the following terms
3 shall have the meanings ascribed to them:

4 (1) "Applicant" means a person who files a completed
5 application as required by sections three and six of this
6 article to be licensed to conduct a private investigation
7 business or a security guard business. When a person
8 other than a natural person is applying for a license, the
9 applicant shall be the person whose qualifications are
10 presented to meet the experience or education require-
11 ments of sections two or five of this article.

12 (2) "Private investigation business" means the busi-
13 ness of doing an investigation or investigations, for hire,
14 reward or any other type of remuneration, to obtain
15 information about:

16 (A) A crime which is alleged to have occurred or is
17 threatened to occur;

18 (B) The habits, activities, conduct, movements,
19 location, associations, transactions, reputation or charac-
20 ter of any person;

21 (C) The credibility of witnesses or other persons;

22 (D) The location or recovery of lost or stolen property;

23 (E) The causes or origins of any fire, accident or
24 injury to any property, real or personal, or to identify
25 or locate any person or persons responsible for any such
26 fire, accident or injury;

27 (F) The truth or falsity of any statement or repres-
28 entation, whether written or oral, or of any type of
29 depiction;

30 (G) Any matters which constitute evidence or which
31 may lead to the discovery of evidence to be used before
32 any judicial or quasijudicial tribunal, including, but not
33 limited to, civil or criminal courts, administrative
34 agencies, investigating committees, or boards of award
35 or arbitration;

36 (H) The whereabouts of any missing or kidnapped
37 person;

38 (I) The affiliation, connection or relationship of any
39 person with any corporation or other business entity,
40 union, organization, society or association, or with any
41 official, member or representative thereof;

42 (J) Any person or persons seeking employment in the
43 place of any employee or employees who have quit work
44 by reason of any strike; or

45 (K) The conduct, honesty, efficiency, loyalty or
46 activities of employees, agents, contractors and
47 subcontractors.

48 (3) "Firm license" means the license held by a person
49 whom the secretary of state has authorized to operate
50 a private detective investigative firm or security guard
51 firm after such person has filed and completed an
52 application pursuant to the application requirements
53 contained in sections three or six and has satisfied the
54 eligibility requirements contained in sections two or
55 five.

56 (4) "Person" means a natural person, a group of
57 persons or individuals acting individually or as a group,
58 a corporation, company, partnership, association,
59 society, firm, or any business organization or entity
60 organized or existing under the laws of this or any other
61 state or country;

62 (5) (A) "Private detective" or "private investigator"
63 means a person who is licensed pursuant to the provi-
64 sions of this article to conduct a private investigation

65 business, as defined in subdivision (2) of this section, and
66 who conducts such business individually and independ-
67 ently from any private detective or investigative firm;

68 (B) "Private detective" or "private investigator" does
69 not include:

70 (i) Any individual while acting as an adjuster for an
71 insurance company or companies;

72 (ii) Individuals employed exclusively and regularly by
73 only one employer in connection with the affairs of such
74 employer only;

75 (iii) An officer or employee of the United States, or
76 any law-enforcement officer of this state or any political
77 subdivision thereof, while such officer or employee is
78 engaged in the performance of his official duties or
79 while working for a private employer in his off-duty
80 hours;

81 (iv) Attorneys or counselors-at-law or any employee or
82 representative of such attorney or counselor;

83 (v) Any corporation duly authorized by this state to
84 operate central burglar or fire alarm protection
85 business; or

86 (vi) Any investigator of crime appointed by a prose-
87 cuting attorney of a county pursuant to the provisions
88 of section two, article four, chapter seven of this code.

89 (6) "Private detective or investigative firm" means
90 any private detective agency or business or any inves-
91 tigative agency or business that is operated by a licensed
92 private detective or investigator and which employs one
93 or more other persons who actually conduct the private
94 investigation business as defined in subdivision (2) of
95 this section.

96 (7) (A) "Security guard" means a person who is
97 licensed pursuant to the provisions of this article to
98 conduct a security guard business, as defined in
99 subdivision (8) of this section, and who conducts such
100 business individually and independently from a security
101 guard firm.

102 (B) "Security guard" does not include a person who
103 is employed exclusively and regularly by only one
104 employer in connection with the affairs of such employer
105 only, or a person who is otherwise hereinafter excluded
106 from the requirements of this article;

107 (8) (A) "Security guard business" means the business
108 of furnishing, for hire, reward or other remuneration,
109 watchmen, guards, bodyguards, private patrolmen or
110 other persons, to:

111 (i) Protect property, real or personal, or any person;

112 (ii) To prevent theft, unlawful taking, misappropriation
113 or concealment of goods, wares or merchandise,
114 money, bonds, stocks, notes or other valuable documents,
115 papers and articles of value; or

116 (iii) To furnish for hire, guard dogs or armored motor
117 vehicle security services, in connection with the protec-
118 tion of persons or property;

119 (B) "Security guard business" does not include any
120 activities or duties for which it is necessary to be trained
121 and certified as a law-enforcement officer in accordance
122 with the provisions of article twenty-nine, chapter thirty
123 of this code.

124 (9) "Security guard firm" means any security guard
125 agency or business that is operated by a licensed
126 security guard and which employs one or more other
127 persons who actually conduct a security guard business
128 as defined in subdivision (8) of this section.

**§30-18-2. Eligibility requirements for license to conduct
the private investigation business.**

1 (a) In order to be eligible for any license to conduct
2 the private investigation business, an applicant shall:

3 (1) Be at least 18 years of age;

4 (2) Be a citizen of the United States or an alien who
5 is legally residing within the United States;

6 (3) Not have had any previous license to conduct a
7 private investigation business or to conduct a security
8 guard business revoked or any application for any such

9 licenses or registrations denied by the appropriate
10 governmental authority in this or any other state or
11 territory;

12 (4) Not have been declared incompetent by reason of
13 mental defect or disease by any court of competent
14 jurisdiction unless a court has subsequently determined
15 that the applicant's competency has been restored;

16 (5) Not suffer from habitual drunkenness or from
17 narcotics addiction or dependence;

18 (6) Be of good moral character;

19 (7) Have a minimum of two years of education or
20 training in any one of the following areas, or some
21 combination thereof:

22 (A) Coursework that is relevant to the private
23 investigation business at an accredited college or
24 university;

25 (B) Employment as a member of any United States
26 government investigative agency, employment as a
27 member of a state or local law-enforcement agency, or
28 service as a sheriff;

29 (C) Employment by a licensed private investigative or
30 detective agency for the purpose of conducting the
31 private investigation business; or

32 (D) Any other substantially equivalent training or
33 experience.

34 (8) Not have been convicted of a felony in this state
35 or any other state or territory;

36 (9) Not have been convicted of any of the following:

37 (A) Illegally using, carrying or possessing a pistol or
38 other dangerous weapon;

39 (B) Making or possessing burglar's instruments;

40 (C) Buying or receiving stolen property;

41 (D) Entering a building unlawfully;

42 (E) Aiding an inmate's escape from prison;

43 (F) Possessing or distributing illicit drugs;

44 (G) Any misdemeanor involving moral turpitude or
45 for which dishonesty of character is a necessary element;
46 and

47 (10) Not have violated any provision of section eight
48 of this article.

49 The provisions of this section shall not prevent the
50 issuance of a license to any person who, subsequent to
51 his conviction, shall have received an executive pardon
52 therefor, removing this disability.

53 (b) Any person who qualifies for a private investiga-
54 tor's license shall also be qualified to conduct security
55 guard business upon notifying the secretary of state in
56 writing that the person will be conducting such
57 business.

**§30-18-3. Application requirements for a license to
conduct the private investigation business.**

1 (a) To be licensed to be a private detective, a private
2 investigator or to operate a private detective or inves-
3 tigative firm, each applicant shall complete and file a
4 written application, under oath, with the secretary of
5 state and in such form as the secretary may prescribe.

6 (b) On the application each applicant shall provide the
7 following information: The applicant's name, birth date,
8 citizenship, physical description, military service,
9 current residence, residences for the preceding seven
10 years, qualifying education or experience, the location
11 of each of his or her offices in this state and any other
12 information requested by the secretary of state in order
13 to comply with the requirements of this article.

14 (c) In the case of a corporation that is seeking a firm
15 license, the application shall be signed by the president,
16 and verified by the secretary or treasurer of such
17 corporation and shall specify the name of the corpora-
18 tion, the date and place of its incorporation, the names
19 and titles of all officers, the location of its principal
20 place of business, and the name of the city, town or
21 village, stating the street and number, and otherwise

22 such apt description as will reasonably indicate the
23 location. If the corporation has been incorporated in a
24 state other than West Virginia, a certificate of good
25 standing from the state of incorporation must accom-
26 pany the application. This information must be provided
27 in addition to that required to be provided by the
28 applicant.

29 (d) The applicant shall provide:

30 (1) Information in the application about whether the
31 applicant has ever been arrested for or convicted of any
32 crime or wrongs, either done or threatened, against the
33 government of the United States;

34 (2) Information about offenses against the laws of
35 West Virginia or any state; and

36 (3) Any facts as may be required by the secretary of
37 state to show the good character, competency and
38 integrity of the applicant.

39 To qualify for a firm license, the applicant shall
40 provide such information for each person who will be
41 authorized to conduct the private investigation business
42 and for each officer, member or partner of the firm.

43 (e) As part of the application, each applicant shall
44 give the secretary of state permission to review the
45 records held by the division of public safety for any
46 convictions that may be on record for the applicant.

47 (f) For each applicant for a license and for each
48 officer, member and partner of the firm applying for a
49 license, the application shall be accompanied by one
50 recent full-face photograph and one complete set of the
51 person's fingerprints.

52 (g) For each applicant, the application shall be
53 accompanied by:

54 (1) Character references from at least five reputable
55 citizens. Each reference must have known the applicant
56 for at least five years preceding the application. No
57 reference may be connected to the applicant by blood or
58 marriage. All references must have been written for the
59 purpose of the application for a license to conduct the

60 private investigation business; and

61 (2) A license fee of fifty dollars if the applicant is an
62 individual, or one hundred dollars if the applicant is a
63 firm, or five hundred dollars if the applicant is a non-
64 resident of West Virginia or a foreign corporation or
65 business entity.

66 (h) All applicants for private detective or private
67 investigator licenses or for private investigation firm
68 licenses shall file in the office of secretary of state a
69 surety bond. Such bond shall:

70 (1) Be in the sum of two thousand five hundred dollars
71 and conditioned upon the faithful and honest conduct of
72 such business by such applicant;

73 (2) Be written by a company recognized and approved
74 by the insurance commissioner of West Virginia and
75 approved by the attorney general of West Virginia with
76 respect to its form;

77 (3) Be in favor of the state of West Virginia for any
78 person who is damaged by any violation of this article.
79 The bond must also be in favor of any person damaged
80 by such a violation.

81 (i) Any person claiming against the bond required by
82 subsection (h) of this section for a violation of this article
83 may maintain an action at law against any licensed
84 individual or firm and against the surety. The surety
85 shall be liable only for damages awarded under section
86 twelve of this article and not the punitive damages
87 permitted under that section. The aggregate liability of
88 the surety to all persons damaged by a person or firm
89 licensed under this article may not exceed the amount
90 of the bond.

**§30-18-4. Requirements for employees conducting the
private investigation business under a firm
license.**

1 (a) Any person who has a private detective firm or
2 investigative firm license shall be responsible for
3 supervising any employee or other individual who
4 conducts the private investigation business under the

5 authority of such person's firm license, regardless of
6 whether such employee or other individual receives
7 compensation for conducting such business. Such
8 supervision shall include providing any education or
9 training that is reasonably necessary to ensure com-
10 pliance with the requirements of this article.

11 (b) Any employee or individual who conducts the
12 private investigation business under the authority of a
13 private detective or investigative firm license shall:

14 (1) Satisfy the requirements of section two of this
15 article, except that such person need not satisfy the
16 education and training requirements contained in
17 subdivision (7) of section two; and

18 (2) Authorize the secretary of state to review the
19 records held by the division of public safety for any
20 convictions that may be on record for such employee or
21 individual.

22 (c) A holder of a private detective or investigative
23 firm license is prohibited from authorizing any individ-
24 ual or employee to conduct a private investigation
25 business if such individual does not comply with the
26 requirements of this section.

27 (d) For every employee or individual who conducts the
28 business of private investigation under the authority of
29 a private detective or investigative firm license, the
30 holder of such license must maintain a recent full-face
31 photograph and one complete set of fingerprints on file
32 at such firm's central business location in this state.
33 Upon request, the holder of the firm license must release
34 the photographs and fingerprints to the secretary of
35 state.

**§30-18-5. Eligibility requirements to be licensed to
conduct security guard business.**

1 (a) In order to be eligible for any license to conduct
2 security guard business, an applicant shall:

3 (1) Be at least eighteen years of age;

4 (2) Be a citizen of the United States or an alien who
5 is legally residing within the United States;

6 (3) Not have had any previous license to conduct
7 security guard business or to conduct the private
8 investigation business revoked or any application for
9 any such licenses or registrations denied by the appropriate
10 governmental authority in this or any other state
11 or territory;

12 (4) Not have been declared incompetent by reason of
13 mental defect or disease by any court of competent
14 jurisdiction unless said court has subsequently determined
15 that the applicant's competency has been
16 restored;

17 (5) Not suffer from habitual drunkenness or from
18 narcotics addiction or dependence;

19 (6) Be of good moral character;

20 (7) Have had at least one year verified, full time
21 employment conducting security guard business or
22 conducting the private investigation business working
23 for a licensed firm or have one year of substantially
24 equivalent training or experience;

25 (8) Not have been convicted of a felony in this state
26 or any other state or territory;

27 (9) Not have been convicted of any of the following:

28 (A) Illegally using, carrying or possessing a pistol or
29 other dangerous weapon;

30 (B) Making or possessing burglar's instruments;

31 (C) Buying or receiving stolen property;

32 (D) Entering a building unlawfully;

33 (E) Aiding an inmate's escape from prison;

34 (F) Possessing or distributing illicit drugs;

35 (G) Any misdemeanor involving moral turpitude or
36 for which dishonesty of character is a necessary element;
37 and

38 (10) Not having violated any provision of section eight
39 of this article.

40 The provisions of this section shall not prevent the

41 issuance of a license to any person who, subsequent to
42 his conviction, shall have received an executive pardon
43 therefor, removing this disability.

**§30-18-6. Application requirements for a license to
conduct security guard business.**

1 (a) To be licensed as a security guard or to operate
2 a security guard firm, each applicant shall complete and
3 file a written application, under oath, with the secretary
4 of state and in such form as the secretary may prescribe.

5 (b) On the application, each applicant shall provide
6 the following information: The applicant's name, birth
7 date, citizenship, physical description, military service,
8 current residence, residences for the preceding seven
9 years, qualifying education or experience, the location
10 of each of his or her offices in this state and any other
11 information requested by the secretary of state in order
12 to comply with the requirements of this article.

13 (c) In the case of a corporation that is seeking a firm
14 license, the application shall be signed by the president,
15 and verified by the secretary or treasurer of such
16 corporation and shall specify the name of the corpora-
17 tion, the date and place of its incorporation, the names
18 and titles of all officers, the location of its principal
19 place of business, and the name of the city, town or
20 village, stating the street and number, and otherwise
21 such apt description as will reasonably indicate the
22 location. If the corporation has been incorporated in a
23 state other than West Virginia, a certificate of good
24 standing from the state of incorporation must accom-
25 pany the application. This information shall be provided
26 in addition to that required to be provided the applicant.

27 (d) The applicant shall provide:

28 (1) Information in the application about whether the
29 applicant has ever been arrested for or convicted of any
30 crime or wrongs, either done or threatened, against the
31 government of the United States;

32 (2) Information about offenses against the laws of
33 West Virginia or any state; and

34 (3) Any facts as may be required by the secretary of
35 state to show the good character, competency and
36 integrity of the applicant.

37 To qualify for a firm license, the applicant shall
38 provide such information for each person who would be
39 authorized to conduct security guard business under the
40 applicant's firm license and for each officer, member or
41 partner in the firm.

42 (e) As part of the application, each applicant shall
43 give the secretary of state permission to review the
44 records held by the department of public safety for any
45 convictions that may be on record for the applicant.

46 (f) For each applicant for a license and for each
47 officer, member and partner of the firm applying for a
48 license, the application shall be accompanied by one
49 recent full-face photograph and one complete set of the
50 person's fingerprints.

51 (g) For each applicant, the application shall be
52 accompanied by:

53 (1) Character references from at least five reputable
54 citizens. Each reference must have known the applicant
55 for at least five years preceding the application. No
56 reference may be connected to the applicant by blood or
57 marriage. All references must have been written for the
58 purpose of the application for a license to conduct
59 security guard business; and

60 (2) A license fee of fifty dollars if the applicant is an
61 individual, or one hundred dollars if the applicant is a
62 firm, or five hundred dollars if the applicant is a non-
63 resident of West Virginia or a foreign corporation.

64 (h) All applicants for security guard licenses or
65 security guard firm licenses shall file in the office of
66 secretary of state a surety bond. Such bond shall:

67 (1) Be in the sum of two thousand five hundred dollars
68 and conditioned upon the faithful and honest conduct of
69 such business by such applicant;

70 (2) Be written by a company recognized and approved
71 by the insurance commissioner of West Virginia and

72 approved by the attorney general of West Virginia with
73 respect to its form;

74 (3) Be in favor of the state of West Virginia for any
75 person who is damaged by any violation of this article.
76 The bond must also be in favor of any person damaged
77 by such a violation.

78 (i) Any person claiming against the bond required by
79 subsection (h) of this section for a violation of this article
80 may maintain an action at law against any licensed
81 individual or firm and against the surety. The surety
82 shall be liable only for damages awarded under section
83 twelve of this article and not the punitive damages
84 permitted under that section. The aggregate liability of
85 the surety to all persons damaged by a person or firm
86 licensed under this article may not exceed the amount
87 of the bond.

§30-18-7. Requirements for employees conducting security guard business under a firm license.

1 (a) Any person who has a security guard firm license
2 shall be responsible for supervising any employee or
3 other individual who conducts security guard business
4 under the authority of such person's firm license,
5 regardless of whether such employee or other individual
6 receives compensation for conducting such business.
7 Such supervision shall include providing any education
8 or training that is reasonably necessary to ensure
9 compliance with the requirements of this article.

10 (b) Any employee or individual who conducts security
11 guard business under the authority of a firm license
12 shall:

13 (1) Satisfy the requirements of section five of this
14 article, except that such person need not satisfy the
15 prior employment requirements contained in subdivi-
16 sion (7) of section five; and

17 (2) Authorize the secretary of state to review the
18 records held by the department of public safety for any
19 convictions that may be on record for such employee or
20 individual.

21 (c) A holder of a security guard firm license is
22 prohibited from authorizing any individual or employee
23 to conduct security guard business if such individual
24 does not comply with the requirements of this section.

25 (d) For every employee or individual who conducts
26 security guard business under the authority of a security
27 guard firm license, the holder of such license must
28 maintain a recent full-face photograph and one complete
29 set of fingerprints on file at such firm's central business
30 location in this state. Upon request, the holder of the
31 firm license must release the photographs and finger-
32 prints to the secretary of state.

§30-18-8. Prohibitions.

1 (a) No person shall engage in the private investigation
2 business or security guard business without having first
3 obtained from the secretary of state a license to conduct
4 such business.

5 (b) All licensed persons, including private detectives,
6 private investigators, security guards, private detective
7 or investigative firms and security guard firms, are
8 prohibited from transferring their licenses to an
9 unlicensed person, firm or agency. This prohibition
10 includes contracting or subcontracting with an unli-
11 censed person, firm or agency to conduct the private
12 investigation business or security guard business.

13 (c) It is unlawful for any person subject to the
14 provisions of this article to knowingly commit any of the
15 following:

16 (1) Employ any individual to perform the duties of an
17 employee who has not first complied with all provisions
18 of this article and the adopted regulations;

19 (2) Falsely represent that a person is the holder of a
20 valid license;

21 (3) Make a false report with respect to any matter
22 with which he or she is employed;

23 (4) Divulge any information acquired from or for a
24 client to persons other than the client or his or her
25 authorized agent without express authorization to do so

26 or unless required by law;

27 (5) Accept employment which includes obtaining
28 information intended for illegal purposes;

29 (6) Authorize or permit another person to violate any
30 provision of this article or any rule of the secretary of
31 state adopted for this article.

§30-18-9. Renewal of license.

1 A license granted under the provisions of this article
2 shall be in effect for one year from the date the
3 certificate of license is issued and may be renewed for
4 a period of one year by the secretary of state upon
5 application, in such form as the secretary may pres-
6 scribe, and upon payment of the fee and the filing of the
7 surety bond. At the time of applying for renewal of a
8 license, the secretary of state may require any person
9 to provide additional information to reflect any changes
10 in the original application or any previous renewal.

§30-18-10. Authority of secretary of state.

1 (a) When the secretary of state shall be satisfied as
2 to the good character, competency and integrity of an
3 applicant, of all employees or individuals conducting the
4 private investigation business or security guard services
5 under a firm license and, if the applicant is a firm, of
6 each member, officer or partner, he shall issue and
7 deliver to such applicant a certificate of license. Each
8 license issued shall be for a period of one year and shall
9 be revocable at all times for cause shown pursuant to
10 subsection (b) of this section or any rules promulgated
11 pursuant thereto.

12 (b) The secretary of state shall have the authority to
13 propose for promulgation in accordance with the
14 provisions of chapter twenty-nine-a of this code such
15 legislative rules as may be necessary for the adminis-
16 tration and enforcement of this article and for the
17 issuance, suspension and revocation of licenses issued
18 under the provisions of this article. The secretary of
19 state shall afford any applicant an opportunity to be
20 heard in person or by counsel when a determination is
21 made to deny, revoke or suspend any such applicant's

22 license or application for license, including a renewal of
23 a license. Such applicant shall have fifteen days from
24 the date of receiving written notice of the secretary of
25 state's adverse determination to request a hearing on the
26 matter of denial, suspension or revocation. The action of
27 the secretary of state in granting, renewing, or in
28 refusing to grant or to renew, a license, shall be subject
29 to review by the circuit court of Kanawha County or
30 other court of competent jurisdiction.

31 (c) At any hearing before the secretary of state to
32 challenge an adverse determination by the secretary of
33 state on the matter of a denial, suspension or revocation
34 of a license, if the adverse determination is based upon
35 a conviction for a crime which would bar licensure
36 under the provisions of this article, the hearing shall be
37 an identity hearing only, and the sole issue which may
38 be contested is whether the person whose application is
39 denied or whose license is suspended or revoked is the
40 same person convicted of the crime.

§30-18-11. Penalties.

1 (a) Any person, licensed or unlicensed, who shall
2 violate any of the provisions of this article is guilty of
3 a misdemeanor, and, upon conviction, shall be fined not
4 less than one hundred dollars nor more than five
5 thousand dollars or be confined in jail for not more than
6 one year, or both.

7 (b) In the case of a violation of subsection (a) of section
8 eight, a fine shall be assessed for each day that an
9 individual conducted the private investigation business
10 or security guard business. In the case of a firm license,
11 the fine shall be based on each day that such services
12 were provided multiplied by the number of unautho-
13 rized persons providing such services.

§30-18-12. Action for damages.

1 Any individual who is injured by a violation of this
2 article may bring an action for recovery of damages,
3 including punitive damages plus reasonable attorney's
4 fees and court costs.

§30-18-13. Disposition of fees.

- 1 All fees collected hereunder by the secretary of state
- 2 shall be paid to the treasurer of the state and deposited
- 3 in the general revenue fund.

CHAPTER 132

(Com. Sub. for H. B. 4205—By Delegates Smith, Campbell, Browning,
Lindsey, Ashley, Prezioso and Wallace)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-five, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article ten-d of said chapter by adding thereto a new section, designated section five, relating to retirement systems administered by the consolidated public retirement board; limiting eligibility for disability retirement by former members of the public employees retirement system to those who were employed by participating public employers within the last twelve months unless other specifications are met; and prohibiting payment of disability retirement benefits to a member of any state-administered retirement system due to disability resulting from a pre-existing condition.

Be it enacted by the Legislature of West Virginia:

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

Article

10. West Virginia Public Employees Retirement Act.
- 10D. Consolidated Public Retirement Board.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-25. Disability retirement.

1 (a) Upon the application of a member or former
2 member of the retirement system, or his or her present
3 or past employing authority, any member or former
4 member who is in the employ of a participating public
5 employer or was in the employ of a participating public
6 employer on a date which is twelve months or less from
7 the date upon which the former member became
8 incapacitated, who has ten or more years of credited
9 service of which three years is contributing service, and
10 who becomes totally and permanently incapacitated for
11 employment, by reason of a personal injury or disease,
12 may be retired by the board if after a medical exam-
13 ination of the said member or former member made by
14 or under the direction of a medical committee consisting
15 of two physicians, one of whom shall be named by the
16 board, and one by the said member or former member,
17 the said medical committee reports, in writing, to the
18 board that the said member or former member is
19 physically or mentally totally incapacitated for employ-
20 ment, that such incapacity will probably be permanent,
21 and that the said member or former member should be
22 retired. In the event the two above-mentioned examin-
23 ing physicians do not agree in their findings, then the
24 board may, at its discretion, appoint a third physician
25 to examine said member or former member and, based
26 upon the third physician's report in writing, the board
27 may retire said member or former member. A former
28 member who has not been employed by a participating
29 public employer may receive disability retirement
30 under the provisions of this subsection if, in the opinion
31 of the medical committee, the incapacity occurred
32 during the time that the former member was employed
33 by a participating public employer and the incapacity
34 otherwise qualifies the former member for retirement
35 under this subsection.

36 (b) A member with less than ten years of credited
37 service shall have the service requirement provided for
38 in subsection (a) above (including the requirement of
39 three years contributing service) waived in the event (1)
40 the board finds his or her total and permanent disability
41 to be the natural and proximate result of a personal
42 injury or disease arising out of and in the course of his

43 or her actual performance of duty in the employ of a
44 participating public employer, and (2) he or she is
45 receiving or has received workers' compensation bene-
46 fits on account of such physical or mental disability.

47 (c) For any member or former member retiring and
48 any member retired, as of March one, one thousand nine
49 hundred seventy, he or she shall receive a straight life
50 annuity computed according to section twenty-two
51 hereof and he or she shall have the right to elect an
52 option provided for in section twenty-four hereof:
53 *Provided*, That his or her straight life annuity payable
54 to his or her attainment of age sixty-five years may not
55 be less than fifty percent of his or her final average
56 salary; and his or her said straight life annuity payable
57 from and after his or her attainment of age sixty-five
58 years may not be less than twenty percent of his or her
59 final average salary: *Provided, however*, That his or her
60 said annuity shall be subject to section twenty-six
61 hereof.

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-5. Award of disability retirement.

1 The board may not award disability retirement to a
2 member of any retirement plan that it administers if the
3 member is seeking to retire based on a disability that
4 existed at the time the member joined the public
5 retirement plan.

CHAPTER 133

(H. B. 4207—By Delegates Smith, Lindsey, Browning,
Campbell, Wallace, Prezioso and Ashley)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section thirty-seven, article ten, chapter five
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to public employees
retirement expense fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**§1. Repeal of section relating to the public employees retirement expense fund.**

1 Section thirty-seven, article ten, chapter five of the
2 code of West Virginia, one thousand nine hundred
3 thirty-one, as amended, is hereby repealed.

CHAPTER 134

(Com. Sub. for S. B. 133—By Senators Burdette, Mr. President, Boley, Anderson, Bailey, Blatnik, Chafin, Chernenko, Claypole, Craigo, Dalton, Dittmar, Helmick, Holliday, Humphreys, Jones, Lucht, Manchin, Miller, Minard, Plymale, Ross, Schoonover, Sharpe, Tomblin, Wagner, Whitlow, Wooton and Yoder)

[Passed March 12, 1994; to take effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the division of public safety; and increasing the annual salary of each division member by one thousand eight dollars.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVISION OF PUBLIC SAFETY.**§15-2-5. Career progression system; salaries; exclusion from wage and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.**

1 The superintendent shall establish within the division
2 of public safety a system to provide for: The promotion
3 of members to the supervisory ranks of sergeant, first
4 sergeant, second lieutenant and first lieutenant; the
5 classification of nonsupervisory members within the
6 field operations force to the ranks of trooper, senior

7 trooper, trooper first class or corporal; the classification
 8 of members assigned to the forensic laboratory as
 9 criminalist I-VII; and the temporary reclassification of
 10 members assigned to administrative duties as adminis-
 11 trative support specialist I-VIII.

12 The superintendent shall, only in the initial imple-
 13 mentation of this section, reclassify nonsupervisory
 14 members without benefit or requirement of a promo-
 15 tional or reclassification system as long as those
 16 reclassified meet the longevity requirements for ad-
 17 vancement as follows: Trooper—less than three years;
 18 senior trooper—three years to eight years; trooper first
 19 class—nine years to fourteen years; corporal—more than
 20 fourteen years.

21 The superintendent is authorized to promulgate
 22 legislative rules in accordance with chapter twenty-
 23 nine-a of this code for the purpose of ensuring consis-
 24 tency, predictability and independent review of any
 25 system developed under the provisions of this section.

26 The superintendent shall provide to each member a
 27 written manual governing any system established under
 28 the provisions of this section and specific procedures
 29 shall be identified for the evaluation and testing of
 30 members for promotion or reclassification and the
 31 subsequent placement of any members on a promotional
 32 eligibility or reclassification recommendation list.

33 Members shall receive annual salaries as follows:

34 ANNUAL SALARY SCHEDULE (BASE PAY)
 35 SUPERVISORY AND NONSUPERVISORY RANKS

36	Cadet During Training.....	\$1,684 Mo.	\$20,208
37	Cadet Trooper After Training....	1,799 Mo.	21,588
38	Trooper Second Year		21,984
39	Trooper Third Year		22,308
40	Trooper Fourth & Fifth Year		22,560
41	Senior Trooper		24,360
42	Trooper First Class		26,160
43	Corporal		27,960
44	Sergeant		31,560
45	First Sergeant		33,360

46	Second Lieutenant	35,160
47	First Lieutenant	36,960
48	Captain	38,760
49	Major	40,560
50	Lieutenant Colonel	42,360

51 ANNUAL SALARY SCHEDULE (BASE PAY)

52 ADMINISTRATION

53 SUPPORT SPECIALIST CLASSIFICATION

54	I	22,560
55	II	24,360
56	III	26,160
57	IV	27,960
58	V	31,560
59	VI	33,360
60	VII.....	35,160
61	VIII.....	36,960

62 ANNUAL SALARY SCHEDULE (BASE PAY)

63 CRIMINALIST CLASSIFICATION

64	I	22,560
65	II	24,360
66	III	26,160
67	IV	27,960
68	V	31,560
69	VI	33,360
70	VII.....	35,160

71 Each member of the division whose salary is fixed
 72 and specified herein shall receive and be entitled to an
 73 increase in salary over that hereinbefore set forth, for
 74 grade in rank, based on length of service, including that
 75 heretofore and hereafter served with the division as
 76 follows: At the end of five years of service with the
 77 division, such member shall receive a salary increase of
 78 three hundred dollars to be effective during his or her
 79 next three years of service and a like increase at three-
 80 year intervals thereafter, with such increases to be
 81 cumulative.

82 In applying the foregoing salary schedule where
 83 salary increases are provided for length of service,
 84 members of the division in service at the time this

85 article becomes effective shall be given credit for prior
86 service and shall be paid such salaries as the same
87 length of service will entitle them to receive under the
88 provisions hereof.

89 The Legislature finds and declares that because of the
90 unique duties of members of the division, it is not
91 appropriate to apply the provisions of state wage and
92 hour laws to them. Accordingly, members of the division
93 of public safety are hereby excluded from the provisions
94 of state wage and hour law. The express exclusion
95 hereby enacted shall not be construed as any indication
96 that such members were or were not heretofore covered
97 by said wage and hour law.

98 In lieu of any overtime pay they might otherwise have
99 received under the wage and hour law, and in addition
100 to their salaries and increases for length of service,
101 members who have completed basic training and who
102 are exempt from federal Fair Labor Standards Act
103 guidelines may receive supplemental pay as hereinafter
104 provided.

105 The superintendent shall, within thirty days after the
106 effective date hereof, promulgate a rule to establish the
107 number of hours per month which shall constitute the
108 standard work month for the members of the division.
109 The rule shall further establish, on a graduated hourly
110 basis, the criteria for receipt of a portion or all of such
111 supplemental payment when hours are worked in excess
112 of said standard work month. The rule shall be promul-
113 gated pursuant to the provisions of chapter twenty-nine-
114 a of this code. The superintendent shall certify monthly
115 to the division's payroll officer the names of those
116 members who have worked in excess of the standard
117 work month and the amount of their entitlement to
118 supplemental payment.

119 The supplemental payment may not exceed two
120 hundred thirty-six dollars monthly. The superintendent
121 and civilian employees of the division are not eligible for
122 any such supplemental payments.

123 Each member of the division, except the superintend-
124 ent and civilian employees, shall execute, before

125 entering upon the discharge of his or her duties, a bond
126 with security in the sum of five thousand dollars payable
127 to the state of West Virginia, conditioned upon the
128 faithful performance of his or her duties, and such bond
129 shall be approved as to form by the attorney general and
130 as to sufficiency by the governor.

131 Any member of the division who is called to perform
132 active duty for training or inactive duty training in the
133 national guard or any reserve component of the armed
134 forces of the United States annually shall be granted
135 upon request leave time not to exceed thirty calendar
136 days for the purpose of performing such active duty for
137 training or inactive duty training and the time so
138 granted may not be deducted from any leave accumu-
139 lated as a member of the division.

CHAPTER 135

(Com. Sub. for H. B. 4680—By Delegate Browning)

[Passed March 12, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-six, twenty-seven, twenty-seven-a, twenty-nine, thirty, thirty-one, thirty-three, thirty-three-a, thirty-four and thirty-seven, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article two-a, all relating to retirement systems for division of public safety members; specifying contributions to retirement fund; providing for retirement awards and benefits; allowing payment of benefits upon disability retirement; providing for retirement annual annuity adjustments; specifying benefits to dependents of a member; providing for refunds of contributions to members upon discharge or resignation; setting requirements for deferred retirements; creating a new West Virginia state police retirement system; providing for administration of the system; creating retirement fund; providing for payment of retirement benefits and annual adjustments thereto; providing for payments upon disability or death; providing for payments with interest upon withdrawal from system.

Be it enacted by the Legislature of West Virginia:

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

Article

2. Division of Public Safety.

2A. West Virginia State Police Retirement System.

ARTICLE 2. DIVISION OF PUBLIC SAFETY.

- §15-2-26. Continuation of death, disability and retirement fund; designating the consolidated public retirement board as administrator of fund.
- §15-2-27. Retirement; awards and benefits.
- §15-2-27a. Retirement annual annuity adjustments.
- §15-2-29. Awards and benefits for disability — incurred in performance of duty.
- §15-2-30. Same — Due to other causes.
- §15-2-31. Same — Physical examinations; recall to active duty; termination.
- §15-2-33. Awards and benefits to dependents of member — When member dies in performance of duty, etc.; dependent child scholarship and amount.
- §15-2-33a. Awards and benefits to dependents of member — Termination.
- §15-2-34. Same — When member dies from nonservice-connected causes.
- §15-2-37. Refunds to certain members upon discharge or resignation; deferred retirement.

§15-2-26. Continuation of death, disability and retirement fund; designating the consolidated public retirement board as administrator of fund.

1 There shall be continued the death, disability and
2 retirement fund heretofore created for the benefit of
3 members of the division of public safety and any
4 dependent of a retired or deceased member thereof.

5 There shall be deducted from the monthly payroll of
6 each member of the division of public safety and paid
7 into such fund six percent of the amount of his or her
8 salary: *Provided*, That beginning on the first day of July,
9 one thousand nine hundred ninety-four, there shall be
10 deducted from the monthly payroll of each member and
11 paid into the fund seven and one-half percent of the

12 amount of his or her salary: *Provided, however*, That on
13 and after the first day of July, one thousand nine
14 hundred ninety-five, there shall be deducted from the
15 monthly payroll of each member and paid into the fund
16 nine percent of the amount of his or her salary. An
17 additional twelve percent of the monthly salary of each
18 member of the division shall be paid by the state of West
19 Virginia monthly into such fund out of the annual
20 appropriation for the division: *Provided further*, That
21 beginning on the first day of July, one thousand nine
22 hundred ninety-five, the state shall pay thirteen percent
23 of the monthly salary of each member into the fund: *And*
24 *provided further*, That beginning on the first day of July,
25 one thousand nine hundred ninety-six, the state shall
26 pay fourteen percent of the monthly salary of each
27 member into the fund: *And provided further*, That on
28 and after the first day of July, one thousand nine
29 hundred ninety-seven, the state shall pay fifteen percent
30 of the monthly salary of each member into the retire-
31 ment fund. There shall also be paid into the fund
32 amounts that have previously been collected by the
33 superintendent of the division of public safety on
34 account of payments to members for court attendance
35 and mileage, rewards for apprehending wanted persons,
36 fees for traffic accident reports and photographs, fees
37 for criminal investigation reports and photographs, fees
38 for criminal history record checks, fees for criminal
39 history record reviews and challenges or from any other
40 sources designated by the superintendent. All moneys
41 payable into the fund shall be deposited in the state
42 treasury, and the treasurer and auditor shall keep a
43 separate account thereof on their respective books.

44 The moneys in this fund, and the right of a member
45 to a retirement allowance, to the return of contributions,
46 or to any benefit under the provisions of this article, are
47 hereby exempt from any state or municipal tax; shall
48 not be subject to execution, garnishment, attachment or
49 any other process whatsoever; and shall be unassignable
50 except as is provided in this article.

51 The death, disability and retirement fund shall be
52 administered by the consolidated public retirement

53 board created pursuant to article ten-d, chapter five of
54 this code.

55 All moneys paid into and accumulated in the death,
56 disability and retirement fund, except such amounts as
57 shall be designated or set aside by the retirement board
58 for payments of death, disability and retirement benefits
59 and awards, shall be invested by the state board of
60 investments as provided by law.

§15-2-27. Retirement; awards and benefits.

1 (a) The retirement board shall retire any member of
2 the division of public safety when the member has both
3 attained the age of fifty-five years and completed
4 twenty-five years of service as a member of the division,
5 including military service credit granted under the
6 provisions of section twenty-eight of this article.

7 (b) The retirement board shall retire any member of
8 the division of public safety who has lodged with the
9 secretary of the consolidated public retirement board his
10 or her voluntary petition in writing for retirement, and:

11 (1) Has or shall have completed twenty-five years of
12 service as a member of the division (including military
13 service credit granted under the provisions of section
14 twenty-eight of this article);

15 (2) Has or shall have attained the age of fifty years
16 and has or shall have completed twenty years of service
17 as a member of the division (excluding military service
18 credit granted under section twenty-eight of this
19 article); or

20 (3) Being under the age of fifty years has or shall have
21 completed twenty years of service as a member of the
22 division (excluding military service credit granted
23 under section twenty-eight of this article).

24 (c) When the retirement board retires any member
25 under any of the provisions of this section, the board
26 shall, by order in writing, make an award directing that
27 the member shall be entitled to receive annually and
28 that there shall be paid to the member from the death,
29 disability and retirement fund in equal monthly

30 installments during the lifetime of the member while in
31 status of retirement one or the other of two amounts,
32 whichever is the greater:

33 (1) An amount equal to five and one-half percent of
34 the aggregate of salary paid to the member during the
35 whole period of service as a member of the division of
36 public safety; or

37 (2) The sum of six thousand dollars.

38 When a member has or shall have served twenty years
39 or longer but less than twenty-five years as a member
40 of the division and shall be retired under any of the
41 provisions of this section before he or she shall have
42 attained the age of fifty years, payment of monthly
43 installments of the amount of retirement award to such
44 member shall commence on the date he or she attains
45 the age of fifty years.

46 Beginning on the fifteenth day of July, one thousand
47 nine hundred ninety-four, in no event may the provisions
48 of section thirteen, article sixteen, chapter five of this
49 code be applied in determining eligibility to retire with
50 either immediate or deferred commencement of benefit.

§15-2-27a. Retirement annual annuity adjustments.

1 Every member of the division of public safety who is
2 fifty-five years of age or older and who is retired by the
3 retirement board under the provisions of section twenty-
4 seven of this article; every member of the division of
5 public safety who is retired by the retirement board
6 under the provisions of section twenty-nine or thirty of
7 this article; and every surviving spouse or other
8 beneficiary receiving a benefit pursuant to section
9 thirty-three or thirty-four of this article, is eligible to
10 receive an annual retirement annuity adjustment equal
11 to three and seventy-five hundredths percent of his or
12 her retirement award or surviving spouse award:
13 *Provided*, That for any person retiring on and after the
14 fifteenth day of September, one thousand nine hundred
15 ninety-four, the annual retirement annuity adjustment
16 shall be equal to two percent of his or her retirement
17 award or award paid to a surviving spouse or other

18 beneficiary. Such adjustments may not be retroactive.
19 Yearly adjustments shall begin upon the first day of
20 July of each year. The annuity adjustments shall be
21 awarded and paid to the members from the death,
22 disability and retirement fund in equal monthly
23 installments while the member is in status of retire-
24 ment. The annuity adjustments shall supplement the
25 retirement awards and benefits as provided in this
26 article.

27 Any member or beneficiary who receives a benefit
28 pursuant to the provisions of section twenty-nine, thirty,
29 thirty-three or thirty-four of this article shall begin to
30 receive the annual annuity adjustment one year after the
31 commencement of the benefit on the next July first:
32 *Provided*, That if the member has been retired for less
33 than one year when the first annuity adjustment is given
34 on that July first, that first annuity adjustment will be
35 a pro rata share of the full year's annuity adjust-
36 ment.

**§15-2-29. Awards and benefits for disability — Incurred
in performance of duty.**

1 Any member of the division who has been or shall
2 become physically or mentally permanently disabled by
3 injury, illness or disease resulting from any occupational
4 risk or hazard inherent in or peculiar to the services
5 required of members of the division and incurred
6 pursuant to or while such member was or shall be
7 engaged in the performance of his or her duties as a
8 member of the division shall, if, in the opinion of the
9 retirement board, he or she is by reason of such cause
10 unable to perform adequately the duties required of him
11 or her as a member of the division, but is able to engage
12 in any other gainful employment, be retired from active
13 service by the retirement board. The member thereafter
14 shall be entitled to receive annually and there shall be
15 paid to such member from the death, disability and
16 retirement fund in equal monthly installments during
17 the lifetime of such member; or until the member
18 attains the age of fifty; or until such disability shall
19 sooner terminate, one or the other of two amounts,
20 whichever is greater:

21 (1) An amount equal to two thirds of the salary
22 received in the preceding twelve-month employment
23 period: *Provided*, That if the member had not been
24 employed with the division for twelve months prior to
25 the disability, the amount of monthly salary shall be
26 annualized for the purpose of determining the benefit;
27 or

28 (2) The sum of six thousand dollars.

29 Upon attaining age fifty, the member shall receive the
30 benefit provided for in subsection (c), section twenty-
31 seven of this article as it would apply to his or her
32 aggregate career earnings from the division through the
33 day immediately preceding his or her disability. The
34 recalculation of benefit upon a member attaining age
35 fifty shall be deemed to be a retirement under the
36 provisions of section twenty-seven of this article, for
37 purposes of determining the amount of annual annuity
38 adjustment and for all other purposes of this article.

39 If any member shall become permanently physically
40 or mentally disabled by injury, illness or disease
41 resulting from any occupational risk or hazard inherent
42 in or peculiar to the services required of members of the
43 division and incurred pursuant to or while such member
44 was or shall be engaged in the performance of his or
45 her duties as a member of the division, to the extent that
46 such member is or shall be incapacitated ever to engage
47 in any gainful employment, such member shall be
48 entitled to receive annually and there shall be paid to
49 such member from the death, disability and retirement
50 fund in equal monthly installments during the lifetime
51 of such member or until such disability shall sooner
52 terminate, an amount equal to the amount of the salary
53 received by the member in the preceding twelve-month
54 employment period: *Provided*, That in no event may
55 such amount be less than fifteen thousand dollars per
56 annum: *Provided, however*, That if the member had not
57 been employed with the division for twelve months prior
58 to the disability, the amount of monthly salary shall be
59 annualized for the purpose of determining the benefit.

60 The superintendent is authorized to expend moneys

61 from funds appropriated for the division in payment of
62 medical, surgical, laboratory, X-ray, hospital, ambu-
63 lance and dental expenses and fees, and reasonable costs
64 and expenses incurred in the purchase of artificial limbs
65 and other approved appliances which may be reasonably
66 necessary for any member of the division who has or
67 shall become temporarily, permanently or totally
68 disabled by injury, illness or disease resulting from any
69 occupational risk or hazard inherent in or peculiar to
70 the service required of members of the division and
71 incurred pursuant to or while such member was or shall
72 be engaged in the performance of duties as a member
73 of the division. Whenever the superintendent shall
74 determine that any disabled member is ineligible to
75 receive any of the aforesaid benefits at public expense,
76 the superintendent shall, at the request of such disabled
77 member, refer such matter to the consolidated public
78 retirement board for hearing and final decision.

79 For the purposes of this section, the term "salary"
80 does not include any compensation paid for overtime
81 service.

§15-2-30. Same—Due to other causes.

1 If any member while in active service of the division
2 has or shall, in the opinion of the retirement board,
3 become permanently disabled to the extent that such
4 member cannot adequately perform the duties required
5 of a member of the division from any cause other than
6 those set forth in the preceding section and not due to
7 vicious habits, intemperance or willful misconduct on
8 his or her part, such member shall be retired by the
9 retirement board. Such member shall be entitled to
10 receive annually and there shall be paid to such member
11 while in status of retirement, from the death, disability
12 and retirement fund in equal monthly installments
13 during the lifetime of such member or until such
14 disability shall sooner terminate, a sum equal to one-half
15 the salary received in the preceding twelve-month
16 period: *Provided*, That if the member had not been
17 employed with the division for twelve months prior to
18 the disability, the amount of monthly salary shall be
19 annualized for the purpose of determining the benefit.

20 If such member, at the time of such retirement under
21 the terms of this section, shall have served twenty years
22 or longer as a member of the division, such member
23 shall be entitled to receive annually and there shall be
24 paid to such member from the death, disability and
25 retirement fund in equal monthly installments, com-
26 mencing on the date such member shall be retired and
27 continuing during the lifetime of such member, until the
28 member attains the age of fifty, while in status of
29 retirement an amount equal to one half the salary
30 received by the member in the preceding twelve-month
31 period: *Provided*, That if the member had not been
32 employed with the division for twelve months prior to
33 the disability, the amount of monthly salary shall be
34 annualized for the purpose of determining the benefit.

35 For the purposes of this section, the term "salary"
36 does not include any compensation paid for overtime
37 service.

38 Upon attaining age fifty, the member shall receive the
39 benefit provided for in subsection (c), section twenty-
40 seven of this article as it would apply to his or her
41 aggregate career earnings from the division through the
42 day immediately preceding his or her disability. The
43 recalculation of benefit upon a member attaining age
44 fifty shall be deemed to be a retirement under the
45 provisions of section twenty-seven of this article, for
46 purposes of determining the amount of annual annuity
47 adjustment and for all other purposes of this article.

**§15-2-31. Same—Physical examinations; recall to active
duty; termination.**

1 The consolidated public retirement board may re-
2 quire any member who has been or who shall be retired
3 with compensation on account of disability to submit to
4 a physical and/or mental examination by a physician or
5 physicians selected or approved by the board and cause
6 all costs incident to such examination including hospital,
7 laboratory, X-ray, medical and physicians' fees to be
8 paid out of funds appropriated to defray the current
9 expense of the division, and a report of the findings of
10 such physician or physicians shall be submitted in

11 writing to the consolidated public retirement board for
12 its consideration. If from such report or from such
13 report and hearing thereon the retirement board shall
14 be of opinion and find that such disabled member shall
15 have recovered from such disability to the extent that
16 he or she is able to perform adequately the duties of a
17 member of the division, the board shall order such
18 member to reassume active duty as a member of the
19 division and thereupon all payments from the death,
20 disability and retirement fund shall be terminated. If
21 from the report or the report and hearing thereon the
22 board shall be of the opinion and find that the disabled
23 member shall have recovered from the disability to the
24 extent that he or she is able to engage in any gainful
25 employment but unable to adequately perform the
26 duties required as a member of the division, the board
27 shall order the payment, in monthly installments of an
28 amount equal to two thirds of the salary, in the case of
29 a member retired under the provisions of section
30 twenty-nine of this article, or equal to one half of the
31 salary, in the case of a member retired under the
32 provisions of section thirty of this article, excluding any
33 compensation paid for overtime service, for the twelve-
34 month employment period preceding the disability:
35 *Provided*, That if the member had not been employed
36 with the division for twelve months prior to the
37 disability, the amount of monthly salary shall be
38 annualized for the purpose of determining the benefit.

**§15-2-33. Awards and benefits to dependents of member
— When member dies in performance of
duty, etc.; dependent child scholarship and
amount.**

1 The surviving spouse or the dependent child or
2 children or dependent parent or parents of any member
3 who has lost or shall lose his or her life by reason of
4 injury, illness or disease resulting from an occupational
5 risk or hazard inherent in or peculiar to the service
6 required of members while such member was or shall
7 be engaged in the performance of his or her duties as
8 a member of the division, or if said member shall die
9 from any cause after having been retired pursuant to

10 the provisions of section twenty-nine of this article, the
11 surviving spouse or other dependent shall be entitled to
12 receive and shall be paid from the death, disability and
13 retirement fund benefits as follows: To the surviving
14 spouse annually, in equal monthly installments during
15 his or her lifetime one or the other of two amounts,
16 which shall become immediately available and which
17 shall be the greater of:

18 (1) An amount equal to seven tenths of the salary
19 received in the preceding twelve-month employment
20 period by the deceased member: *Provided*, That if the
21 member had not been employed with the division for
22 twelve months prior to the disability, the amount of
23 monthly salary shall be annualized for the purpose of
24 determining the benefit; or

25 (2) The sum of six thousand dollars.

26 In addition thereto such surviving spouse shall be
27 entitled to receive and there shall be paid to such person
28 one hundred dollars monthly for each dependent child
29 or children. If such surviving spouse dies or if there is
30 no surviving spouse, there shall be paid monthly to each
31 such dependent child or children from the death,
32 disability and retirement fund a sum equal to twenty-
33 five percent of the surviving spouse's entitlement. If
34 there are no surviving spouse and no dependent child
35 or children, there shall be paid annually in equal
36 monthly installments from the death, disability and
37 retirement fund to the dependent parents of the
38 deceased member during their joint lifetimes a sum
39 equal to the amount which a surviving spouse, without
40 children, would have received: *Provided*, That when
41 there is but one dependent parent surviving, that parent
42 is entitled to receive during his or her lifetime one half
43 the amount which both parents, if living, would have
44 been entitled to receive.

45 Any person qualified as a surviving dependent child
46 under this section shall, in addition to any other benefits
47 due under this or other sections of this article, be
48 entitled to receive a scholarship to be applied to the
49 career development education of that person. This sum

50 up to but not exceeding seven thousand five hundred
51 dollars shall be paid from the death, disability and
52 retirement fund to any university or college in this state
53 or to any trade or vocational school or other entity in
54 this state approved by the board, to offset the expenses
55 of tuition, room and board, books, fees or other costs
56 incurred in a course of study at any of those institutions
57 so long as the recipient makes application to the board
58 on an approved form and under such rules as the board
59 may provide, and maintains scholastic eligibility as
60 defined by the institution or the board. The board may
61 by appropriate rules define age requirements, physical
62 and mental requirements, scholastic eligibility, disbur-
63 sement methods, institutional qualifications and other
64 requirements as necessary and not inconsistent with this
65 section.

66 Awards and benefits for a member's surviving spouse
67 or dependents received under any section or any of the
68 provisions of this retirement system shall be in lieu of
69 receipt of any such benefits for such persons under the
70 provisions of any other state retirement system. Receipt
71 of benefits under any other state retirement system shall
72 be in lieu of any right to receive any benefits under this
73 retirement system, so that only a single receipt of
74 retirement benefits shall occur.

75 For the purposes of this section, the term "salary"
76 does not include any compensation paid for overtime
77 service.

**§15-2-33a. Awards and benefits to dependents of
member — Termination.**

1 When any surviving spouse of a member shall die or
2 remarry while receiving or being entitled to receive any
3 benefits under any section except section thirty-three of
4 this article, the surviving spouse may not from the date
5 of his or her remarriage, nor may the deceased
6 member's estate from the date of death of the surviving
7 spouse, be entitled to receive any benefits hereunder
8 whatsoever: *Provided*, That in any case where under the
9 terms of this article benefits are provided for a child or
10 children surviving the death or remarriage of the

11 surviving spouse, payment of benefits to that child or
12 children shall be calculated for payment from the date
13 the surviving spouse dies or remarries.

§15-2-34. Same — When member dies from nonservice-connected causes.

1 In any case where a member while in active service
2 of the division, before having completed twenty years of
3 service as a member of the division, has died or shall
4 die from any cause other than those specified in this
5 article and not due to vicious habits, intemperance or
6 willful misconduct on his or her part, there shall be paid
7 annually in equal monthly installments from said death,
8 disability and retirement fund to the surviving spouse
9 of such member during his or her lifetime, or until such
10 time as said surviving spouse remarries, a sum equal to
11 one half of the salary received in the preceding twelve-
12 month employment period by the deceased member:
13 *Provided*, That if the member had not been employed
14 with the division for twelve months prior to his or her
15 death, the amount of monthly salary shall be annualized
16 for the purpose of determining the benefit. Such benefit
17 shall become immediately available upon the death of
18 the member. If there is no surviving spouse, or the
19 surviving spouse dies or remarries, there shall be paid
20 monthly to each dependent child or children, from the
21 death, disability and retirement fund, a sum equal to
22 twenty-five percent of the surviving spouse's entitle-
23 ment. If there are no surviving spouse and no dependent
24 child or children, there shall be paid annually in equal
25 monthly installments from the fund to the dependent
26 parents of the deceased member during their joint
27 lifetimes a sum equal to the amount which a surviving
28 spouse would have been entitled to receive: *Provided*,
29 *however*, That when there is but one dependent parent
30 surviving, that parent shall be entitled to receive during
31 his or her lifetime one half the amount which both
32 parents, if living, would have been entitled to receive.

33 For the purposes of this section, the term "salary"
34 does not include compensation paid for overtime service.

§15-2-37. Refunds to certain members upon discharge or resignation; deferred retirement.

1 (a) Any member who shall be discharged by order of
2 the superintendent or shall otherwise terminate employ-
3 ment with the division shall, at the written request of
4 the member to the retirement board, be entitled to
5 receive from the retirement fund a sum equal to the
6 aggregate of the principal amount of moneys deducted
7 from his or her salary and paid into the death, disability
8 and retirement fund plus four percent interest com-
9 pounded thereon calculated annually as provided and
10 required by this article.

11 (b) Any member who has ten or more years of service
12 with the division and who withdraws his or her
13 contributions may thereafter be reenlisted as a member
14 of the division, but may not receive any prior service
15 credit on account of former service, unless following
16 reenlistment the member shall redeposit in the fund
17 established in article two-a of this chapter the amount
18 of the refund, together with interest thereon at the rate
19 of seven and one-half percent per annum from the date
20 of withdrawal to the date of redeposit, in which case he
21 or she shall receive the same credit on account of his
22 or her former service as if no refund had been made.
23 He or she shall become a member of the retirement
24 system established in article two-a of this chapter.

25 (c) Every member who completes ten years of service
26 with the division of public safety is eligible, upon
27 separation of employment with the division, either to
28 withdraw his or her contributions in accordance with
29 subsection (a) of this section or to choose not to withdraw
30 his or her accumulated contributions with interest.
31 Upon attainment of age sixty-two, a member who
32 chooses not to withdraw his or her contributions will be
33 eligible to receive a retirement annuity. Any member
34 choosing to receive the deferred annuity under this
35 subsection is not eligible to receive the annual annuity
36 adjustment provided in section twenty-seven-a of this
37 article. When the retirement board retires any member
38 under any of the provisions of this section, the board
39 shall, by order in writing, make an award directing that

40 the member is entitled to receive annually and that
 41 there shall be paid to the member from the death,
 42 disability and retirement fund in equal monthly
 43 installments during the lifetime of the member while in
 44 status of retirement one or the other of two amounts,
 45 whichever is greater:

46 (1) An amount equal to five and one-half percent of
 47 the aggregate of salary paid to the member during the
 48 whole period of service as a member of the division of
 49 public safety; or

50 (2) The sum of six thousand dollars.

51 The annuity shall be payable during the lifetime of
 52 the member. The retiring member may choose, in lieu
 53 of such a life annuity, an annuity in reduced amount
 54 payable during the member's lifetime, with one half of
 55 such reduced monthly amount paid to his or her
 56 surviving spouse if any, for the spouse's remaining
 57 lifetime after the death of the member. Reduction of this
 58 monthly benefit amount shall be calculated to be of
 59 equal actuarial value to the life annuity the member
 60 could otherwise have chosen.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

- §15-2A-1. Short title.
- §15-2A-2. Definitions.
- §15-2A-3. Creation and administration of West Virginia state police retirement system.
- §15-2A-4. Participation in system; creation of fund.
- §15-2A-5. Members' contributions; employer contributions.
- §15-2A-6. Retirement; commencement of benefits.
- §15-2A-7. Annual annuity adjustment.
- §15-2A-8. Refunds to certain members upon discharge or resignation; deferred retirement.
- §15-2A-9. Awards and benefits for disability — Incurred in performance of duty.
- §15-2A-10. Same — Due to other causes.
- §15-2A-11. Same — Physical examinations; recall to active duty; termination.
- §15-2A-12. Awards and benefits to dependents of member — When member dies in performance of duty, etc.; dependent child scholarship and amount.
- §15-2A-13. Same — When member dies from nonservice-connected causes.
- §15-2A-14. Awards and benefits to dependents of member — When member dies after retirement or after serving twenty years.

- §15-2A-15. Exemption from taxation, garnishment and other process.
§15-2A-16. Fraud; penalties.
§15-2A-17. Awards and benefits to dependents of member — Termination.
§15-2A-18. Authority to continue payments to certain dependents.
§15-2A-19. Credit toward retirement for member's prior military service;
credit toward retirement when member has joined armed
forces in time of armed conflict.

§15-2A-1. Short title.

- 1 This article shall be known and may be cited as the
2 "West Virginia State Police Retirement System Act".

§15-2A-2. Definitions.

- 1 As used in this article, unless the context clearly
2 requires a different meaning:
- 3 (1) "Active military duty" means full-time active duty
4 with the armed forces of the United States, namely, the
5 United States air force, army, coast guard, marines or
6 navy; and service with the national guard or reserve
7 military forces of any of such armed forces when the
8 member has been called to active full-time duty and has
9 received no compensation during the period of such duty
10 from any person other than the armed forces.
- 11 (2) "Base salary" means compensation paid to a
12 member without regard to any overtime pay.
- 13 (3) "Board" means the consolidated public retirement
14 board created pursuant to article ten-d, chapter five of
15 this code.
- 16 (4) "Division" means the division of public safety.
- 17 (5) "Final average salary" means the average of the
18 highest annual compensation received for employment
19 with the division, including compensation paid for
20 overtime service, received by the member during any
21 five years within the member's last ten years of service.
- 22 (6) "Fund" means the West Virginia state police
23 retirement fund created pursuant to section four of this
24 article.
- 25 (7) "Member" or "employee" means a person regularly
26 employed in the service of the division of public safety
27 after the effective date of this article.

28 (8) "Salary" means the compensation of a member,
29 excluding any overtime payments.

§15-2A-3. Creation and administration of West Virginia state police retirement system.

1 There is hereby created the West Virginia state police
2 retirement system. Any West Virginia state trooper
3 employed by the division of public safety on or after the
4 effective date of this article shall be a member of this
5 retirement system and may not qualify for membership
6 in any other retirement system administered by the
7 consolidated public retirement board, so long as he or
8 she remains employed by the division.

9 The consolidated public retirement board created
10 pursuant to article ten-d, chapter five of this code shall
11 administer the West Virginia state police retirement
12 system. The board may sue and be sued, contract and
13 be contracted with and conduct all the business of the
14 system in the name of the West Virginia state police
15 retirement system.

§15-2A-4. Participation in system; creation of fund.

1 There is hereby created the "West Virginia state
2 police retirement fund" for the benefit of the members
3 of the retirement system created pursuant to this article
4 and the dependents of any deceased or retired member
5 of the system.

6 All moneys paid into and accumulated in the fund,
7 except such amounts as shall be designated or set aside
8 by the board for payments of benefits as provided in this
9 article, shall be invested by the state board of invest-
10 ments as provided by law.

**§15-2A-5. Members' contributions; employer contribu-
tions.**

1 There shall be deducted from the monthly payroll of
2 each member and paid into the fund created pursuant
3 to section four of this article twelve percent of the
4 amount of his or her salary. An additional twelve
5 percent of the monthly salary of each member of the
6 division shall be paid by the state of West Virginia

7 monthly into such fund out of the annual appropriation
8 for the division.

§15-2A-6. Retirement; commencement of benefits.

1 A member may retire with full benefits upon attain-
2 ing the age of fifty-five and completing twenty or more
3 years of service, by lodging with the consolidated public
4 retirement board his or her voluntary petition in writing
5 for retirement. A member who is less than age fifty-five
6 may retire upon completing twenty years or more of
7 service: *Provided*, That he or she will receive a reduced
8 benefit that is of equal actuarial value to the benefit the
9 member would have received if the member deferred
10 commencement of his or her accrued retirement benefit
11 to the age of fifty-five.

12 When the retirement board retires a member with
13 full benefits under the provisions of this section, the
14 board, by order in writing, shall make a determination
15 that the member is entitled to receive on annuity equal
16 to two and three-fourths percent of his or her final
17 average salary multiplied by the number of years, and
18 fraction of a year, of his or her service in the division
19 at the time of retirement.

20 In no event may the provisions of section thirteen,
21 article sixteen, chapter five be applied in determining
22 eligibility to retire with either a deferred or immediate
23 commencement of benefit.

§15-2A-7. Annual annuity adjustment.

1 Every member of the division of public safety who is
2 sixty-three years of age or older and who is retired by
3 the retirement board under the provisions of section six
4 of this article; every member who is retired under the
5 provisions of section nine or ten of this article; and every
6 surviving spouse receiving a benefit pursuant to section
7 twelve, thirteen or fourteen of this article is eligible to
8 receive an annual retirement annuity adjustment equal
9 to one percent of his or her retirement award or
10 surviving spouse award. Such adjustments may not be
11 retroactive. Yearly adjustments shall begin upon the
12 first day of July of each year. The annuity adjustments

13 shall be awarded and paid to a member from the fund
14 in equal monthly installments while the member is in
15 status of retirement. The annuity adjustments shall
16 supplement the retirement awards and benefits pro-
17 vided in this article.

18 Any member or beneficiary who receives a benefit
19 pursuant to the provisions of section nine, ten, twelve,
20 thirteen or fourteen of this article shall begin to receive
21 the annual annuity adjustment one year after the
22 commencement of the benefit on the next July first:
23 *Provided*, That if the member has been retired for less
24 than one year when the first annuity adjustment is given
25 on that July first, that first annuity adjustment will be
26 a pro rata share of the full year's annuity adjustment.

**§15-2A-8. Refunds to certain members upon discharge or
resignation; deferred retirement.**

1 (a) Any member who shall be discharged by order of
2 the superintendent or shall otherwise terminate employ-
3 ment with the division shall, at the written request of
4 the member to the retirement board, be entitled to
5 receive from the retirement fund a sum equal to the
6 aggregate of the principal amount of moneys deducted
7 from the salary of the member and paid into the
8 retirement fund plus four percent interest compounded
9 thereon calculated annually as provided and required by
10 this article.

11 (b) Any member withdrawing contributions who may
12 thereafter be reenlisted as a member of the division
13 shall not receive any prior service credit on account of
14 the former service, unless following his or her reenlist-
15 ment the member shall redeposit in the fund the amount
16 of the refund, together with interest thereon at the rate
17 of seven and one-half percent per annum from the date
18 of withdrawal to the date of redeposit, in which case he
19 or she shall receive the same credit on account of his
20 or her former service as if no refund had been made.

21 (c) Every member who completes ten years of service
22 with the division of public safety is eligible, upon
23 separation of employment with the division, to either
24 withdraw his or her contributions in accordance with

25 subsection (a) of this section, or to choose not to
26 withdraw his or her accumulated contributions with
27 interest. Upon attainment of age sixty-two, a member
28 who chooses not to withdraw his or her contributions
29 will be eligible to receive a retirement annuity. The
30 annuity shall be payable during the lifetime of the
31 member, and shall be in the amount of his or her
32 accrued retirement benefit as determined under section
33 six of this article. The retiring member may choose, in
34 lieu of such a life annuity, an annuity in reduced amount
35 payable during the member's lifetime, with one half of
36 the reduced monthly amount paid to his or her surviving
37 spouse if any, for the spouse's remaining lifetime after
38 the death of the member. Reduction of such monthly
39 benefit amount shall be calculated to be of equal
40 actuarial value to the life annuity the member could
41 otherwise have chosen. Any member choosing to receive
42 the deferred annuity under this subsection is not eligible
43 to receive the annual annuity adjustment provided in
44 section seven of this article.

**§15-2A-9. Awards and benefits for disability — Incurred
in performance of duty.**

1 Any member of the division who has been or shall
2 become physically or mentally permanently disabled by
3 injury, illness or disease resulting from any occupational
4 risk or hazard inherent in or peculiar to the services
5 required of members of the division and incurred
6 pursuant to or while the member was or shall be
7 engaged in the performance of his or her duties as a
8 member of the division shall, if, in the opinion of the
9 retirement board, he or she is by reason of such cause
10 unable to perform adequately the duties required of him
11 or her as a member of the division, but is able to engage
12 in other gainful employment be retired from active
13 service by the board. The member shall thereafter be
14 entitled to receive annually and there shall be paid to
15 the member from the fund in equal monthly install-
16 ments during the lifetime of the member, or until the
17 member attains the age of fifty-five or until such
18 disability shall sooner terminate, one or the other of two
19 amounts, whichever is greater:

20 (1) An amount equal to six tenths of the base salary
21 received in the preceding twelve-month employment
22 period: *Provided*, That if the member had not been
23 employed with the division for twelve months prior to
24 the disability, the amount of monthly salary shall be
25 annualized for the purpose of determining the benefit;
26 or

27 (2) The sum of six thousand dollars.

28 Upon attaining age fifty-five, the member shall
29 receive the benefit provided for in section six of this
30 article as it would apply to his or her final average
31 salary based on earnings from the division through the
32 day immediately preceding his or her disability. The
33 recalculation of benefit upon a member attaining age
34 fifty-five shall be deemed to be a retirement under the
35 provisions of section six of this article, for purposes of
36 determining the amount of annual annuity adjustment
37 and for all other purposes of this article.

38 If any member shall become permanently physically
39 or mentally disabled by injury, illness or disease
40 resulting from any occupational risk or hazard inherent
41 in or peculiar to the services required of members of the
42 division and incurred pursuant to or while such member
43 was or shall be engaged in the performance of his or
44 her duties as a member of the division to the extent that
45 the member is or shall be incapacitated ever to engage
46 in any gainful employment, the member shall be
47 entitled to receive annually, and there shall be paid to
48 such member from the fund in equal monthly instal-
49 lments during the lifetime of the member or until such
50 disability shall sooner terminate, an amount equal to the
51 amount of the base salary received by the member in
52 the preceding twelve-month employment period.

53 The superintendent of the division is authorized to
54 expend moneys from funds appropriated for the division
55 in payment of medical, surgical, laboratory, X-ray,
56 hospital, ambulance and dental expenses and fees, and
57 reasonable costs and expenses incurred in the purchase
58 of artificial limbs and other approved appliances which
59 may be reasonably necessary for any member of the

60 division who has or shall become temporarily, perman-
61 ently or totally disabled by injury, illness or disease
62 resulting from any occupational risk or hazard inherent
63 in or peculiar to the service required of members of the
64 division and incurred pursuant to or while the member
65 was or shall be engaged in the performance of duties
66 as a member of the division. Whenever the superintend-
67 ent shall determine that any disabled member is
68 ineligible to receive any of the aforesaid benefits at
69 public expense, the superintendent shall, at the request
70 of the disabled member, refer such matter to the board
71 for hearing and final decision.

§15-2A-10. Same — Due to other causes.

1 If any member while in active service of the division
2 has or shall, in the opinion of the board, become
3 permanently disabled to the extent that he or she cannot
4 adequately perform the duties required of a member of
5 the division from any cause other than those set forth
6 in the preceding section and not due to vicious habits,
7 intemperance or willful misconduct on his or her part,
8 the member shall be retired by the board. There shall
9 be paid to the member from the fund in equal monthly
10 installments, commencing on the date the member shall
11 be retired and continuing during the lifetime of the
12 member; or until the member attains the age of fifty-
13 five; while in status of retirement an amount equal to
14 one half the base salary received by the member in the
15 preceding twelve-month period: *Provided*, That if the
16 member had not been employed with the division for
17 twelve months prior to the disability, the amount of
18 monthly salary shall be annualized for the purpose of
19 determining the benefit.

20 Upon attaining age fifty-five, the member shall
21 receive the benefit provided for in section six of this
22 article as it would apply to his or her final average
23 salary based on earnings from the division through the
24 day immediately preceding his or her disability. The
25 recalculation of benefit upon a member attaining age
26 fifty-five shall be deemed to be a retirement under the
27 provisions of section six of this article, for purposes of
28 determining the amount of annual annuity adjustment

29 and for all other purposes of this article.

§15-2A-11. Same — Physical examinations; recall to active duty; termination.

1 The board may require any member who has been or
2 who shall be retired with compensation on account of
3 disability to submit to a physical and/or mental
4 examination by a physician or physicians selected or
5 approved by the retirement board and cause all costs
6 incident to such examination including hospital, labor-
7 atory, X-ray, medical and physicians' fees to be paid out
8 of funds appropriated to defray the current expenses of
9 the division, and a report of the findings of such
10 physician or physicians shall be submitted in writing to
11 the board for its consideration. If from the report or
12 from the report and hearing thereon the board shall be
13 of opinion and find that the disabled member shall have
14 recovered from such disability to the extent that he or
15 she is able to perform adequately the duties of a member
16 of the division, the board shall order the member to
17 reassume active duty as a member of the division and
18 thereupon all payments from the fund shall be termi-
19 nated. If from the report or the report and hearing
20 thereon, the board shall be of the opinion and find that
21 the disabled member has recovered from the disability
22 to the extent that he or she is able to engage in any
23 gainful employment but unable to adequately perform
24 the duties required as a member of the division, the
25 board shall order in the case of a member retired under
26 the provisions of section nine of this article that the
27 disabled member be paid from the fund an amount
28 equal to six tenths of the base salary paid to the member
29 in the last twelve-month employment period. The board
30 shall order in the case of a member retired under the
31 provisions of section ten of this article that the disabled
32 member be paid from the fund an amount equal to one
33 fourth of the base salary paid to the member in the last
34 twelve-month employment period: *Provided*, That if the
35 member had not been employed with the division for
36 twelve months prior to the disability, the amount of
37 monthly salary shall be annualized for the purpose of
38 determining the benefit.

§15-2A-12. Awards and benefits to dependents of member — When member dies in performance of duty, etc.; dependent child scholarship and amount.

1 The surviving spouse, the dependent child or children
2 or dependent parent or parents of any member who has
3 lost or shall lose his or her life by reason of injury, illness
4 or disease resulting from an occupational risk or hazard
5 inherent in or peculiar to the service required of
6 members while the member was or shall be engaged in
7 the performance of his or her duties as a member of the
8 division, or the survivor of a member who dies from any
9 cause after having been retired pursuant to the provi-
10 sions of section nine of this article, shall be entitled to
11 receive and shall be paid from the fund benefits as
12 follows: To the surviving spouse annually, in equal
13 monthly installments during his or her lifetime an
14 amount equal to two thirds of the base salary received
15 in the preceding twelve-month period by the deceased
16 member: *Provided*, That if the member had not been
17 employed with the division for twelve months prior to
18 his or her death, the amount of monthly salary shall be
19 annualized for the purpose of determining the benefit.

20 In addition thereto, the surviving spouse shall be
21 entitled to receive and there shall be paid to such person
22 one hundred dollars monthly for each dependent child
23 or children. If the surviving spouse dies or if there is
24 no surviving spouse, there shall be paid monthly to each
25 dependent child or children from the fund a sum equal
26 to one fourth of the surviving spouse's entitlement. If
27 there are no surviving spouse and no dependent child
28 or children, there shall be paid annually in equal
29 monthly installments from the fund to the dependent
30 parents of the deceased member during their joint
31 lifetimes a sum equal to the amount which a surviving
32 spouse, without children, would have received: *Provided*,
33 That when there is but one dependent parent surviving,
34 that parent is entitled to receive during his or her
35 lifetime one half the amount which both parents, if
36 living, would have been entitled to receive.

37 Any person qualifying as a surviving dependent child

38 under this section shall, in addition to any other benefits
39 due under this or other sections of this article, be
40 entitled to receive a scholarship to be applied to the
41 career development education of that person. This sum,
42 up to but not exceeding seven thousand five hundred
43 dollars, shall be paid from the fund to any university
44 or college in this state or to any trade or vocational
45 school or other entity in this state approved by the
46 board, to offset the expenses of tuition, room and board,
47 books, fees or other costs incurred in a course of study
48 at any of these institutions so long as the recipient makes
49 application to the board on an approved form and under
50 such rules as the board may provide, and maintains
51 scholastic eligibility as defined by the institution or the
52 board. The board may by appropriate rules define age
53 requirements, physical and mental requirements,
54 scholastic eligibility, disbursement methods, institu-
55 tional qualifications and other requirements as neces-
56 sary and not inconsistent with this section.

57 Awards and benefits for a surviving spouse or
58 dependents of a member received under any section or
59 any of the provisions of this retirement system shall be
60 in lieu of receipt of any benefits for these persons under
61 the provisions of any other state retirement system.
62 Receipt of benefits under any other state retirement
63 system shall be in lieu of any right to receive any
64 benefits under this retirement system, so that only a
65 single receipt of state retirement benefits shall occur.

**§15-2A-13. Same — When member dies from nonservice-
connected causes.**

1 In any case where a member while in active service
2 of the division, before having completed twenty years of
3 service as a member of the division, has died or shall
4 die from any cause other than those specified in this
5 article and not due to vicious habits, intemperance or
6 willful misconduct on his or her part, there shall be paid
7 annually in equal monthly installments from the fund
8 to the surviving spouse of the member during his or her
9 lifetime, or until such time as the surviving spouse
10 remarries, a sum equal to one half of the base salary
11 received in the preceding twelve-month employment

12 period by the deceased member: *Provided*, That if the
13 member had not been employed with the division for
14 twelve months prior to the disability, the amount of
15 monthly salary shall be annualized for the purpose of
16 determining the benefit. If there is no surviving spouse
17 or the surviving spouse dies or remarries, there shall be
18 paid monthly to each dependent child or children from
19 the fund a sum equal to one fourth of the surviving
20 spouse's entitlement. If there are no surviving spouse
21 and no dependent child or children, there shall be paid
22 annually in equal monthly installments from the fund
23 to the dependent parents of the deceased member
24 during their joint lifetimes a sum equal to the amount
25 that a surviving spouse would have been entitled to
26 receive: *Provided, however*, That when there is but one
27 dependent parent surviving, then that parent shall be
28 entitled to receive during his or her lifetime one half the
29 amount which both parents, if living, would have been
30 entitled to receive.

§15-2A-14. Awards and benefits to dependents of member — When member dies after retirement or after serving twenty years.

1 When any member of the division has completed
2 twenty years of service or longer as a member of the
3 division and has died or shall die from any cause or
4 causes other than those specified in this article before
5 having been retired by the board, and when a member
6 in retirement status has died or shall die after having
7 been retired by the board under the provisions of this
8 article, there shall be paid annually in equal monthly
9 installments from the fund to the surviving spouse of the
10 member, commencing on the date of the death of the
11 member and continuing during the lifetime or until
12 remarriage of the surviving spouse, an amount equal to
13 two thirds of the retirement benefit which the deceased
14 member was receiving while in status of retirement, or
15 would have been entitled to receive to the same effect
16 as if the member had been retired under the provisions
17 of this article immediately prior to the time of his or
18 her death. In no event shall the annual benefit payable
19 be less than five thousand dollars. In addition thereto,

20 the surviving spouse is entitled to receive and there shall
21 be paid to the surviving spouse from the fund the sum
22 of one hundred dollars monthly for each dependent child
23 or children. If the surviving spouse dies or remarries,
24 or if there is no surviving spouse, there shall be paid
25 monthly from the fund to each dependent child or
26 children of the deceased member a sum equal to one
27 fourth of the surviving spouse's entitlement. If there is
28 no surviving spouse or no surviving spouse eligible to
29 receive benefits and no dependent child or children,
30 there shall be paid annually in equal monthly instal-
31 lments from the fund to the dependent parents of the
32 deceased member during their joint lifetimes a sum
33 equal to the amount which a surviving spouse without
34 children would have been entitled to receive: *Provided,*
35 That when there is but one dependent parent surviving,
36 that parent shall be entitled to receive during his or her
37 lifetime one half the amount which both parents, if
38 living, would have been entitled to receive.

39 The member may choose a higher percentage of
40 surviving spouse benefits by taking an actuarially
41 determined reduced initial benefit so that the chosen
42 spouse benefit and initial benefit would be actuarially
43 equivalent to the normal spouse benefit and initial
44 benefit. The retirement board shall design these benefit
45 options and provide them as choices for the member to
46 select. For the purposes of this subsection, "initial
47 benefit" means the benefit received by the member upon
48 retirement.

§15-2A-15. Exemption from taxation, garnishment and other process.

1 The moneys in the fund and the right of a member
2 to a retirement allowance, to the return of contributions,
3 or to any benefit under the provisions of this article, are
4 hereby exempt from any state or municipal tax; shall
5 not be subject to execution, garnishment, attachment or
6 any other process whatsoever; and shall be unassignable
7 except as is provided in this article.

§15-2A-16. Fraud; penalties.

1 Any person who knowingly makes any false statement

2 or who falsifies or permits to be falsified any record or
3 records of the retirement system in any attempt to
4 defraud that system is guilty of a misdemeanor, and,
5 upon conviction, shall be punished by a fine not to
6 exceed one thousand dollars, or confinement in the
7 county jail not to exceed one year or both.

§15-2A-17. Awards and benefits to dependents of member — Termination.

1 When any surviving spouse of a member shall die or
2 remarry while receiving or being entitled to receive any
3 benefits under any section except section twelve of this
4 article, the surviving spouse may not from the date of
5 his or her remarriage, nor may the estate from the date
6 of death of the deceased member's surviving spouse, be
7 entitled to receive any benefits hereunder whatsoever:
8 *Provided*, That in any case where under the terms of this
9 article benefits are provided for a child or children
10 surviving the death or remarriage of the surviving
11 spouse, payment of benefits to that child or children
12 shall be calculated for payment from the date the
13 surviving spouse dies or remarries.

§15-2A-18. Authority to continue payments to certain dependents.

1 The board may continue payments of a surviving
2 spouse's entitlement in full to any dependent child who
3 continues to be dependent by reason of mental or
4 physical incapacity as determined by the board, not-
5 withstanding the age of the dependent child or other
6 provisions of this article.

§15-2A-19. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict.

1 (a) Any member who has previously served on active
2 military duty is entitled to receive additional credited
3 service for the purpose of determining the amount of
4 retirement award under the provisions of this article for
5 a period equal to the active military duty not to exceed
6 five years, subject to the following:

7 (1) That he or she has been honorably discharged from
8 the armed forces;

9 (2) That he or she substantiates by appropriate
10 documentation or evidence his or her period of active
11 military duty;

12 (3) That he or she is receiving no benefits from any
13 other retirement system for his or her active military
14 duty; and

15 (4) That, except with respect to disability retirement
16 pay awarded under this article, he or she has actually
17 served with the division for twenty years exclusive of his
18 or her active military duty.

19 (b) In addition, any person who while a member of
20 the division was commissioned, enlisted or inducted into
21 the armed forces of the United States or, being a
22 member of the reserve officers' corps, was called to
23 active duty in the armed forces between the first day
24 of September, one thousand nine hundred forty, and the
25 close of hostilities in World War II, or between the
26 twenty-seventh day of June, one thousand nine hundred
27 fifty, and the close of the armed conflict in Korea on the
28 twenty-seventh day of July, one thousand nine hundred
29 fifty-three, between the first day of August, one
30 thousand nine hundred sixty-four and the close of the
31 armed conflict in Vietnam, or during any other period
32 of armed conflict by the United States whether sancti-
33 oned by a declaration of war by the Congress or by
34 executive or other order of the president, is entitled to
35 and shall receive credit on the minimum period of
36 service required by law for retirement pay from the
37 service of the division of public safety, or its predecessor
38 agency, for a period equal to the full time that he or she
39 has or, pursuant to that commission, enlistment,
40 induction or call, shall have served with the armed
41 forces subject to the following:

42 (1) That he or she has been honorably discharged from
43 the armed forces;

44 (2) That within ninety days after honorable discharge
45 from the armed forces, he or she presented himself or

46 herself to the superintendent and offered to resume
47 service as an active member of the division; and

48 (3) That he or she has made no voluntary act, whether
49 by reenlistment, waiver of discharge, acceptance of
50 commission or otherwise, to extend or participate in
51 extension of the period of service with the armed forces
52 beyond the period of service for which he or she was
53 originally commissioned, enlisted, inducted or called.

54 (c) The total amount of military service credit
55 allowable under this section may not exceed five years
56 for any member of the division.

CHAPTER 136

(Com. Sub. for H. B. 4430—By Delegates McKinley, Trump, Staton and Kessel)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen, relating to the public service commission promulgating rules to effect electric utilities; providing a plan for identifying persons needing special services during power outages; providing notification of planned outages and developing procedures to restore services to those persons on life support systems; and defining the term life support system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-17. Registry of electric customers on life support systems; notification prior to scheduled outages; priority of service restoration; limitation of liability; life support defined.

1 (a) In addition to all other powers and duties con-
2 ferred upon the commission by this chapter, the
3 commission shall promulgate rules establishing require-
4 ments for electric utilities in this state for purposes of
5 accomplishing the following:

6 (1) Identifying and maintaining a registry of persons
7 that are dependent upon life support systems which
8 require electric service to function, and updating that
9 registry at least twice annually; all new customers shall
10 be notified of the registry and its functions;

11 (2) Providing adequate notice of planned power
12 outages to each residence in the registry; and

13 (3) Organizing service restoration so that, as much as
14 practicable given the scope and nature of a power
15 outage, priority is given to residences listed in the
16 registry.

17 (b) An electric utility which acts in good faith to
18 comply with the rules promulgated in accordance with
19 this section shall not be liable for damages in a civil
20 action for any injuries or deaths resulting from loss of
21 power to a life support system as a result of a power
22 outage.

23 (c) Nothing in this section shall be construed as
24 requiring an electric utility to provide back-up life
25 support to any customers.

26 (d) For purposes of this section, the term "life support
27 system" means a kidney dialysis machine, mechanical
28 ventilation device or other medical device, the use of
29 which is prescribed by a licensed physician and upon the
30 request of the patient or his or her patient representa-
31 tive, is certified by such physician in writing to the
32 electric utility as necessary to sustain critical body
33 functions and without which a person is in imminent
34 risk of death.

CHAPTER 137

(H. B. 4653—By Delegates Kiss, S. Cook, Farris, Doyle and McKinley)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections eleven-a and twenty-six; and to amend and reenact section six-a, article eight of said chapter eleven, all relating to the public utilities division; establishment of a special revenue account; authorizing expenditures to operate the public utilities division and authorizing the board of public works to adjust valuations prior to appeal in circuit court.

Be it enacted by the Legislature of West Virginia:

That article six, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections eleven-a and twenty-six; and to amend and reenact section six-a, article eight of said chapter eleven, all to read as follows:

Article

- 6. Assessment of Public Service Businesses.
- 8. Levies.

ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.

§11-6-11a. Adjustment of valuation by board.

§11-6-26. Operating fund for public utilities division in auditor's office.

§11-6-11a. Adjustment of valuation by board.

- 1 Any time before an owner or operator appeals a
- 2 valuation to circuit court, as provided for in section
- 3 twelve of this article, the board of public works may,
- 4 after consideration of all relevant facts and evidence,
- 5 adjust the valuation made by the board pursuant to
- 6 section eleven of this article.

§11-6-26. Operating fund for public utilities division in auditor's office.

- 1 The auditor shall establish a special operating fund
- 2 in the state treasury for the public utilities division in

3 his or her office. The auditor shall pay into the fund
4 three eighths of one percent of the gross receipts of all
5 moneys collected as provided for in this article. From
6 the fund, the auditor shall reimburse the department of
7 tax and revenue for the actual operating expenses
8 incurred in the performance of its duties required by
9 this article. The reimbursements to the tax department
10 from the fund shall not exceed fifty percent of the
11 annual deposits to the fund. Any moneys remaining in
12 the special operating fund after reimbursement to the
13 tax department shall be used by the auditor for funding
14 the operation of the public utilities division located in
15 his office. On the thirty-first day of July in each fiscal
16 year, if the balance in the operating fund exceeds fifty
17 thousand dollars, the excess shall be withdrawn from
18 the special fund and deposited in the general fund of the
19 state.

ARTICLE 8. LEVIES.

§11-8-6a. Levies on each classification by board of public works.

1 The state board of public works shall levy as provided
2 by section eight as follows:

3 On Class I property, twenty-five hundredths of one
4 cent; on Class II property, five tenths of one cent; and
5 on Classes III and IV property, one cent.

6 Whenever the state board of public works finds the
7 revenues from all sources have been or will be insuffi-
8 cient to meet the requirements for interest and sinking
9 funds on state road bonds, said state board of public
10 works shall levy for said purposes as provided by section
11 eight, whatever rates of levy are necessary to meet the
12 requirements for interest and sinking funds on state
13 road bonds issued prior to November eight, one thou-
14 sand nine hundred thirty-two, which rates of levy shall
15 be as follows:

16 On Class I property, one cent; on Class II property,
17 two cents; and on Classes III and IV property, four
18 cents, or multiples thereof or in like ratio on all property
19 subject to taxation in the state.

CHAPTER 138

(Com. Sub. for H. B. 4171—By Delegates Trump,
Burk, Rowe, Huffman and Kiss)

[Passed March 11, 1994: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article eleven, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the time period for curing technical deficiencies in documents that effect real estate conveyances and transactions from ten to five years.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. CURATIVE PROVISIONS RESPECTING DEEDS AND OTHER WRITINGS AND THE RECORDATION THEREOF.

§37-11-2. Validation of instruments, acknowledgments and records.

1 (a) No deed or other writing conveying or purporting
2 to convey or release or assign real estate, or any interest
3 therein, or to create any power of attorney relating to
4 real estate or any interest therein, heretofore made or
5 executed and delivered by any person or persons
6 whomsoever, or by a husband and wife to a bona fide
7 purchaser for good and valuable consideration, and
8 acknowledged by him or them before an officer duly
9 authorized by law to take such acknowledgments, if
10 such deed, writing or power of attorney was made,
11 executed, acknowledged and delivered prior to the
12 seventh day of June, one thousand nine hundred fifty-
13 five, shall be deemed, held or adjudged invalid, or
14 defective, or insufficient in law or in equity, by reason
15 of any informality or omission in setting forth the
16 particulars of the acknowledgment made before such

17 officer aforesaid in the certification thereof, or in stating
18 the official character of such officer, or the place of
19 taking the acknowledgment, or by reason of the fact that
20 the wife executed such instrument prior to the execution
21 thereof by the husband, or by reason of the fact that the
22 parties making or executing the instrument or writing,
23 or any of them omitted to seal the same, or by reason
24 of the fact that the official taking the acknowledgment
25 omitted his official seal, or by reason of the failure to
26 set forth the date of the deed or other writing or the date
27 of the acknowledgment in the certification thereof. or by
28 reason of the failure to set forth correctly the date of
29 the deed or other writing or the date of the acknowl-
30 edgment in the certification thereof.

31 (b) If a period of five years has elapsed from the date
32 of recordation of any deed or other writing, and if said
33 deed or other writing has an acknowledgment consid-
34 ered defective for any reason, then every such deed or
35 other writing shall be as good, valid and effectual in law
36 as if the law with respect to acknowledgments and seals,
37 in force at the date of such acknowledgment had been
38 fully complied with; and the record of the same duly
39 made in the proper office for recording deeds in the
40 state of West Virginia, or in the state of Virginia before
41 formation of West Virginia, and exemplifications of the
42 same duly certified, shall be legal evidence in all cases
43 in which the original would be competent evidence:
44 *Provided*, That this section shall not apply to suits now
45 pending and undetermined insofar as it amends laws
46 existing at the time such pending suits were instituted,
47 nor to any suit that may be brought within one year
48 after the day this section takes effect, insofar as it
49 amends laws existing at the time this section takes
50 effect; nor shall this section apply to any deed or other
51 writing which has heretofore been declared or held
52 invalid by any court of competent jurisdiction.

CHAPTER 139

(S. B. 92—By Senators Anderson, Minard, Ross and Grubb)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter thirty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six, relating to recordation of corrections made to county indices.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. GENERAL INDEX AND PRESERVATION OF RECORDS.

§39-2-6. Records of county commissions, correction recordation.

- 1 Every clerk of a county commission shall establish a
- 2 system which will permanently record any corrections
- 3 made to any index under his or her care, custody and
- 4 control. Such recordation of correction shall include the
- 5 date such correction was made.

CHAPTER 140

(Com. Sub. for S. B. 56—By Senator Humphreys)

[Passed February 18, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article one, chapter forty-six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, seven and eight, article three of said chapter, all relating to the regulation of the rental of consumer goods under rent-to-own agreements; general definitions; disclosure require-

ments; and prohibitions for rent-to-own transactions.

Be it enacted by the Legislature of West Virginia:

That section five, article one, chapter forty-six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections three, seven and eight, article three of said chapter be amended and reenacted, all to read as follows:

Article

1. **General Provisions; Purpose and Intent; Definitions.**
3. **Default.**

ARTICLE 1. GENERAL PROVISIONS; PURPOSE AND INTENT; DEFINITIONS.

§46B-1-5. General definitions.

1 The following words and phrases, when used in this
2 chapter, shall have the meanings respectively ascribed
3 to them in this section, unless the context in which such
4 words or phrases are used elsewhere in this chapter
5 clearly requires a different meaning:

6 (1) "Agricultural purpose" means a purpose related to
7 the production, harvest, exhibition, marketing, trans-
8 portation, processing or manufacture of agricultural
9 products by a natural person who cultivates, plants,
10 propagates or nurtures the agricultural products.
11 "Agricultural products" include agricultural, horticultu-
12 ral, viticultural and dairy products, livestock, wildlife,
13 poultry, bees, forest products, fish and shellfish and any
14 products thereof, including processed and manufactured
15 products, and any and all products raised or produced
16 on farms and any processed or manufactured products
17 thereof.

18 (2) "Consumer" means a natural person who acquires,
19 or seeks to acquire, the right to possession and use of
20 consumer goods from a dealer.

21 (3) "Consumer goods" or "goods" means goods in-
22 tended to be used primarily for personal, family or
23 household purposes.

24 (4) "Damage waiver" means the voiding or disregard
25 by the dealer of any obligation on the part of the

26 consumer to pay the value of the consumer goods or to
27 make payments pursuant to a rent-to-own agreement in
28 the event of loss or damage to the consumer goods in
29 excess of normal wear and tear or the insurance of the
30 value of the consumer goods or of payments pursuant
31 to the rent-to-own agreement in the event of loss or
32 damage to the consumer goods in excess of normal wear
33 and tear.

34 (5) "Dealer" or "rent-to-own dealer" means a person
35 who, in the ordinary course of business, transfers or
36 offers to transfer the right to possession and use of
37 consumer goods to a consumer or acts as an agent to
38 transfer or offer to transfer the right to possession and
39 use of consumer goods to a consumer, pursuant to a
40 rental agreement.

41 (6) "Debt collection" means any action, conduct or
42 practice of soliciting claims for collection or the
43 collection of a claim or claims owed or due or alleged
44 to be owed or due to a dealer by a consumer under a
45 rent-to-own agreement.

46 (7) "Debt collector" means any person or organization
47 engaging directly or indirectly in debt collection. The
48 term includes any person or organization who sells or
49 offers to sell forms which are, or are represented to be,
50 a collection system, device or scheme and are intended
51 or calculated to be used to collect claims.

52 (8) "Financial organization" means a corporation,
53 partnership, cooperative or association which:

54 (A) Is organized, chartered or holding an authoriza-
55 tion certificate under the laws of this state or of the
56 United States which authorizes the organization to
57 make consumer loans; and

58 (B) Is subject to supervision and examination with
59 respect to such loans by an official or agency of this state
60 or of the United States.

61 (9) "Ownership" means the right to enjoy, possess and
62 use consumer goods to the exclusion of other persons,
63 including the right to transfer legal title to such
64 consumer goods or to otherwise control, handle or

65 dispose of such consumer goods, whether or not indicia
66 of such ownership is established by, or otherwise
67 required to be evidenced by, a title-paper, letter, receipt
68 or other document or instrument.

69 (10) "Period" or "rental period" means a week, a
70 month or another specific length of time set forth in a
71 rent-to-own agreement, during which such period the
72 consumer has a right to continue possessing and using
73 consumer goods, after having made the periodic rental
74 payment for such period.

75 (11) "Periodic payment" means a payment required to
76 be made by a consumer to have the right to possession
77 and use of consumer goods during a specified time
78 period. The periodic payment does not include any
79 applicable sales, use, privilege, excise or documentary
80 stamp taxes otherwise payable upon a transfer of
81 consumer goods from a dealer to a consumer, except as
82 provided for by the disclosure requirements or other
83 applicable requirements set forth in this chapter.

84 (12) "Person" or "party" includes a natural person or
85 an individual, an organization, partnership or
86 corporation.

87 (13) "Person related to" with respect to an individual
88 means: (A) The spouse of the individual; (B) a brother,
89 brother-in-law, sister or sister-in-law of the individual;
90 (C) an ancestor or lineal descendant of the individual or
91 his spouse; and (D) any other relative, by blood or
92 marriage, of the individual or his spouse who shares the
93 same home with the individual. "Person related to" with
94 respect to an organization, partnership or corporation
95 means: (A) A person directly or indirectly controlling,
96 controlled by or under common control with the
97 organization, partnership or corporation; (B) an officer
98 or director of the organization, partnership or corpora-
99 tion or a person performing similar functions with
100 respect to the organization or to a person related to the
101 organization, partnership or corporation; (C) the spouse
102 of a person related to the organization, partnership or
103 corporation; and (D) a relative by blood or marriage of
104 a person related to the organization, partnership or

105 corporation shares the same home with him or her.

106 (14) "Premises" means a particular physical place of
107 business opened to the public by a dealer.

108 (15) "Rental agreement" means the bargain, with
109 respect to the rental of consumer goods under a rent-
110 to-own agreement, of the dealer and the consumer as
111 found in their language or by implication from other
112 circumstances including course of dealing or usage of
113 trade or course of performance as provided in this
114 chapter.

115 (16) "Rental contract" means the total legal obligation
116 that results from the rental agreement as affected by
117 this chapter and any other applicable rules of law.

118 (17) (A) "Rent-to-own agreement" means a rental
119 agreement which:

120 (i) Transfers the right to possession and use of the
121 rental property from the dealer to the consumer;

122 (ii) Obligates the consumer to pay successive periodic
123 rental payments as each shall become due, in order to
124 continue his or her right to possession and use of the
125 rented consumer goods;

126 (iii) Is subject to termination by the consumer as
127 permitted by this chapter, whereupon the consumer is
128 not obligated to make payments for any period of time
129 other than a period during which he or she chooses to
130 maintain possession and use of the rented consumer
131 goods; and

132 (iv) Provides that upon compliance with the terms of
133 the agreement the consumer shall become or has the
134 option to become the owner of the property.

135 (B) The term "rent-to-own agreement" does not
136 include a rental agreement in which:

137 (i) A financial organization is a party, if the rental
138 agreement is subject to the federal Truth in Lending
139 Act or the federal Consumer Leasing Act and the
140 regulations promulgated pursuant thereto;

141 (ii) Any of the consumer goods which are the subject

142 matter of the rental agreement are vehicles as defined
143 in section one, article one, chapter seventeen-a of this
144 code;

145 (iii) All of the consumer goods which are the subject
146 of the rental agreement are either two-way telecommu-
147 nications equipment, medical equipment or musical
148 instruments, and the rental agreement is subject to the
149 federal Truth in Lending Act or the federal Consumer
150 Leasing Act and the regulations promulgated pursuant
151 thereto; or

152 (iv) All of the goods which are the subject matter of
153 the rental agreement are primarily intended to be used
154 for agricultural purposes.

155 (18) "Retail value" or "fair market value" of particular
156 consumer goods means the price at which goods of like
157 type, quality and quantity would change hands between
158 a willing seller and a willing buyer, at retail, for cash,
159 in the particular market area at the time of the rent-
160 to-own rental agreement, which price does not include
161 any applicable sales, use, privilege, excise or documen-
162 tary stamp taxes payable upon the transfer of such
163 goods.

164 (19) "Rent-to-own charge", in connection with any
165 rent-to-own agreement, means the sum of all charges in
166 excess of the retail value which must be paid directly
167 or indirectly by the consumer in order for the consumer
168 to acquire ownership of the consumer goods without
169 payment of further consideration.

170 (20) "Termination" means the cancellation of a rental
171 agreement when the consumer determines that he or she
172 no longer desires to pay periodic payments and retain
173 the right to possession and use of the consumer goods
174 or either party puts an end to the rental agreement for
175 default by the other party in accordance with the
176 provisions of this chapter.

177 (21) "Total of payments" means the total of all periodic
178 payments specified in the written agreement which the
179 consumer must pay in order to acquire ownership of the
180 consumer goods without the payment of additional

181 consideration to the dealer.

182 (22) "Willing buyer" means a person who:

183 (A) Buys consumer goods at retail for his or her
184 personal use or for the use of his or her family or
185 household;

186 (B) Has a reasonable knowledge of the relevant facts
187 to be considered in ascertaining the fair market price
188 of consumer goods which are offered to be sold at retail;
189 and

190 (C) Is under no compulsion to buy or to buy from a
191 particular seller.

192 (23) "Willing seller" means a person other than a rent-
193 to-own dealer who:

194 (A) In the ordinary course of business regularly sells
195 or offers for sale consumer goods at retail;

196 (B) Has no direct or indirect ownership connection
197 with any dealer;

198 (C) Has a reasonable knowledge of the relevant facts
199 to be considered in fixing the fair market price of
200 consumer goods which are offered to be sold at retail;
201 and

202 (D) Is under no compulsion to sell or to sell to a
203 particular buyer.

204 (24) "Written agreement" means a written document
205 containing or evidencing the terms of a rent-to-own
206 transaction, reduced to a tangible and legible form by
207 printing, typewriting, computer print-out or any other
208 intentional reduction.

ARTICLE 3. DEFAULT.

§46B-3-3. Termination of rent-to-own agreements.

§46B-3-7. Disclosure requirements.

§46B-3-8. Prohibitions for rent-to-own transactions.

§46B-3-3. Termination of rent-to-own agreements.

- 1 (a) Upon the termination of a rent-to-own agreement
- 2 by a consumer, all obligations that are still executory
- 3 by both parties are discharged, but any right based on

4 a failure of the dealer to maintain the consumer goods
5 in accordance with the provisions of section six of this
6 article, or any other right based on prior default or
7 performance of the dealer survives, and the consumer
8 retains any remedy or defense for such default. Rights
9 and remedies available to the consumer for material
10 misrepresentation or fraud by a dealer are not affected
11 by a termination of the rental agreement by a consumer.
12 Termination of the rental agreement by a consumer
13 shall not bar or be deemed inconsistent with a claim for
14 damages or other right or remedy.

15 (b) A consumer may terminate a rent-to-own agree-
16 ment at any time.

17 (c) When a consumer terminates a rent-to-own
18 transaction, the dealer may not require any further
19 action or payment by the consumer except:

20 (1) Payment of any unpaid periodic payments and
21 charges accrued before the consumer notified the dealer
22 of the termination of the transaction and made the
23 consumer goods available to be received by the dealer;
24 and

25 (2) Payment of any pickup charge provided for in the
26 rental agreement.

27 (d) A dealer may terminate a rent-to-own agreement
28 when the consumer fails to make a periodic payment as
29 it becomes due: *Provided*, That seven days prior to
30 terminating the rent-to-own agreement, the dealer shall
31 provide a written notice to the consumer informing him
32 or her:

33 (1) Of the amount of any periodic payment or
34 payments that the consumer has failed to make;

35 (2) That the consumer may voluntarily surrender
36 possession of the goods to the dealer at the location
37 where the goods are located;

38 (3) Of any late payment which has been or may be
39 assessed;

40 (4) Of the right to reinstate which shall include:

41 (A) The consumer's right to reinstate the agreement
42 by payment of amounts due when the goods are in the
43 possession of the consumer;

44 (B) The amount of time when the consumer has to
45 reinstate the agreement;

46 (C) That reinstatement will result in continuation of
47 the original agreement, including the provisions relat-
48 ing to ownership of the goods; and

49 (D) The amount of fees to be paid for reinstatement.

50 (e) The dealer may request that the goods be surren-
51 dered at any time after a consumer has failed to timely
52 make a periodic payment required under the
53 agreement.

54 (f) A rent-to-own agreement terminates when the
55 consumer surrenders the goods. The dealer shall provide
56 the consumer with a notice of reinstatement rights as
57 stated in subdivision (4), subsection (d) of this section.

§46B-3-7. Disclosure requirements.

1 (a) The dealer shall make all disclosures required by
2 this section.

3 (b) In all circumstances listed in subsection (c) of this
4 section, the dealer shall disclose the following informa-
5 tion with respect to the goods that are the subject of the
6 rental agreement in a clear, conspicuous and easily
7 understood manner:

8 (1) Retail value;

9 (2) Rent-to-own charge;

10 (3) Rental period;

11 (4) Number of periodic payments required for
12 ownership;

13 (5) Amount of each periodic payment;

14 (6) Total of all payments; and

15 (7) Whether the goods are new or have been pre-
16 viously rented or are otherwise used.

17 (c) The dealer shall make the disclosures required in
18 this section:

19 (1) On a label attached or posted on top of the goods
20 displayed to any potential consumer;

21 (2) In any rent-to-own agreement as defined in section
22 five, article one of this chapter;

23 (3) In any telephone communication with a potential
24 consumer; and

25 (4) In any radio, television or printed advertisement
26 for the goods when the amount of the periodic payment
27 for the item is included in the advertisement.

28 (d) Any oral communications concerning the terms
29 and conditions of the transaction shall be incorporated
30 into a written agreement which shall govern the
31 transaction.

32 (e) In any transaction involving more than one dealer,
33 only one dealer may make the disclosures required by
34 this article: *Provided*, That when the name of the dealer
35 is required to be disclosed, all dealers shall be disclosed.

36 (f) A dealer may disclose information that is not
37 required by this section only when the additional
38 information is not stated, used or placed in a manner
39 that may contradict, obscure or distract attention from
40 the information required by this section.

§46B-3-8. Prohibitions for rent-to-own transactions.

1 No dealer may:

2 (1) Require any initial payment in any transaction
3 except the payment for the first rental period, taxes,
4 insurance or delivery fees and other disclosed fees or
5 fees authorized by this chapter;

6 (2) Charge any fee at the time ownership of the
7 consumer goods passes to the consumer, other than an
8 applicable fee, if any, which actually is or will be paid
9 to public officials for perfecting title or ownership in the
10 consumer;

11 (3) Raise the amount of any payment or charge after

12 the execution of the written agreement without both
13 parties voluntarily entering into a second written
14 agreement;

15 (4) Take any action to collect a payment which is
16 prohibited by this chapter;

17 (5) Accept any cosigner other than a person who is in
18 the household of the consumer and who is expected to
19 use the consumer goods;

20 (6) Take any security interest in any property owned
21 by the consumer;

22 (7) Require a damage waiver, insurance or form of
23 insurance, insuring the consumer goods against loss or
24 damage, unless the dealer requires such insurance for
25 all goods of comparable type and value in every rent-
26 to-own agreement;

27 (8) Require damage waiver from a particular insurer;

28 (9) Seek to collect any charge not authorized by this
29 chapter and disclosed in a written agreement; or

30 (10) Have an initial period which is more than one
31 week longer than any other rental period.

CHAPTER 141

(S. B. 129—By Senators Anderson, Wagner, Chernenko, Chafin,
Dalton, Bailey, Sharpe, Ross, Schoonover, Withers and Wooton)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to retirement credit for former constables and justices of the peace who are currently public employees; and providing that anyone seeking this credit must do so by the thirtieth day of July, one thousand nine hundred ninety-five.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article ten, 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 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-14. Service credit.

1 (a) The board of trustees shall credit each member
2 with the prior service and contributing service to which
3 he or she is entitled based upon such rules and
4 regulations as the board of trustees shall from time to
5 time adopt: *Provided*, That in no case shall less than ten
6 days of service rendered by a member in any calendar
7 month be credited as a month of service; nor shall less
8 than ten months of service rendered in any calendar
9 year be credited as a year of service; nor shall more than
10 one year of service be credited any member for all
11 service rendered by him or her in any calendar year;
12 nor shall any member who was not in the employ of a
13 political subdivision within a period of thirty years
14 immediately preceding the date the political subdivision
15 became a participating public employer be credited
16 with prior service: *Provided, however*, That said member
17 is not required to have been employed by a participating
18 public employer of this state within a period of fifteen
19 years subsequent to the date that participating public
20 employer elected to become a participating employer.

21 (b) The board of trustees shall grant service credit to
22 employees of boards of health, the clerk of the House of
23 Delegates and the clerk of the state Senate, or to any
24 former and present member of the state teachers
25 retirement system who have been contributing members
26 for more than three years, for service previously
27 credited by the state teachers retirement system and
28 shall require the transfer of the member's contributions
29 to the system and shall also require a deposit, with
30 interest, of any withdrawals of contributions any time
31 prior to said member's retirement. Repayment of
32 withdrawals shall be as directed by the board of
33 trustees.

34 (c) Court reporters who are acting in an official
35 capacity, although paid by funds other than the county
36 commission or state auditor, may receive prior service
37 credit for such time as served in such capacity.

38 (d) Employees of the state Legislature whose term of
39 employment is otherwise classified as temporary and
40 who are employed to perform services required by the
41 Legislature for its regular sessions or during the interim
42 between regular sessions and who have been or are so
43 employed during regular sessions or during the interim
44 between sessions for eight or more years, may receive
45 service credit for the time as served in that capacity.

46 (e) Former justices of the peace and constables who
47 continue to actively serve as employees or elected
48 officials of state or local governments that are partic-
49 ipating public employers shall be entitled to credit for
50 retirement purposes for those years of service as a
51 justice of the peace or constable: *Provided*, That they
52 have a minimum of five years contributing service and
53 they compensate the retirement fund in an amount
54 equal to the amount which they would have contributed
55 for a like period of time, according to a formula
56 determined by the retirement board, plus an amount
57 equal to the determined employer's contribution for the
58 same period. For purposes of calculating the contribu-
59 tions, the salary for constables shall be deemed to be five
60 thousand dollars per year and the salary for justices of
61 the peace shall be deemed to be seven thousand five
62 hundred dollars per year. In addition, they shall deposit
63 the compounded yearly interest on the aggregate of the
64 employee and employer contributions at a rate or rates
65 to be determined by the retirement board: *Provided*,
66 *however*, That those former justices of the peace and
67 constables who elect to seek credit under this subsection
68 shall be allowed until the thirtieth day of June, one
69 thousand nine hundred ninety-five, to compensate the
70 retirement fund as provided herein.

CHAPTER 142

(Com. Sub. for S. B. 237—By Senators Burdette, Mr. President, Boley, Anderson, Chafin, Chernenko, Claypole, Craigo, Dittmar, Humphreys, Jones, Lucht, Manchin, Miller, Minard, Ross, Schoonover, Sharpe, Tomblin, Walker, Wehrle, Whitlow, Wiedebusch, Withers and Wooton)
 [By Request of the Executive]

[Passed March 12, 1994; to take effect July 1, 1994. Approved by the Governor.]

AN ACT to amend article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two-e; and to amend and reenact section thirty-one of said article, relating to the public employees retirement act; providing supplemental benefits for retirees under specified conditions; employers accumulation fund; employer contributions; requiring the consolidated public retirement board to promulgate legislative rules relating to the amount of employer contributions; allowing for emergency rule promulgation under certain conditions; and maintaining a cap on the percentage rate of contributions by employers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-22e. Supplemental benefits for retirees effective July 1, 1994; calculation of benefits and conditions of payment.

§5-10-31. Employers accumulation fund; employers contributions.

§5-10-22e. Supplemental benefits for retirees effective July 1, 1994; calculation of benefits and conditions of payment.

- 1 (a) A supplement to retirement benefits provided shall
- 2 be paid prospectively to all eligible annuitants who have
- 3 been retired prior to the thirty-first day of December,

4 one thousand nine hundred ninety-two, which supple-
5 ment shall become effective on the first day of July, one
6 thousand nine hundred ninety-four. The calculation of
7 such supplement for each annuitant shall be based upon
8 the number of full increments as set forth in subsections
9 (b) through (k) of this section that the annuitant has
10 maintained his or her retired status since the original
11 date of the commencement of his or her retirement, and
12 shall equal the sum of the applicable percentages
13 credited for such increments as set forth in the
14 applicable subsections of this section. Any such supple-
15 ment shall be paid in pro rata monthly installments.

16 (b) The total amount of the supplement due to
17 qualified annuitants who retired during the period
18 commencing on the first day of April, one thousand nine
19 hundred eighty-eight, and ending on the thirty-first day
20 of December, one thousand nine hundred ninety-two,
21 shall be three percent of their retirement benefit
22 including any supplemental benefits provided on or
23 before the first day of July, one thousand nine hundred
24 seventy-four: *Provided*, That annuitants who retired
25 during the period set forth in this subsection shall be
26 required to elect between receiving the supplemental
27 benefit provided in this section or any incentives
28 provided in section twenty-two-c of this article or any
29 other supplements provided in this article: *Provided*,
30 *however*, That the consolidated public retirement board
31 shall provide written notification to members eligible
32 for the benefit provided in this subsection of the
33 availability and terms of the benefit provided in this
34 subsection and members electing to select this benefit
35 in lieu of any other incentive the member has or is
36 receiving shall submit an application for the benefit on
37 the form prescribed by the board.

38 (c) The total amount of the supplement due to
39 qualified annuitants who retired during the period
40 commencing on the first day of July, one thousand nine
41 hundred eighty-five, and ending on the thirty-first day
42 of March, one thousand nine hundred eighty-eight, shall
43 be five percent of their retirement benefit including any
44 supplemental benefits provided on or before the first

45 day of July, one thousand nine hundred seventy-four,
46 plus the amount of the percentage supplement provided
47 in subsection (b) of this section.

48 (d) The total amount of the supplement due to
49 qualified annuitants who retired during the period
50 commencing on the first day of July, one thousand nine
51 hundred eighty-two, and ending on the thirtieth day of
52 June, one thousand nine hundred eighty-five, shall be
53 five percent of their retirement benefit including any
54 supplemental benefits provided on or before the first
55 day of July, one thousand nine hundred seventy-four,
56 plus the amount of the percentage supplements provided
57 in subsections (b) and (c) of this section.

58 (e) The total amount of the supplement due to
59 qualified annuitants who retired during the period
60 commencing on the first day of July, one thousand nine
61 hundred seventy-nine, and ending on the thirtieth day
62 of June, one thousand nine hundred eighty-two, shall be
63 sixteen percent of their retirement benefit including any
64 supplemental benefits provided on or before the first
65 day of July, one thousand nine hundred seventy-four,
66 plus the amount of the percentage supplements provided
67 in subsections (b), (c) and (d) of this section.

68 (f) The total amount of the supplement due to
69 qualified annuitants who retired during the period
70 commencing on the first day of July, one thousand nine
71 hundred seventy-six, and ending on the thirtieth day of
72 June, one thousand nine hundred seventy-nine, shall be
73 sixteen percent of their retirement benefit including any
74 supplemental benefits provided on or before the first
75 day of July, one thousand nine hundred seventy-four,
76 plus the amount of the percentage supplements provided
77 in subsections (b), (c), (d) and (e) of this section.

78 (g) The total amount of the supplement due to
79 qualified annuitants who retired during the period
80 commencing on the first day of July, one thousand nine
81 hundred seventy-three, and ending on the thirtieth day
82 of June, one thousand nine hundred seventy-six, shall be
83 sixteen percent of their retirement benefit including any
84 supplemental benefits provided on or before the first

85 day of July, one thousand nine hundred seventy-four,
86 plus the amount of the percentage supplements provided
87 in subsections (b), (c), (d), (e) and (f) of this section.

88 (h) The total amount of the supplement due to
89 qualified annuitants who retired during the period
90 commencing on the first day of July, one thousand nine
91 hundred seventy, and ending on the thirtieth day of
92 June, one thousand nine hundred seventy-three, shall be
93 twenty-four percent of their retirement benefit includ-
94 ing any supplemental benefits provided on or before the
95 first day of July, one thousand nine hundred seventy-
96 four, plus the amount of the percentage supplements
97 provided in subsections (b), (c), (d), (e), (f) and (g) of this
98 section.

99 (i) The total amount of the supplement due to
100 qualified annuitants who retired during the period
101 commencing on the first day of July, one thousand nine
102 hundred sixty-seven, and ending on the thirtieth day of
103 June, one thousand nine hundred seventy, shall be
104 twenty-four percent of their retirement benefit includ-
105 ing any supplemental benefits provided on or before the
106 first day of July, one thousand nine hundred seventy-
107 four, plus the amount of the percentage supplements
108 provided in subsections (b), (c), (d), (e), (f), (g) and (h)
109 of this section.

110 (j) The total amount of the supplement due to
111 qualified annuitants who retired during the period
112 commencing on the first day of July, one thousand nine
113 hundred sixty-four, and ending on the thirtieth day of
114 June, one thousand nine hundred sixty-seven, shall be
115 twenty-four percent of their retirement benefit includ-
116 ing any supplemental benefits provided on or before the
117 first day of July, one thousand nine hundred seventy-
118 four, plus the amount of the percentage supplements
119 provided in subsections (b), (c), (d), (e), (f), (g), (h) and
120 (i) of this section.

121 (k) The total amount of the supplement due to
122 qualified annuitants who retired during the period
123 commencing on the first day of July, one thousand nine
124 hundred sixty-one, and ending on the thirtieth day of

125 June, one thousand nine hundred sixty-four, shall be
126 twenty-four percent of their retirement benefit includ-
127 ing any supplemental benefits provided on or before the
128 first day of July, one thousand nine hundred seventy-
129 four, plus the amount of the percentage supplements
130 provided in subsections (b), (c), (d), (e), (f), (g), (h), (i) and
131 (j) of this section.

132 (l) For each annuitant, a preliminary supplement
133 shall be computed on the basis of the original annual
134 benefit including any supplemental benefits provided on
135 or before the first day of July, one thousand nine
136 hundred seventy-four, received by the original retiree as
137 provided by subsections (b) through (k) of this section,
138 inclusive. This preliminary supplement shall be calcu-
139 lated only on amounts up to, but not exceeding, the first
140 five thousand four hundred dollars of the original
141 annual retirement benefit paid including any supple-
142 ment provided on or before the first day of July, one
143 thousand nine hundred seventy-four.

144 (m) Each annuitant shall receive as that annuitant's
145 supplement under this section an amount equal to the
146 preliminary supplement or a supplement as calculated
147 in subsections (n) and (o) of this section as appropriate.

148 (n) Each survivor beneficiary shall receive as that
149 survivor beneficiary's supplement under this section an
150 amount equal to that pro rata share of that survivor
151 beneficiary's preliminary supplement, as defined above,
152 as such survivor beneficiary's benefit, without regard to
153 any supplements, constitutes as a pro rata share of the
154 original benefit of the original retiree: *Provided*, That
155 for any person who becomes a survivor beneficiary, after
156 the first day of July, one thousand nine hundred ninety-
157 four, the benefit provided under this section shall be
158 recomputed under the provisions of this subsection.

159 (o) Each disabled retiree shall receive as that disabled
160 retiree's supplement under this section that pro rata
161 share of that disabled retiree's preliminary supplement,
162 as defined above, as such disabled retiree's current
163 benefit, without regard to any supplements, constitutes
164 as a pro rata share of that disabled retiree's original

165 benefit: *Provided*, That any disabled retiree scheduled
166 under the terms of the retirement system to have a
167 benefit recomputed at some time subsequent to the
168 effective date of this section will, at the time of that
169 recomputation, also have the supplemental benefit
170 recomputed under the terms of the preceding sentence.

171 (p) Any supplemental benefit computed under this
172 section shall only be paid in lieu of, and not in addition
173 to, the payment of any prior supplemental benefit
174 amounts or incentives provided by law after the first
175 day of July, one thousand nine hundred seventy-four,
176 which are currently being paid: *Provided*, That any
177 annuitant receiving a supplemental benefit greater than
178 that provided in this section shall continue to receive the
179 current supplemental benefits.

180 (q) The supplement provided in this section shall be
181 recalculated on a pro rata basis of the preliminary
182 supplement whenever the original annuity amount is
183 adjusted due to the death or disability of an annuitant
184 or any other event.

**§5-10-31. Employers accumulation fund; employers
contributions.**

1 (a) The employers accumulation fund is hereby
2 continued. It shall be the fund in which shall be
3 accumulated the contributions made by the participat-
4 ing public employers to the retirement system, and from
5 which transfers shall be made as provided in this
6 section.

7 (b) Based upon the provisions of section thirteen of
8 this article, the participating public employers' contri-
9 butions to the retirement system, as determined by the
10 consolidated public retirement board by legislative rule
11 promulgated in accordance with the provisions of article
12 three, chapter twenty-nine-a of this code, shall be a
13 percent of the members' total annual compensation
14 related to benefits under this retirement system. In
15 determining the amount, the board shall give consider-
16 ation to setting the amount at a sum equal to an amount
17 which, if paid annually by the participating public
18 employers, will be sufficient to provide for the total

19 normal cost of the benefits expected to become payable
20 to all members and to amortize any unfunded liability
21 found by application of such actuarial funding method
22 as shall be chosen for such purpose by the consolidated
23 public retirement board, over such a period of years as
24 shall be deemed actuarially appropriate. When propos-
25 ing a rule for promulgation which relates to the amount
26 of employer contribution, the board may promulgate
27 rules by emergency pursuant to the provisions of article
28 three, chapter twenty-nine-a, if the inability of the board
29 to increase employer contributions will detrimentally
30 affect the actuarial soundness of the retirement system.
31 A signed statement from the state actuary will accom-
32 pany the statement of facts and circumstances constitut-
33 ing an emergency which must be filed in the state
34 register. For purposes of this section, subdivision (2),
35 subsection (b), section fifteen-a, article three, chapter
36 twenty-nine-a of this code shall not be applicable to the
37 secretary of state's determination of whether an emer-
38 gency rule should be approved.

39 In no year may the total of the contributions provided
40 for in this section, to be paid by any participating public
41 employer, exceed ten and five-tenths percent of the total
42 payroll for the members in the employ of such partic-
43 ipating public employer for the preceding fiscal year.

CHAPTER 143

(H. B. 4584—By Delegates Paxton, Linch, Houvouras,
Fantasia, Prezioso, Love and Talbott)

[Passed March 9, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article ten-d,
chapter five of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to
appointing the state treasurer to the consolidated public
retirement board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.**§5-10D-1. Consolidated public retirement board created; transition; members; vacancies.**

1 (a) There is hereby created a consolidated public
2 retirement board to administer all public retirement
3 plans in this state. It shall administer the public
4 employees retirement system established in article ten,
5 chapter five of this code; the teachers retirement system
6 established in article seven-a, chapter eighteen of this
7 code; the teachers' defined contribution retirement
8 system created by article seven-b, chapter eighteen of
9 this code; the death, disability and retirement fund of
10 the department of public safety created by article two,
11 chapter fifteen of this code; and the judges' retirement
12 system created under article nine, chapter fifty-one of
13 this code;

14 (b) The consolidated public retirement board shall
15 begin administration of the systems listed in subsection
16 (a) of this section on the first day of July, one thousand
17 nine hundred ninety-one: *Provided*, That the board shall
18 begin administration of the teachers' defined contribu-
19 tion retirement system established in article seven-b,
20 chapter eighteen of this code on the first day of January,
21 one thousand nine hundred ninety-one. Prior to that date
22 the existing entities which administer the system shall
23 cooperate with the board in the orderly transition of all
24 duties, responsibilities, records and other materials in
25 their possession;

26 (c) The membership of the consolidated public
27 retirement board consists of:

28 (1) The governor or his or her designee;

29 (2) The state treasurer or his or her designee;

30 (3) The state auditor or his or her designee;

31 (4) The secretary of the department of administration
32 or his or her designee;

33 (5) Four residents of the state, who are not members,
34 retirants or beneficiaries of any of the public retirement
35 systems, to be appointed by the governor, with the
36 advice and consent of the Senate;

37 (6) A member, annuitant or retirant of the public
38 employees retirement system who is or was a state
39 employee; a member, annuitant or retirant of the public
40 employees retirement system who is not or was not a
41 state employee; a member, annuitant or retirant of the
42 teachers retirement system; a member, annuitant or
43 retirant of the department of public safety death,
44 disability and retirement fund; and a member, annui-
45 tant or retirant of the teachers' defined contribution
46 retirement system, all to be appointed by the governor,
47 with the advice and consent of the Senate.

48 (d) The appointed members of the board shall serve
49 five-year terms. Of the members initially appointed,
50 three shall be appointed for two-year terms; three shall
51 be appointed for three-year terms; and three shall be
52 appointed for five-year terms. Thereafter, all members
53 shall serve full five-year terms. A member appointed
54 pursuant to subdivision (5), subsection (c) of this section
55 ceases to be a member of the board if he or she ceases
56 to be a member of the represented system. If a vacancy
57 occurs in the appointed membership, the governor,
58 within sixty days, shall fill the vacancy by appointment
59 for the unexpired term. No more than five appointees
60 shall be of the same political party.

61 (e) The consolidated public retirement board shall
62 have all the powers, duties, responsibilities and liabil-
63 ities of the public employees retirement system estab-
64 lished pursuant to article ten, chapter five of this code;
65 the teachers retirement system established pursuant to
66 article seven-a, chapter eighteen of this code; the
67 teachers' defined contribution system established
68 pursuant to article seven-b, chapter eighteen of this
69 code; the death, disability and retirement fund of the
70 department of public safety created pursuant to article
71 two, chapter fifteen of this code, and the judges'
72 retirement system created pursuant to article nine,
73 chapter fifty-one of this code and their appropriate
74 governing boards. The consolidated public retirement
75 board may promulgate all rules necessary to effectuate
76 its powers, duties and responsibilities: *Provided*, That
77 the board may adopt any or all of the rules, previously
78 promulgated, of a retirement system which it administers.

CHAPTER 144

(H. B. 4476—By Delegates Kiss and Browning)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to pension and relief funds for policemen and firemen.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

PART III.

**POLICEMEN'S PENSION AND RELIEF FUND;
FIREMEN'S PENSION AND RELIEF FUND.**

§8-22-16. Pension and relief funds for policemen and firemen; creation of boards of trustees; definitions; continuance of funds.

1 In every Class I and Class II city having, or which
2 may hereafter have, a paid police department and a paid
3 fire department, or either of such departments, the
4 governing body shall, and in every Class III city and
5 Class IV town or village having, or which may hereafter
6 have, a paid police department and a paid fire depart-
7 ment, or either of such departments, the governing body
8 may, by ordinance provide for the establishment and
9 maintenance of a policemen's pension and relief fund,
10 and for a firemen's pension and relief fund, for the
11 purposes hereinafter enumerated, and, thereupon, there
12 shall be created boards of trustees which shall admin-
13 ister and distribute the moneys authorized to be raised
14 by this section and the following sections of this article.

15 For the purposes of this section and sections seventeen
16 through twenty-eight of this article, the term "paid
17 police department" or "paid fire department" means
18 only a municipal police department or municipal fire
19 department, as the case may be, maintained and paid
20 for out of public funds and whose employees are paid
21 on a full-time basis out of public funds. The term shall
22 not be taken to mean any such department whose
23 employees are paid nominal salaries or wages or are
24 only paid for services actually rendered on an hourly
25 basis.

26 Unless and until other provision is made by subse-
27 quent legislative action, any policemen's pension and
28 relief fund and any firemen's pension and relief fund
29 established in accordance with the provisions of former
30 article six of this chapter or this article twenty-two shall
31 be or remain mandatory and shall be governed by the
32 provisions of sections sixteen through twenty-eight of
33 this article twenty-two (with like effect, in the case of
34 a Class III city or Class IV town or village, as if such
35 Class III city or Class IV town or village were a Class
36 I or Class II city), and shall not be affected by the
37 transition from one class of municipal corporation to a
38 lower class as specified in section three, article one of
39 this chapter: *Provided*, That any Class III or Class IV
40 town or village that hereafter becomes a Class I or Class
41 II city shall not be required to establish such pension
42 and relief fund if said town or village is a participant
43 in an existing pension plan regarding paid firemen
44 and/or policemen.

45 After the thirtieth day of June, one thousand nine
46 hundred eighty-one, for the purposes of sections sixteen
47 through twenty-eight of this article the word "member"
48 means any paid police officer or firefighter who at time
49 of appointment to such paid police or fire department
50 met the medical requirements of chapter 2-2 of the
51 National Fire Protection Association Standards
52 Number 1001 — Firefighters Professional Qualifica-
53 tions '74 as updated from year to year: *Provided*, That
54 any police officer or firefighter who was a member of
55 such fund prior to the first day of July, one thousand

56 nine hundred eighty-one, shall be considered a member
57 after June thirtieth, one thousand nine hundred eighty-
58 one.

59 For purposes of sections sixteen through twenty-eight
60 of this article the words "salary or compensation" means
61 remuneration actually received by a member, plus such
62 member's deferred compensation under sections 125,
63 401(k), 414(h)(2) and 457 of the United States Internal
64 Revenue Code of 1986, as amended: *Provided*, That the
65 remuneration received by such member during any
66 twelve-consecutive-month period utilized in determining
67 benefits which is in excess of an amount which is twenty
68 percent greater than the "average adjusted salary"
69 received by such member in the two consecutive twelve-
70 consecutive-month periods immediately preceding such
71 twelve-consecutive-month period utilized in determining
72 benefits shall be disregarded: *Provided, however*, That
73 the "average adjusted salary" means the arithmetic
74 average of each year's adjusted salary such adjustment
75 made to reflect current salary rate and such average
76 adjusted salary shall be determined as follows: Assum-
77 ing "year-one" means the second twelve-consecutive-
78 month period preceding such twelve-consecutive-month
79 period utilized in determining benefits, "year-two"
80 means the twelve-consecutive-month period immediately
81 preceding such twelve-consecutive-month period utilized
82 in determining benefits, and "year-three" means the
83 twelve-consecutive-month period utilized in determining
84 benefits, year-one total remuneration shall be multiplied
85 by the ratio of year-three base salary, exclusive of all
86 overtime and other remuneration, to year-one base
87 salary, exclusive of all overtime and other remuneration,
88 such product shall equal "year-one adjusted salary";
89 year-two total remuneration shall be multiplied by the
90 ratio of year-three base salary, exclusive of all overtime
91 and other remuneration, to year-two base salary,
92 exclusive of all overtime and other remuneration, such
93 product shall equal "year-two adjusted salary"; and the
94 arithmetic average of year-one adjusted salary and year-
95 two adjusted salary shall equal the average adjusted
96 salary.

CHAPTER 145

(Com. Sub. for H. B. 4339—By Delegates Rowe, Michael,
Campbell, Pethtel, Varner and Evans)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the sale, exchange or lease of real property by the commissioner of highways; permitting adjoining land-owners right of first refusal in certain instances; determination of sale price.

Be it enacted by the Legislature of West Virginia:

That section nineteen, 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:

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-19. Sale, exchange, or lease of real property.

1 The division of highways, subject to the conditions
2 herein, may sell, exchange, or lease real property, or any
3 interest or right therein, held by the division of
4 highways,

5 When the real property, or any interest or right
6 therein, is being held for future road purposes, it may
7 be leased. When the real property, or any part thereof,
8 or any interest or right therein, is deemed by the
9 commissioner not necessary, or desirable for present or
10 presently foreseeable future highways purposes, it may
11 be exchanged for other real property, or any interest or
12 right therein, deemed by the commissioner to be
13 necessary or desirable for present or presently foresee-
14 able future highways purposes, or it may be sold. In
15 addition the division may exchange real property, or any
16 part thereof, or any interest or right therein, even
17 though it may be necessary or desirable for present or
18 presently foreseeable future highways purposes, if the
19 exchange is made for other real property, or any interest
20 or right therein, in close proximity thereto which the

21 commissioner deems of equal or superior useful value
22 for present or presently foreseeable future highways
23 purposes. In making exchanges the division may make
24 allowances for differences in the value of the properties
25 being exchanged and may move or pay the cost of
26 moving buildings, structures, or appurtenances in
27 connection with the exchange.

28 Every such sale of real property, or any interest or
29 right therein or structure thereon, shall be at public
30 auction in the county in which the real property, or the
31 greater part thereof in value, is located, and the division
32 shall advertise, by publication or otherwise, the time,
33 place, and terms of the sale at least twenty days prior
34 thereto. The property shall be sold in the manner which
35 will bring the highest and best price therefor. The
36 division may reject any or all bids received at the sale.
37 The commissioner shall keep a record, open to public
38 inspection, indicating the manner in which such real
39 property, or any interest or right therein or structure
40 thereon, was publicly advertised for sale, the highest bid
41 received therefor and from whom, the person to whom
42 sold, and payment received therefor. The record shall be
43 kept for a period of five years and may thereafter be
44 destroyed.

45 The commissioner may transfer, sell, or otherwise
46 dispose of any right-of-way properties or any interest or
47 right therein, owned by or to be acquired by the division
48 of highways which the commissioner in his or her sole
49 discretion shall determine are not necessary or desirable
50 for present or presently foreseeable future highways
51 purposes by first offering the same to the principal
52 abutting landowners without following the procedure
53 for public auction hereinbefore set forth in this section.

54 The commissioner shall adopt and promulgate rules
55 in accordance with the provisions of article three,
56 chapter twenty-nine-a of this code governing and
57 controlling the making of any leases or sales pursuant
58 to the provisions of this section, which rules may provide
59 for the giving of preferential treatment in making leases
60 to the persons from whom the properties or rights or
61 interests therein were acquired, or their heirs or assigns

62 and shall also provide for granting a right of first
63 refusal to abutting landowners at fair market value in
64 the sale of any real estate or any interest or right therein
65 owned by the division of highways.

66 Notwithstanding any other provision of this section to
67 the contrary, with respect to real property acquired
68 subsequent to the year one thousand nine hundred
69 seventy-three for highways purposes through voluntary
70 real estate acquisition or exercise of the right of eminent
71 domain, which real estate the commissioner has deter-
72 mined should be sold as not necessary for highways
73 purposes, the commissioner shall give preferential
74 treatment to an abutting landowner if it appears that:

75 (1) A principal abutting landowner is an individual
76 from whom the real estate was acquired or his or her
77 surviving spouse or descendant. In order to qualify for
78 preferential treatment, the surviving spouse or descend-
79 ant need not be a beneficiary of the individual. The
80 terms used in this subdivision are as defined in section
81 one, article one, chapter forty-two of this code; and

82 (2) The primary use of the abutting property has not
83 substantially changed since the time of the acquisition.

84 When the foregoing conditions are met, the commis-
85 sioner shall offer the property for sale to the principal
86 abutting landowner at a cost equal to the amount paid
87 by the division of highways in acquiring the real estate:
88 *Provided*, That if improvements on the property have
89 been removed since the time of the acquisition, the cost
90 shall be reduced by an amount attributable to the value
91 of the improvements removed: *Provided, however*, That
92 the cost may be adjusted to reflect interest at a rate
93 equal to the increase in the consumer price index for all
94 urban consumers as reported by the United States
95 department of labor since the time of disbursement of
96 the funds.

97 The commissioner may insert in any deed or convey-
98 ance, whether it involves an exchange, lease, or sale, the
99 conditions as are in the public interest and have been
100 approved in advance by the governor.

101 All moneys received from the exchange, sale, or lease
102 of real property, or any right or interest therein, shall
103 be paid into the state treasury and credited to the state
104 road fund.

105 Notwithstanding the provisions of this section,
106 property shall not be transferred, sold or otherwise
107 disposed of unless the commissioner finds that the right-
108 of-way or other property has no significant value to the
109 state as a hiking trail and does not serve as a link
110 between two or more state owned properties, except that
111 any such property that lies within six hundred feet of
112 any dwelling house may be transferred, sold or other-
113 wise disposed of without such a finding pursuant to the
114 provisions of this section.

CHAPTER 146

(Com. Sub. for H. B. 4075—By Delegates Martin and Border)

[Passed March 3, 1994; in effect from passage. Approved by the Governor.]

AN ACT to repeal article ten-f, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to repeal of provisions establishing the structural barriers compliance board.

Be it enacted by the Legislature of West Virginia:

That article ten-f, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed.

§1. Repeal of article creating structural barriers compliance board.

1 Article ten-f, chapter eighteen of the code of West
2 Virginia, one thousand nine hundred thirty-one, as
3 amended, is hereby repealed.

CHAPTER 147

(S. B. 83—By Senators Holliday and Boley)

[Passed February 14, 1994; in effect July 1, 1994. 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 continuation of 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:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

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

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 section 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 article ten, chapter
61 four of this code, on the first day of July, one thousand
62 nine hundred ninety-five, unless extended by legislation
63 enacted before the termination date.

CHAPTER 148

(S. B. 82—By Senators Holliday and Boley)

[Passed March 5, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact sections four and six, 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; reimbursement and compensation for the members; requiring advice by a newly designated advisory board; compensation for advisory board members.

Be it enacted by the Legislature of West Virginia:

That sections four and six, 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.

§5-16-6. Creation and composition of advisory board; powers and duties of board generally; expenses.

§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. All new
24 appointments made subsequent to the first day of July,
25 one thousand nine hundred ninety-four, shall be selected
26 to represent the different geographical areas within the
27 state and all members shall be residents of West
28 Virginia. No member may be removed from office by
29 the governor except for official misconduct, incompe-
30 tence, neglect of duty, neglect of fiduciary duty or other
31 specific responsibility imposed by this article, or gross
32 immorality.

33 (c) The director shall serve as chairperson of the
34 finance board, which shall meet at such time and place
35 as shall be specified by the call of the director or upon
36 the written request to the director of at least two
37 members. Notice of each meeting shall be given in
38 writing to each member by the director at least three
39 days in advance of the meeting. Three members shall
40 constitute a quorum. The board shall pay each member
41 the same compensation and expense reimbursement as
42 is paid to members of the Legislature for their interim
43 duties as recommended by the citizens legislative
44 compensation commission and authorized by law for
45 each day or portion thereof engaged in the discharge of
46 official duties.

47 (d) Pursuant to the provisions of article ten, chapter
48 four of this code, the finance board shall terminate on
49 the first day of July, one thousand nine hundred ninety-
50 five, unless extended by legislation enacted before the
51 termination date.

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

**§5-16-6. Creation and composition of advisory board;
powers and duties of board generally;
expenses.**

1 (a) The public employees insurance agency advisory
2 board is hereby created and established to provide
3 advice and make recommendations to the director
4 concerning group hospital and surgical insurance, group
5 major medical insurance and group life and accidental
6 death insurance for all employees in the manner as
7 hereinafter provided. All business of the advisory board
8 shall be transacted in the name of West Virginia public
9 employees insurance agency advisory board. The
10 advisory board members shall receive notice of all
11 finance board meetings and be given the opportunity to
12 offer advice and recommendations to the finance board.

13 (b) The advisory board shall consist of fifteen
14 members who are citizens of the United States and
15 residents of this state as follows: Three members
16 representing licensed health care professionals, health
17 care facilities or other types of health care providers,

18 one of whom shall be a physician, appointed by the
19 governor, with the advice and consent of the Senate; five
20 members either covered by the public employees
21 insurance plans or from organizations representing such
22 employees, one of whom shall represent either retired
23 public employees or retired educators and one of whom
24 shall represent county or municipal public employees,
25 appointed by the governor, with the advice and consent
26 of the Senate, and selected so as to represent as broadly
27 as possible all elements of the employees covered by the
28 plan: *Provided*, That such members shall not be: (1)
29 Employees of or contractors to any health care facility;
30 (2) licensed health care professionals; (3) members of the
31 immediate family of licensed health care professionals;
32 or (4) an employee of or contractor to any such licensed
33 health care professionals; the insurance commissioner or
34 his or her designee; one representative of the West
35 Virginia health care cost review authority, appointed by
36 the governor, with the advice and consent of the Senate;
37 five members from the public at large appointed by the
38 governor, with the advice and consent of the Senate.
39 Members of the board shall be selected to represent, as
40 broadly as possible, the different geographical areas
41 within the state. No more than ten of the fifteen
42 members of the board shall be of the same political
43 party.

44 Of the members first appointed by the governor to the
45 advisory board, one health care provider member shall
46 be appointed for a term of two years; one health care
47 provider member shall be appointed for a term of four
48 years and one health care provider member shall be
49 appointed for a term of five years; the member who is
50 the representative of the West Virginia health care cost
51 review authority shall be appointed for a term of three
52 years; the five members who are participants in the
53 public employees insurance plan shall be appointed to
54 terms of one, two, three, four and five years respectively;
55 and the five members who are the public at large shall
56 be appointed to terms of one, two, three, four and five
57 years respectively. Subsequent appointed members shall

58 be appointed to five-year terms except for members
59 appointed to fill vacancies who shall serve for the
60 remainder of the vacant term. Members of the advisory
61 board are eligible for reappointment upon the expira-
62 tion of their terms but may not serve more than two full
63 five-year terms consecutively. Members' terms shall
64 commence on the first day of September of the year of
65 appointment and end on the thirty-first day of August
66 in the year in which the term expires.

67 The advisory board shall hold a meeting at least twice
68 each year and shall designate the time and place of such
69 meeting. Nine advisory board members shall constitute
70 a quorum at any meeting of the advisory board. Each
71 advisory board member shall be entitled to one vote on
72 each question before the advisory board. A majority of
73 the quorum present shall be required for a decision by
74 the advisory board at its meetings. The advisory board
75 shall keep a record of its proceedings.

76 The board shall elect one of its members as chairper-
77 son and shall meet at such time and place as shall be
78 specified by the call of the chairperson. All meetings
79 shall be open to the public. Notice of each meeting shall
80 be given in writing to each member by the director at
81 least three days in advance of the meeting period.

82 The advisory board shall be responsible for advising
83 and making recommendations to the director regarding
84 the administration and management of the public
85 employees insurance agency as provided for in this
86 article. Under no circumstances, however, will the
87 decisions, advice or recommendations of the advisory
88 board be controlling or binding on the director.

89 The board shall pay each member the same compen-
90 sation and expense reimbursement as is paid to
91 members of the Legislature for their interim duties as
92 recommended by the citizens legislative compensation
93 commission and authorized by law for each day or
94 portion thereof engaged in the discharge of official
95 duties.

CHAPTER 149

(S. B. 76—By Senators Holliday and Boley)

[Passed February 18, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the division of tourism and parks.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF TOURISM AND PARKS.

§5B-1-18. Sunset provision.

1 Unless sooner terminated by law, the division of
2 tourism and parks shall terminate on the first day of
3 July, one thousand nine hundred ninety-five, in accor-
4 dance with the provisions of article ten, chapter four of
5 this code.

CHAPTER 150

(S. B. 86—By Senators Holliday and Boley)

[Passed March 12, 1994; in effect July 1, 1994. 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 the continuation of the West Virginia ethics commission; and changing compensation and expense reimbursement 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 have
21 served as a member of the West Virginia Legislature;
22 at least two members of the commission shall have been
23 employed in a full-time elected or appointed office in
24 state government; at least one member shall have served
25 as an elected official in a county or municipal govern-
26 ment or on a county school board; at least one member
27 shall have been employed full time as a county or
28 municipal officer or employee; and at least two members
29 shall have served part time as a member or director of

30 a state, county or municipal board, commission or public
31 service district and at least four members shall be
32 selected from the public at large. No more than four
33 members of the commission shall reside in the same
34 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 the same
81 compensation and expense reimbursement as is paid to
82 members of the Legislature for their interim duties as
83 recommended by the citizens legislative compensation
84 commission and authorized by law for each day or
85 portion thereof engaged in the discharge of official
86 duties.

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

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

107 (j) The chairman shall have the authority to designate

108 subcommittees of three persons, no more than two of
109 whom may be members of the same political party. Said
110 subcommittees shall be investigative panels which shall
111 have the powers and duties set forth hereinafter in this
112 article.

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

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

§6B-2-11. Continuation of commission.

1 Pursuant to the provisions of article ten, chapter four
2 of this code, the West Virginia ethics commission shall
3 continue to exist until the first day of July, two
4 thousand.

CHAPTER 151

(Com. Sub. for H. B. 4090—By Delegates Martin, Michael, Border and Evans)

[Passed March 3, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact sections two and five, article one, chapter nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the veterans' council; changing compensation and expense reimbursement for members of the veterans' council.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF VETERANS' AFFAIRS.

§9A-1-2. Veterans' council; continuation of council; administration of division.

§9A-1-5. Compensation of director, veterans' affairs officers, assistants and employees; payment to veterans' council members; traveling expenses; meetings of veterans' council.

§9A-1-2. Veterans' council; continuation of council; administration of division.

1 There shall be a "veterans' council" which shall
2 consist of seven members who shall be citizens and
3 residents of this state, who have served in and been
4 honorably discharged or separated under honorable
5 conditions from the armed forces of the United States
6 and whose service was within a time of war as defined
7 by the laws of the United States, either Public Law No.
8 2 — 73rd Congress or Public Law No. 346 — 78th
9 Congress, and any and all amendments thereto. At least
10 one member of the council shall be a veteran of World
11 War II, at least one member of the council shall be a
12 veteran of the Korean Conflict and at least two members
13 of the council shall be veterans of the Vietnam era. The
14 members of the veterans' council shall be selected with
15 special reference to their ability and fitness to effectuate
16 the purposes of this article.

17 After having conducted a preliminary performance
18 review through its joint committee on government
19 operations, pursuant to article ten, chapter four of this
20 code, the Legislature hereby finds and declares that the
21 veterans' council should be continued and reestablished.
22 Accordingly, notwithstanding the provisions of article
23 ten, chapter four of this code, the veterans' council shall
24 continue to exist until the first day of July, two
25 thousand.

26 The West Virginia division of veterans' affairs shall
27 be administered by a director, and such veterans' affairs
28 officers, assistants and employees as may be deemed
29 advisable.

**§9A-1-5. Compensation of director, veterans' affairs
officers, assistants and employees; payment
to veterans' council members; traveling
expenses; meetings of veterans' council.**

1 The director shall receive a salary of thirty-two
2 thousand dollars per annum and necessary traveling
3 expenses incident to the performance of his or her
4 duties. The salaries of the veterans' affairs officers,
5 assistants and employees shall be fixed by the veterans'
6 council. The members of the veterans' council shall
7 receive no salary, but each member shall receive the
8 same compensation and expense reimbursement as is
9 paid to members of the Legislature for their interim
10 duties as recommended by the citizens legislative
11 compensation commission and authorized by law for
12 each day or portion thereof engaged in the discharge of
13 official duties. The requisition for such expenses and
14 traveling expenses shall be accompanied by a sworn and
15 itemized statement, which shall be filed with the auditor
16 and permanently preserved as a public record. The
17 veterans' council shall hold its initial meeting on the call
18 of the governor, and thereafter shall meet on the call of
19 its chairman, except as otherwise provided. With the
20 exception of the first three meetings of the veterans'
21 council, none of which shall be of a duration longer than
22 two weeks each, for organizational purposes, the
23 veterans' council shall meet not more than once every
24 two months at such times as may be determined by and

25 upon the call of the chairman for a period of not more
26 than two days, unless there should be an emergency
27 requiring a special meeting or for a longer period and
28 so declared and called by the governor or by the
29 chairman with the approval of the governor. A majority
30 of the members of the veterans' council shall constitute
31 a quorum for the conduct of official business.

CHAPTER 152

(H. B. 4089—By Delegates Martin, Michael, Border and Evans)

[Passed February 16, 1994; in effect July 1, 1994. 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 continuation of 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:

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-1. Duties of state road commissioner transferred to division of highways; department to act through commissioner of highways; termination of division; 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 article ten, chapter four
14 of this code, the West Virginia division of highways shall
15 continue to exist until the first day of July, one thousand
16 nine hundred ninety-five, to allow for the completion of
17 a full performance audit by the joint committee on
18 government operations.

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

CHAPTER 153

(H. B. 4087—By Delegates Martin, Michael, Border and Evans)

[Passed February 17, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact section three, article ten-c, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of West Virginia's membership in the southern regional education compact.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10C. THE SOUTHERN REGIONAL EDUCATION COMPACT.

§18-10C-3. Membership in compact continued; findings.

1 After having conducted a preliminary performance
2 review through its joint committee on government
3 operations, pursuant to article ten, chapter four of this
4 code, the Legislature hereby finds and declares that
5 West Virginia should remain a member of the compact.
6 Accordingly, notwithstanding the provisions of article
7 ten, chapter four of this code, West Virginia shall
8 continue to be a member of this compact until the first
9 day of July, two thousand.

CHAPTER 154

(H. B. 4094—By Delegates Martin, Michael, Love, Border and Evans)

[Passed February 16, 1994; in July 1, 1994. 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 continuance of the division of natural resources.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

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

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-five, to allow for the completion of
11 an audit by the joint committee on government opera-
12 tions.

CHAPTER 155

(H. B. 4082—By Delegates Martin, Michael and Border)

[Passed February 16, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact section five, article one, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the division of labor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF LABOR.

§21-1-5. Reestablishment of division; findings.

1 After having conducted a performance audit through
2 its joint committee on government operations, pursuant
3 to article ten, chapter four of this code, the Legislature
4 hereby finds and declares that the division of labor
5 should be continued and reestablished. Accordingly,
6 notwithstanding the provisions of article ten, chapter
7 four of this code, the division of labor shall continue to
8 exist until the first day of July, one thousand nine
9 hundred ninety-five.

CHAPTER 156

(H. B. 4525—By Delegates Love, Fragale, Heck,
Higgins, Stewart, Walters and Willison)

[Passed March 3, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend article two, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to continuing the authority of the commissioner of the bureau of employment programs to administer unemployment compensation.

Be it enacted by the Legislature of West Virginia:

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

§21A-2-9. Continuation of authority of commissioner to administer unemployment compensation.

1 Pursuant to the provisions of article ten, chapter four
2 of this code, the commissioner shall continue to admin-
3 ister this chapter until the first day of July, one
4 thousand nine hundred ninety-six, to allow for the
5 completion of a preliminary performance review by the
6 joint committee on government operations.

CHAPTER 157

(Com. Sub. for H. B. 4091—By Delegates Martin, Michael, Border and Evans)

[Passed February 16, 1994; in effect July 1, 1994. 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; changing expense reimbursement for board 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

*Clerk's Note: This section was recodified by H. B. 4065 (Chapter 61). The provisions as contained in such act now appear as 22C-7-3 and passed subsequent to this act.

8 the representative of the public, shall be a professor in
9 the 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 and expense reimbursement as is paid to
31 members of the Legislature for their interim duties as
32 recommended by the citizens legislative compensation
33 commission and authorized by law for each day or
34 portion thereof engaged in the discharge of official
35 duties.

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

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

41 The board shall meet at such times and places as shall
42 be designated by the chairman. It shall be the duty of
43 the chairman to call a meeting of the board on the
44 written request of two members, or on the written
45 request of said director or the director of the division
46 of environmental protection. Notice of each meeting

47 shall be given in writing to each member by the
48 secretary at least five days in advance of the meeting.
49 Three voting members shall constitute a quorum for the
50 transaction of business.

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

53 (1) Establish, and from time to time revise, forms of
54 application for employment as an oil and gas inspector
55 and supervising inspector and forms for written
56 examinations to test the qualifications of candidates,
57 with such distinctions, if any, in the forms for oil and
58 gas inspector and supervising inspector as the board
59 may from time to time deem necessary or advisable;

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

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

75 (4) Prepare and certify to said director and the
76 director of the division of environmental protection a
77 register of qualified eligible candidates for appointment
78 as oil and gas inspectors or as supervising inspectors,
79 with such differentiation, if any, between the certifica-
80 tion of candidates for oil and gas inspectors and for
81 supervising inspectors as the board may from time to
82 time deem necessary or advisable. The register shall list
83 all qualified eligible candidates in the order of their
84 grades, the candidate with the highest grade appearing
85 at the top of the list. After each meeting of the board
86 held to examine such candidates and at least annually,

87 the board shall prepare and submit to said director and
88 the director of the division of environmental protection
89 a revised and corrected register of qualified eligible
90 candidates for appointment, deleting from such revised
91 register all persons: (a) Who are no longer residents of
92 West Virginia; (b) who have allowed a calendar year to
93 expire without, in writing, indicating their continued
94 availability for such appointment; (c) who have been
95 passed over for appointment for three years; (d) who
96 have become ineligible for appointment since the board
97 originally certified that such persons were qualified and
98 eligible for appointment; or (e) who, in the judgment of
99 at least three members of the board, should be removed
100 from the register for good cause;

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

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

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

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

126 (9) Make an annual report to the governor concerning

127 the administration of oil and gas inspection personnel in
128 the state service; making such recommendations as the
129 board considers to be in the public interest; and

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

134 (c) After having conducted a preliminary perfor-
135 mance review through its joint committee on govern-
136 ment operations, pursuant to article ten, chapter four of
137 this code, the Legislature hereby finds and declares that
138 the oil and gas inspectors' examining board within the
139 division of environmental protection should be continued
140 and reestablished. Accordingly, notwithstanding the
141 provisions of said article, the oil and gas inspectors'
142 examining board within the division of environmental
143 protection shall continue to exist until the first day of
144 July, two thousand.

CHAPTER 158

(H. B. 4635—By Delegates Martin, Michael and Love)

[Passed March 12, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact section five, article three,
chapter twenty-two-b of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to continuing the environmental quality board.

Be it enacted by the Legislature of West Virginia:

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

§22B-3-5. Environmental quality board continued.

1 Pursuant to the provisions of article ten, chapter four
2 of this code, and following a preliminary performance
3 review by the joint committee on government opera-
4 tions, the environmental quality board shall continue to
5 exist until the first day of July, two thousand.

CHAPTER 159

(H. B. 4524—By Delegates Love, Fragale, Heck,
Higgins, Stewart, Walters and Willison)

[Passed March 3, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of authority of commissioner of bureau of employment programs to administer workers' compensation program.

Be it enacted by the Legislature of West Virginia:

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

§23-1-1. Commissioner of the bureau of employment programs; compensation programs performance council; official seal; continuation of authority of commissioner; 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 Pursuant to the provisions of chapter four, article ten
24 of this code, the commissioner of the bureau of employ-
25 ment programs shall continue to administer this chapter
26 until the first day of July, one thousand nine hundred
27 ninety-six, to allow the joint committee on government
28 operations to monitor compliance with recommendations
29 set forth in the full performance audit of the office of
30 the workers' compensation commissioner completed in
31 the year one thousand nine hundred ninety.

32 The attorney general shall perform all legal services
33 required by the commissioner under the provisions of
34 this chapter: *Provided*, That in any case in which an
35 application for review is prosecuted from any final
36 decision of the workers' compensation appeal board to
37 the supreme court of appeals, as provided by section
38 four, article five of this chapter, or in any court
39 proceeding before the workers' compensation appeal
40 board, or in any proceedings before the office of judges,
41 in which such representation shall appear to the
42 commissioner to be desirable, the commissioner may
43 designate a regular employee of this office, qualified to
44 practice before such court to represent the commissioner
45 upon such appeal or proceeding, and in no case shall the
46 person so appearing for the commissioner before the
47 court receive remuneration therefor other than such
48 person's regular salary.

CHAPTER 160

(H. B. 4526—By Delegates Love, Fragale, Heck,
Higgins, Stewart, Walters and Willison)

[Passed March 3, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact section one-g, article five,
chapter twenty-three of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating

to continuation of the office of judges of workers' compensation.

Be it enacted by the Legislature of West Virginia:

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

§23-5-1g. Continuation of office of administrative law judges; powers of chief administrative law judge and said office.

1 (a) There is hereby continued within the workers'
2 compensation appeal board the workers' compensation
3 office of administrative law judges which shall be
4 referred to as the office of judges. The office of judges
5 shall be under the supervision of a chief administrative
6 law judge who shall be appointed by the governor, with
7 the advice and consent of the Senate.

8 (b) The chief administrative law judge shall be a
9 person who has been admitted to the practice of law in
10 this state and shall also have had at least four years of
11 experience as an attorney. The chief administrative law
12 judge's salary shall be set by the appeal board created
13 in section two of this article. Said salary shall be within
14 the salary range for comparable chief administrative
15 law judges as determined by the state personnel board
16 created by section six, article six of chapter twenty-nine
17 of this code. The chief administrative law judge may
18 only be removed by the appeal board and shall not be
19 removed except for official misconduct, incompetence,
20 neglect of duty, gross immorality, or malfeasance and
21 then only after he or she has been presented in writing
22 with the reasons for his or her removal and then only
23 in the manner prescribed in article six-a of chapter
24 twenty-nine of this code. No other provision of this code
25 purporting to limit the term of office of any appointed
26 official or employee or affecting the removal of any
27 appointed official or employee shall be applicable to the
28 chief administrative law judge.

29 (c) By and with the consent of the commissioner, the
30 chief administrative law judge shall employ such

31 additional administrative law judges and other person-
32 nel as are necessary for the proper conduct of a system
33 of administrative review of orders issued by the
34 commissioner which orders have been objected to by a
35 party, and all such employees shall be in the classified
36 service of the state. Qualifications, compensation and
37 personnel practice relating to the employees of the office
38 of judges, other than the chief administrative law judge,
39 shall be governed by the provisions of the statutes, rules
40 and regulations of the classified service pursuant to
41 article six, chapter twenty-nine of this code. All such
42 additional administrative law judges shall be persons
43 who have been admitted to the practice of law in this
44 state and shall also have had at least two years of
45 experience as an attorney. The chief administrative law
46 judge shall supervise the other administrative law
47 judges and other personnel which collectively shall be
48 referred to in this chapter as the office of judges.

49 (d) The administrative expense of the office of judges
50 shall be included by the appeal board in its annual
51 budget when it submits that budget to the commissioner
52 pursuant to section two of this article.

53 (e) With the advice and consent of the commissioner,
54 on or before the first day of May, one thousand nine
55 hundred ninety-one, the appeal board shall promulgate
56 rules of practice and procedure for the hearing and
57 determination of all objections to findings or orders of
58 the commissioner pursuant to section one of this article
59 and for the settlement of claims pursuant to section one-
60 f of this article. Such rules of practice and procedure
61 shall be promulgated in accordance with the provisions
62 of article three of chapter twenty-nine-a of this code. The
63 appeal board shall not have the power to promulgate
64 legislative rules as that phrase is defined in article three
65 of chapter twenty-nine-a of this code.

66 (f) On and after the first day of July, one thousand
67 nine hundred ninety-one, the chief administrative law
68 judge shall have the power, which shall be delegated by
69 the appeal board, to hear and determine all disputed
70 claims in accordance with the provisions of this article,
71 establish a procedure for the hearing of disputed claims,

72 take oaths, examine witnesses, issue subpoenas, estab-
73 lish the amount of witness fees, keep such records and
74 make such reports as are necessary for disputed claims,
75 review and approve agreements to compromise and
76 settle claims involving permanent partial disability
77 awards permitted by the provisions of section one-f,
78 article five of this chapter, and exercise such additional
79 powers, including the delegation of such powers to
80 administrative law judges or hearing examiners as may
81 be necessary for the proper conduct of a system of
82 administrative review of disputed claims.

83 (g) Pursuant to the provisions of chapter four, article
84 ten of this code, the office of judges shall continue to
85 exist until the first day of July, one thousand nine
86 hundred ninety-six, to allow for the completion of a
87 preliminary performance review by the joint committee
88 on government operations.

CHAPTER 161

(S. B. 85—By Senators Holliday and Boley)

[Passed February 14, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the division of corrections.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-2. Reestablishment of division; findings.

1 Pursuant to the provisions of article ten, chapter four
2 of this code, the division of corrections shall continue to
3 exist until the first day of July, one thousand nine
4 hundred ninety-five, to allow for the completion of an
5 audit by the joint committee on government operations.

CHAPTER 162

(H. B. 4084—By Delegates Martin, Michael and Border)

[Passed February 16, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact sections two and six, article one-d, 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 Ohio River valley water sanitation commission compact and changing ex officio membership to the director of the division of environmental protection.

Be it enacted by the Legislature of West Virginia:

That sections two and six, article one-d, 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 1D. OHIO RIVER VALLEY WATER SANITATION COMMISSION.

§29-1D-2. Appointment of members of commission; director of the division of environmental protection member ex officio.

§29-1D-6. When article effective; findings; continuation.

***§29-1D-2. Appointment of members of commission; director of the division of environmental protection member ex officio.**

1 In pursuance of article four of said compact, there
2 shall be three members of the "Ohio River valley water
3 sanitation commission" from the state of West Virginia.
4 The governor, by and with the advice and consent of the
5 Senate, shall appoint two persons as two of such
6 commissioners, each of whom shall be a resident and
7 citizen of this state. The terms of one of the said two
8 commissioners first appointed shall be three years and
9 of the other shall be six years; and their successors shall
10 be appointed by the governor, by and with the advice
11 and consent of the Senate, for terms of six years each.

* Clerk's Note: This section was recodified by H. B. 4065 (Chapter 61). The provisions as contained in such act now appear as §22C-12-2 and passed subsequent to this act.

12 Each commissioner shall hold office until his successor
13 shall be appointed and qualified. Vacancies occurring in
14 the office of any such commissioner from any reason or
15 cause shall be filled by appointment by the governor, by
16 and with the advice and consent of the Senate, for the
17 unexpired term. The third commissioner from this state
18 shall be the director of the division of environmental
19 protection ex officio, and the term of any such ex officio
20 commissioner shall terminate at the time he ceases to
21 hold the office of director of the division of environmen-
22 tal protection, and his successor as a commissioner shall
23 be his successor as the director of the division of
24 environmental protection. With the exception of the
25 issuance of any order under the provisions of article nine
26 of the compact, the ex officio commissioner may
27 delegate, from time to time, to any deputy or other
28 subordinate in his division or office, the power to be
29 present and participate, including voting, as his
30 representative or substitute at any meeting of or hearing
31 by or other proceeding of the commission. The terms of
32 each of the initial three members shall begin at the date
33 of the appointment of the two appointive commissioners,
34 provided the said compact shall then have gone into
35 effect in accordance with article eleven of the compact;
36 otherwise shall begin upon the date which said compact
37 shall become effective in accordance with said article
38 eleven.

39 Any commissioner may be removed from office by the
40 governor.

***§29-1D-6. When article effective; findings; continuation.**

1 This article shall take effect and become operative
2 and the compact be executed for and on behalf of this
3 state only from and after the approval, ratification and
4 adoption, and entering into thereof by the states of New
5 York, Pennsylvania, Ohio and Virginia.

6 After having conducted a preliminary performance
7 review through its joint committee on government

* Clerk's Note: This section was recodified by H. B. 4065 (Chapter 61). The provisions as contained in such act now appear as §22C-12-6 and passed subsequent to this act.

8 operations, pursuant to article ten, chapter four of this
9 code, the Legislature hereby finds and declares that
10 West Virginia should remain a member of the compact.
11 Accordingly, notwithstanding the provisions of article
12 ten, chapter four of this code, West Virginia shall
13 continue to be a member of this compact until the first
14 day of July, two thousand.

CHAPTER 163

(Com. Sub. for H. B. 4083—By Delegates Martin, Michael and Border)

[Passed March 11, 1994; in effect July 1, 1994. 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 board of architects; changing expense reimbursement for board 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 and expense reimbursement as is paid to
24 members of the Legislature for their interim duties as
25 recommended by the citizens legislative compensation
26 commission and authorized by law for each day or
27 portion thereof engaged in the discharge of official
28 duties.

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

39 Pursuant to the provisions of article ten, chapter four
40 of this code, the West Virginia board of architects shall
41 continue to exist until the first day of July, one thousand
42 nine hundred ninety-five.

CHAPTER 164

(S. B. 84—By Senators Holliday and Boley)

[Passed February 15, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact section three, article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the real estate commission; and changing expense reimbursement of commission members.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. REAL ESTATE COMMISSION, BROKERS AND SALESPERSONS.

§47-12-3. Commission created; powers generally; membership; appointment and removal of members; qualifications; terms; organization; salaries and expenses; executive director and assistants; seal; admissibility of and inspection of records; termination of commission.

1 There shall be a commission known as the "West
2 Virginia Real Estate Commission", which commission
3 shall be a corporation and as such may sue and be sued,
4 may contract and be contracted with and shall have a
5 common seal. The commission shall consist of three
6 persons to be appointed by the governor by and with the
7 advice and consent of the Senate. Two of such appointees
8 each shall have been a resident and a citizen of this state
9 for at least six years prior to his or her appointment and
10 whose vocation for at least ten years shall have been that
11 of a real estate broker or real estate salesperson and the
12 third shall be a representative of the public generally.
13 Members in office on the date this section becomes
14 effective shall continue in office until their respective
15 terms expire. The term of the members of said commis-
16 sion shall be for four years and until their successors are
17 appointed and qualify. No more than two members of
18 such commission shall belong to the same political party.
19 No member shall be a candidate for or hold any other
20 public office or be a member of any political committee
21 while acting as such commissioner. In case any commis-
22 sioner be a candidate for or hold any other public office
23 or be a member of any political committee, his or her
24 office as such commissioner shall ipso facto be vacated.
25 Members to fill vacancies shall be appointed by the
26 governor for the unexpired term. No member may be
27 removed from office by the governor except for official
28 misconduct, incompetency, neglect of duty, gross

29 immorality or other good cause shown and then only in
30 the manner prescribed by law for the removal by the
31 governor of state elective officers. The governor shall
32 designate one member of the commission as the chair-
33 man thereof and the members shall choose one of the
34 members thereof as secretary. Two members of the
35 commission shall constitute a quorum for the conduct of
36 official business.

37 (a) The commission shall do all things necessary and
38 convenient for carrying into effect the provisions of this
39 article and may from time to time promulgate reasona-
40 ble, fair and impartial rules and regulations in accor-
41 dance with the provisions of article three, chapter
42 twenty-nine-a of this code. The board shall pay each
43 member the same compensation and expense reimbur-
44 sement as is paid to members of the Legislature for their
45 interim duties as recommended by the citizens legisla-
46 tive compensation commission and authorized by law for
47 each day or portion thereof engaged in the discharge of
48 official duties.

49 (b) The commission shall employ an executive director
50 and such clerks, investigators and assistants as it shall
51 deem necessary to discharge the duties imposed by the
52 provisions of this article and to effect its purposes, and
53 the commission shall determine the duties and fix the
54 compensation of such executive director, clerks, inves-
55 tigators and assistants, subject to the general laws of the
56 state.

57 (c) The commission shall adopt a seal by which it shall
58 authenticate its proceedings. Copies of all records and
59 papers in the office of the commission, duly certified and
60 authenticated by the seal of said commission, shall be
61 received in evidence in all courts equally and with like
62 effect as the original. All records kept in the office of
63 the commission under authority of this article shall be
64 open to public inspection under reasonable rules and
65 regulations as shall be prescribed by the commission.

66 (d) After having conducted a preliminary perfor-
67 mance review through its joint committee on govern-
68 ment operations, pursuant to article ten, chapter four of

69 this code, the Legislature hereby finds and declares that
70 the West Virginia real estate commission should be
71 continued and reestablished. Accordingly, notwithstand-
72 ing the provisions of said article, the West Virginia real
73 estate commission shall continue to exist until the first
74 day of July, one thousand nine hundred ninety-five, to
75 allow the joint committee on government operations to
76 monitor compliance with recommendations set forth in
77 the preliminary performance review.

CHAPTER 165

(H. B. 4088—By Delegates Martin, Michael, Border and Evans)

[Passed February 16 1994; in effect July 1, 1994. 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 article ten, chapter four of this code, the Legislature
4 hereby finds and declares that the family protection
5 services board should be continued and reestablished.
6 Accordingly, notwithstanding the provisions of said
7 article, the family protection services board shall
8 continue to exist until the first day of July, two
9 thousand.

CHAPTER 166

(H. B. 4092—By Delegates Martin, Michael, Border and Evans)

[Passed February 24, 1994; in effect July 1, 1994. 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 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 article ten, chapter four of this
- 6 code, the Legislature hereby finds and declares the child
- 7 advocate office should be continued and reestablished.
- 8 Accordingly, notwithstanding the provisions of article
- 9 ten, chapter four of this code, the child advocate office
- 10 shall continue to exist until the first day of July, one
- 11 thousand nine hundred ninety-seven.

CHAPTER 167

(S. B. 80—By Senators Holliday, Boley and Chernenko)

[Passed February 14, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article four, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the family law masters system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PROCEEDINGS BEFORE A MASTER.

§48A-4-24. 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 article ten, chapter four of this
4 code, the Legislature hereby finds and declares the
5 family law masters system should be continued and
6 reestablished. Accordingly, notwithstanding the provi-
7 sions of said article, the family law masters system shall
8 continue to exist until the first day of July, one thousand
9 nine hundred ninety-five, so that the joint committee on
10 government operations may monitor compliance by the
11 family law masters system with the recommendations of
12 the performance audit.

CHAPTER 168

(Com. Sub. for S. B. 373—By Senator Bailey)

[Passed March 12, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article nine, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the criminal investigation and special audits division of the state tax division; number of investigators and examiners; exemption of investigators from classified service; including examiners in the classified service; increasing amount of moneys which may be placed in the appropriated special revenue account; disposition of fees; qualifications and powers of investigators; investigators to execute performance bonds; assistance of division of public safety or other law-enforcement officers; issuance of license plates to investigators; and requiring a report by the tax commissioner.

Be it enacted by the Legislature of West Virginia:

That section two-a, article nine, 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 9. CRIMES AND PENALTIES.

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

1 (a) *Criminal investigation division.* — A criminal
2 investigation division consisting of no more than twelve
3 investigators, of which one investigator shall serve as
4 division director, plus necessary support staff, all of
5 whom are exempt from the classified service, is hereby
6 established in the state tax division for the purpose of
7 assuring compliance with laws and rules pertaining to
8 the taxes, fees or credits administered under article ten
9 of this chapter, including, but not limited to, the
10 provisions of articles twenty, twenty-one and twenty-
11 three, chapter forty-seven of this code, but not including
12 income taxes, imposed on individuals by article twenty
13 of this chapter.

14 (b) *Special audits division.* — A special audits division
15 consisting of no more than eight tax examiners, plus
16 necessary support staff, all of whom are covered by the
17 classified service, is hereby established in the auditing
18 section of the state tax division for purposes of assuring
19 compliance with laws and rules pertaining to taxes, fees
20 or credits administered under article ten of this chapter,
21 including, but not limited to, the provisions of articles
22 twenty, twenty-one and twenty-three, chapter forty-
23 seven of this code, but not including income taxes
24 imposed on individuals by article twenty-one of this
25 chapter.

26 (c) The Legislature hereby finds that the enforcement
27 of the laws and rules pertaining to the taxes, fees or
28 credits administered under article ten of this chapter,
29 as such are applicable to persons whose residence or
30 principal place of business is outside of the state of West
31 Virginia, requires greater efforts and investigation than
32 required for resident persons subject thereto, and does
33 further find that there is a greater rate of noncom-

34 pliance with said laws and rules by such nonresident
35 persons. Therefore, the criminal investigation division
36 and the special audits division created in subsections (a)
37 and (b) of this section are hereby directed to expend a
38 significant amount of their efforts to ensure compliance
39 with the laws and rules pertaining to taxes, fees or
40 credits administered under article ten of this chapter in
41 accordance with the authority provided in this section,
42 by persons whose residence or principal place of
43 business is located outside the state of West Virginia.

44 (d) *Deposits of certain fees.* — Charitable bingo fees
45 imposed by article twenty, chapter forty-seven of this
46 code; charitable raffle fees imposed by article twenty-
47 one of said chapter; and charitable raffle boards and
48 games fees imposed by article twenty-three of said
49 chapter in an amount not to exceed five hundred
50 thousand dollars in any fiscal year shall be deposited in
51 a special revenue account established in the office of the
52 treasurer to be appropriated by the Legislature. The
53 special revenue account shall be used to support
54 compliance expenditures relating to the establishment,
55 operation, maintenance and support of the criminal
56 investigation division established in subsection (a) of this
57 section and the special audits division established in
58 subsection (b) of this section. Such expenditures may
59 include, but shall not be limited to, employee compen-
60 sation, equipment, office supplies and travel expenses.
61 On the last day of each fiscal year, unencumbered funds
62 in the special revenue account in excess of seventy-five
63 thousand dollars shall be transferred to the general
64 revenue fund.

65 (e) *Investigators.* — Investigators employed in the
66 criminal investigation division shall have a background
67 in accounting or law enforcement or related fields
68 pursuant to article twenty-nine, chapter thirty of this
69 code, or its equivalent. Any investigator so designated
70 by the tax commissioner shall have all the lawful powers
71 delegated to members of the division of public safety
72 except the power to carry firearms and shall have the
73 authority to enforce the provisions of this article and the
74 criminal provisions of any other article of this code to
75 which this article applies, in any county or municipality

76 of this state. The tax commissioner shall establish such
77 additional standards as he or she considers applicable
78 or necessary. Any employee shall, before entering upon
79 the discharge of his or her duties, execute a bond with
80 security in the sum of three thousand five hundred
81 dollars, payable to the state of West Virginia, condi-
82 tioned for the faithful performance of the employee's
83 duties and the bond shall be approved as to form by the
84 attorney general and shall be filed with the secretary
85 of state for preservation in that office. The division of
86 public safety, any county sheriff or deputy sheriff and
87 any municipal police officer upon request by the tax
88 commissioner is hereby authorized to assist the tax
89 commissioner in enforcing the provisions of this article
90 and any criminal penalty provision of any article of this
91 code to which this article applies.

92 (f) *Class A license plates.* — Notwithstanding the
93 provisions of article three, chapter seventeen-a of this
94 code, upon application by the tax commissioner and
95 payment of fees, the commissioner of motor vehicles
96 shall issue a maximum of twenty Class A license plates
97 to be used on state owned or leased vehicles assigned to
98 investigators employed in the criminal investigation
99 division.

100 (g) *Reports.* — On the first day of July of each year,
101 beginning in the year one thousand nine hundred ninety-
102 four, the tax commissioner shall present a written
103 report to the joint committee on government operations
104 on the division's compliance with the provisions of this
105 section, including, but not limited to, activities of the
106 divisions created by this section and disbursement of
107 funding.

CHAPTER 169

(Com. Sub. for H. B. 4023—By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[By Request of the Executive]

[Passed March 12, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eight-a, generally relating to tax credits; relating to the continuation of the suspension of certification of business investment and jobs expansion credit; providing for recapture of credits.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section eight-a, all to read as follows:

ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION CREDIT.

§11-13C-8a. Recapture of credit; recapture tax imposed.

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

§11-13C-8a. Recapture of credit; recapture tax imposed.

1 (a) *When recapture tax applies.*—

2 (1) Any person who places business investment and
3 jobs expansion tax credit property in service or use after
4 the twelfth day of March, one thousand nine hundred
5 ninety-four, and who fails to use such qualified invest-
6 ment property for at least the period of its useful life
7 (determined as of the time the property was placed in
8 service or use), or the period of time over which tax
9 credits allowed under this article with respect to such
10 property are applied under this article, which ever
11 period is less, and who reduces the number of its
12 employees filling new jobs in its business in this state,
13 which were created and are directly attributable to the
14 qualified investment property, after the third taxable
15 year in which the qualified investment property was
16 placed in service or use, or fails to continue to employ
17 individuals in all the new jobs created as a direct result
18 of the qualified investment property and used to qualify
19 for the credit allowed by this article, prior to the end

20 of the tenth taxable year after the qualified investment
21 property was placed in service or use, such person shall
22 pay the recapture tax imposed by subsection (b) of this
23 section.

24 (2) This section shall not apply when section nine of
25 this article applies. However, the successor, or the
26 successors, and the person, or persons, who previously
27 claimed credit under this article with respect to such
28 qualified investment property and the new jobs attrib-
29 utable thereto, shall be jointly and severally liable for
30 payment of any recapture tax subsequently imposed
31 under this section with respect to such qualified
32 investment property and new jobs.

33 (b) *Recapture tax imposed.* — The recapture tax
34 imposed by this subsection shall be the amount deter-
35 mined as follows:

36 (1) *Full recapture.* — If taxpayer prematurely
37 removes qualified investment property placed in service
38 after the twelfth day of March, one thousand nine
39 hundred ninety-four, (when considered as a class) from
40 economic service in such taxpayer's qualified investment
41 business activity in this state, and the number of
42 employees filling the new jobs created by such person
43 falls below fifty, taxpayer shall recapture the amount of
44 credit claimed under section five of this article for the
45 taxable year, and all preceding taxable years, on
46 qualified investment property which has been prema-
47 turely removed from service. The amount of tax due
48 under this subdivision of subsection (b) shall be an
49 amount equal to the amount of credit that is recaptured
50 under this subdivision (1).

51 (2) *Partial recapture.* — If taxpayer prematurely
52 removes qualified investment property placed in service
53 after the twelfth day of March, one thousand nine
54 hundred ninety-four, (when considered as a class) from
55 economic service in such taxpayer's qualified investment
56 business activity in this state, and the number of
57 employees filling the new jobs created by such person
58 remains fifty or more, but falls below the number
59 necessary to sustain continued application of credit

60 determined by use of the new job percentage upon which
61 such taxpayer's one-tenth annual credit allowance was
62 determined under section four, or seven-a of this article,
63 taxpayer shall recapture an amount of credit equal to
64 the difference between (A) the amount of credit claimed
65 under section five of this article for the taxable year,
66 and all preceding taxable years, and (B) the amount of
67 credit that would have been claimed in such years if the
68 amount of credit allowable under section four, or seven-
69 a of this article had been determined based on the
70 qualified investment property which remains in service
71 using the average number of new jobs filled by em-
72 ployees in the taxable year for which recapture occurs.
73 The amount of tax due under this subdivision of
74 subsection (b) shall be an amount equal to the amount
75 of credit that is recaptured under this subdivision (2).

76 (3) *Additional recapture.* — If after a partial recap-
77 ture under subdivision (2) of this subsection, such
78 taxpayer further reduces the number of employees
79 filling new jobs below fifty, taxpayer shall recapture an
80 additional amount determined as provided under
81 subdivision (1) of this subsection. The amount of tax due
82 under this subdivision of subsection (b) shall be an
83 amount equal to the amount of credit that is recaptured
84 under this subdivision (3).

85 (c) *Recapture of credit allowed for projects.* — The tax
86 commissioner shall file in the West Virginia register by
87 the first day of July, one thousand nine hundred ninety-
88 four, an emergency legislative regulation explaining
89 how the rules of this section shall be applied in the case
90 of projects certified under section four-b of this article.

91 (d) *Payment of recapture tax.* — The amount of tax
92 recaptured under this section shall be due and payable
93 on the day such person's annual return is due for the
94 taxable year in which this section applies, under article
95 twenty-one, or twenty-four, of this chapter. When the
96 employer is a partnership, or s corporation, for federal
97 income tax purposes, the recapture tax shall be paid by
98 those persons who are partners in such partnership, or
99 shareholders in such s corporation, in the taxable year
100 in which recapture occurs under this section.

101 (e) *Regulations.* — The tax commissioner shall
102 promulgate such legislative regulations as may be
103 necessary to carry out the purpose of this section and
104 to implement the intent of the Legislature. Such
105 regulations shall be promulgated in accordance with the
106 provisions of article three, chapter twenty-nine-a of this
107 code.

§11-13C-15. Continuing 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 after
6 the tenth day of April, one thousand nine hundred
7 ninety-three.

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

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

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

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

31 (4) The activity of goods distribution;

32 (5) Destination-oriented recreation and tourism.

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

45 (d) *Transition rule.* — Notwithstanding any provision
46 herein contained to the contrary, this section shall not
47 apply to investments for which applications for credit
48 or applications for projected certification were filed
49 prior to the tenth day of April, one thousand nine
50 hundred ninety-three.

CHAPTER 170

(S. B. 508—By Senator Plymale)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fourteen-b, relating generally to compliance with section four thousand eight of the "Intermodal Surface Transportation and Efficiency Act of 1991"; transferring authority to register motor carriers and issue trip permits to the division of motor vehicles; authorizing tax commissioner to enter into cooperative reciprocal international fuel tax agreements with one or more other states for collection of West Virginia motor fuel use taxes from motor carriers based in other states; specifying scope and effect of such agreements; specify-

ing powers, duties and rights under such agreements; authorizing exchanges of information for purposes of single point registration of motor carriers and for administration and collection of motor fuel use taxes under such agreements; providing for disposition of motor fuel use taxes collected under such agreements; creating international fuel tax agreement clearing fund in the state treasury; providing for administration and collection of motor fuel use taxes under an international fuel tax agreement to be subject to the West Virginia tax procedure and administration act; and providing for West Virginia tax crimes and penalties act to apply to international fuel tax agreements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14B. INTERSTATE FUEL TAX AGREEMENT.

- §11-14B-1. Purpose.
- §11-14B-2. Definitions.
- §11-14B-3. Registration of motor carriers.
- §11-14B-4. Cooperative agreements between states authorized.
- §11-14B-5. Scope of agreement.
- §11-14B-6. Effect of international fuel tax agreement.
- §11-14B-7. Effective date of international fuel tax agreement or amendment.
- §11-14B-8. Copy of agreement to be maintained by tax commissioner.
- §11-14B-9. Exchange of information.
- §11-14B-10. Audits.
- §11-14B-11. Disposition of moneys; international fuel tax agreement clearing fund.
- §11-14B-12. Regulations.
- §11-14B-13. Legal remedies.
- §11-14B-14. General procedure and administration.
- §11-14B-15. Criminal penalties.
- §11-14B-16. Reimbursement of expenses of tax commissioner.
- §11-14B-17. Severability.

§11-14B-1. Purpose.

- 1 This article is enacted to conform laws of this state
- 2 relating to registration of motor carriers and reporting
- 3 and payment of motor fuel use taxes with requirements

4 of the “Intermodal Surface Transportation and Effi-
5 ciency Act of 1991”, Public Law 102-240. More
6 specifically:

7 (1) Section 4005 of that act requires establishment of
8 a single state registration system for commercial motor
9 carriers. Under this system, a motor carrier is required
10 to register annually only with one state. Single state
11 registration is deemed to satisfy the registration
12 requirements of all other states.

13 (2) Section 4008 of that act mandates state participa-
14 tion in the international registration plan and adoption
15 of the international fuel tax agreement by providing
16 that after the thirtieth day of September, one thousand
17 nine hundred ninety-six:

18 (A) No state (other than a state participating in the
19 international registration plan) may establish, maintain
20 or enforce any commercial motor vehicle registration
21 law, regulation or agreement which limits the operation
22 of any commercial motor vehicle within its borders
23 which is not registered under the laws of the state if the
24 vehicle is registered under the laws of any other state
25 participating in the international registration plan;

26 (B) No state may establish, maintain or enforce any
27 law or regulation which has fuel use tax reporting
28 requirements (including tax reporting forms) which are
29 not in conformity with the international fuel tax
30 agreement; and

31 (C) No state may establish, maintain or enforce any
32 law or regulation which provides for the payment of a
33 fuel use tax unless such law or regulation is in
34 conformity with the international fuel tax agreement
35 with respect to collection of such tax by a single base
36 state and proportional sharing of such taxes charged
37 among the states in which a commercial motor vehicle
38 is operated.

§11-14B-2. Definitions.

1 (a) “Commercial motor vehicle”: (1) As used with
2 respect to the international registration plan, has the
3 meaning the term “apportionable vehicle” has under

4 that plan; and (2) as used with respect to the interna-
5 tional fuel tax agreement, has the meaning the term
6 "qualified motor vehicle" has under that agreement.

7 (b) "Fuel use tax" means a tax imposed on or
8 measured by the consumption of fuel in a motor vehicle.

9 (c) "International fuel tax agreement" means the
10 international agreement for the collection and distribu-
11 tion of fuel use taxes paid by motor carriers, developed
12 under the auspices of the national governors' association.

13 (d) "International registration plan" means the
14 interstate agreement for the apportionment of vehicle
15 registration fees paid by motor carriers developed by
16 the American association of motor vehicle
17 administrators.

18 (e) "Motor fuel use taxes imposed by this state" means
19 the aggregate amount of taxes, expressed in cents per
20 gallon, imposed by this state, under articles fourteen-a
21 and fifteen-a of this chapter, on gasoline or special fuel
22 consumed in this state by a motor carrier.

23 (f) "State" means any of the forty-eight contiguous
24 states and the District of Columbia, and any other
25 jurisdiction which imposes a motor fuel use tax and is
26 a member of the international fuel tax agreement.

§11-14B-3. Registration of motor carriers.

1 (a) To facilitate adoption of the single point registra-
2 tion system in this state, the powers, duties and
3 responsibilities of the tax commissioner under section
4 seven, article fourteen-a of this chapter, are transferred
5 to the commissioner of the division of motor vehicles
6 effective with the registration year that begins the first
7 day of July, one thousand nine hundred ninety-five:
8 *Provided*, That no registration marker or trip permit
9 shall be required under section seven, article fourteen-a of
10 this chapter of a motor carrier based in another state
11 which is a member of the international fuel tax agreement.

12 (b) Beginning with the registration year specified in
13 subsection (a) of this section, the commissioner of motor
14 vehicles shall furnish the tax commissioner with motor

15 carrier registration information and information per-
16 taining to the trip permit registration program for use
17 by the tax commissioner in collecting motor fuel taxes.

18 (c) Also beginning with the registration year specified
19 in subsection (a) of this section, the tax commissioner
20 shall furnish the commissioner of motor vehicles with
21 the taxpayer identity information for any motor carrier
22 which fails to file required returns or report for, or to
23 pay, the motor fuel use taxes imposed by this state. This
24 information may give the commissioner of motor
25 vehicles sufficient cause to revoke or refuse to renew the
26 identification marker previously issued under section
27 seven, article fourteen-a of this chapter.

28 (d) Information exchanged pursuant to this section
29 shall be used solely for tax administration and motor
30 carrier registration purposes and shall be treated as
31 confidential information for all other purposes as
32 provided in article ten of this chapter.

**§11-14B-4. Cooperative agreements between states
authorized.**

1 (a) The tax commissioner may enter into cooperative
2 reciprocal international fuel tax agreements on behalf
3 of the state of West Virginia with the appropriate
4 authorities of another state or group of states for
5 administration of the motor fuel use taxes imposed by
6 this state.

7 (b) The tax commissioner may enter into any ancillary
8 or related agreements on behalf of this state with the
9 appropriate officials of one or more other states, or the
10 federal government which the tax commissioner consid-
11 ers appropriate and necessary to fully implement any
12 international fuel tax agreement entered into under
13 subsection (a) of this section.

§11-14B-5. Scope of agreement.

1 An international fuel tax agreement may provide for:

2 (a) Determining the base state of motor carriers;

3 (b) Making and retaining of records by motor
4 carriers;

- 5 (c) Auditing the books and records of motor carriers
6 and auditing procedures;
- 7 (d) Exchanging information for purposes of motor
8 fuel use tax administration and collection;
- 9 (e) Determining persons eligible for a motor carrier
10 tax license or registration;
- 11 (f) Defining qualified motor vehicles;
- 12 (g) Determining if or when bonding is required;
- 13 (h) Specify reporting requirements and periods;
- 14 (i) Specifying uniform penalty and interest rates for
15 late reporting and payment of motor fuel use taxes;
- 16 (j) Determining methods for collecting and forward-
17 ing of motor fuel use taxes and penalties to another
18 jurisdiction; and
- 19 (k) Any other provision which the parties to the
20 agreement believe will facilitate administration of the
21 agreement and collection of motor fuel use taxes from
22 interstate motor carriers.

§11-14B-6. Effect of international fuel tax agreement.

- 1 (a) The reporting requirements provided in the
2 international fuel tax agreement shall take precedence
3 over the reporting requirements provided in article
4 fourteen-a of this chapter.
- 5 (b) Where the international fuel tax agreement and
6 the provisions of article fourteen-a of this chapter and
7 any amendments thereto subsequently made address the
8 same matters, the provisions of the international fuel tax
9 agreement shall take precedence.
- 10 (c) The amount of international fuel tax agreement
11 taxes reported as due and owing by a motor carrier
12 based in this state shall for purposes of articles nine and
13 ten of this chapter be treated as taxes due and owing
14 to the state of West Virginia.
- 15 (d) Interstate motor fuel users based in another state
16 which is not a member of the international fuel tax
17 agreement shall continue to be subject to the provisions

18 of article fourteen-a of this chapter, and any subsequent
19 amendments thereto.

§11-14B-7. Effective date of international fuel tax agreement or amendment.

1 The terms of an international fuel tax agreement, or
2 an amendment thereto, shall not be effective until they
3 are stated in writing and a properly executed copy is
4 filed with the tax commissioner.

§11-14B-8. Copy of agreement to be maintained by tax commissioner.

1 A current copy of the international fuel tax agree-
2 ment shall be maintained by the tax commissioner. A
3 current copy of the international fuel tax agreement and
4 any amendment thereto shall be published in the state
5 register.

§11-14B-9. Exchange of information.

1 (a) The tax commissioner may, as required by the
2 terms of any agreement executed under section four of
3 this article, forward to the proper officers of any party
4 to such agreement any information in the tax commis-
5 sioner's possession relative to the manufacture, receipt,
6 sale, use, transportation or shipment of motor fuels by
7 any person.

8 (b) The tax commissioner may disclose to the proper
9 officers of any party to an agreement executed under
10 section four of this article the location of offices, motor
11 vehicles and other real and personal property of users
12 of motor fuels.

13 (c) Information which the tax commissioner is
14 authorized to disclose under this article, which is
15 confidential information under article ten of this
16 chapter when in the possession of the tax commissioner,
17 shall be treated as confidential information by the
18 recipient thereof and that information may be used only
19 for tax administration purposes.

20 (d) In the event of any inconsistency between the
21 disclosure of information rules specified in this article
22 and the confidentiality rules provided in article ten of

23 this chapter, the language of this article shall control.

§11-14B-10. Audits.

1 (a) The international fuel tax agreement may provide
2 for each state to audit the records of motor carriers
3 based in that state to determine if the motor fuel taxes
4 due each state are properly reported and paid. When a
5 base state performs a motor fuel use tax audit on an
6 interstate motor carrier based in that state, it shall
7 forward the findings of such audit to each state in which
8 the interstate motor carrier has taxable use of motor
9 fuels.

10 (b) No international fuel tax agreement entered into
11 under this article may preclude the tax commissioner
12 from auditing the records of any person covered by the
13 provisions of this article.

§11-14B-11. Disposition of moneys; international fuel tax agreement clearing fund.

1 (a) *International fuel tax agreement clearing fund.* —
2 All amounts collected under the international fuel tax
3 agreement shall be deposited daily by the tax commis-
4 sioner into the international fuel tax agreement clearing
5 fund which is hereby created in the state treasury.

6 (b) *Distributions.* — The tax commissioner shall
7 distribute funds in the international fuel tax agreement
8 clearing fund as follows:

9 (1) Payments due and owing to member jurisdictions
10 under the international fuel tax agreement shall be
11 distributed as provided in the agreement.

12 (2) Refunds for over payment of motor fuel taxes by
13 a West Virginia based interstate motor carrier shall be
14 made from the fund.

15 (3) The tax commissioner shall periodically reconcile
16 the international fuel tax agreement clearing fund and,
17 after reconciliation, transfer to the state road fund all
18 deposits in the clearing fund of motor fuel use taxes
19 imposed by articles fourteen-a and fifteen-a of this
20 chapter.

21 (c) *Investment of funds.* — Funds in the international
22 fuel tax agreement clearing fund shall be invested in the
23 same manner as funds in the state road fund and all
24 earnings from these investments shall be deposited in
25 the state treasury and credited to the state road fund:
26 *Provided,* That these investments shall not affect or
27 interfere with distributions from the fund in accordance
28 with the terms of the international fuel tax agreement.

§11-14B-12. Regulations.

1 The tax commissioner may adopt rules for the
2 implementation, administration or enforcement of an
3 international fuel tax agreement. These rules shall be
4 promulgated in accordance with the provisions of article
5 three, chapter twenty-nine-a of this code.

§11-14B-13. Legal remedies.

1 The legal remedies of any person served with an order
2 or assessment under this article shall be those provided
3 in this code to taxpayers in this state.

§11-14B-14. General procedure and administration.

1 (a) All of the provisions of the “West Virginia Tax
2 Procedure and Administration Act” set forth in article
3 ten of this chapter, including amendments thereto,
4 apply to motor fuel taxes collected under an interna-
5 tional fuel tax agreement.

6 (b) In the event of any inconsistency between the
7 provisions of article ten of this chapter and the terms
8 of the international fuel tax agreement, the terms of the
9 international fuel tax agreement shall control.

§11-14B-15. Criminal penalties.

1 All of the provisions of the “West Virginia Tax Crimes
2 and Penalties Act” set forth in article nine of this
3 chapter, including amendments thereto, apply to the
4 international fuel tax agreement taxes collectible under
5 this article.

§11-14B-16. Reimbursement of expenses of tax commissioner.

1 The division of motor vehicles shall reimburse the tax
2 commissioner for costs incurred by the tax commis-
3 sioner to implement agreements entered into under this

4 section and for any additional expenses as may be
5 incurred by the tax commissioner to collect motor fuel
6 use taxes under these agreements, when these expenses
7 are not provided for in the tax division's annual budget
8 appropriation. For the fiscal year of the state that
9 begins on the first day of July, one thousand nine
10 hundred ninety-four, the reimbursement amount shall
11 be six hundred twenty thousand dollars. The amount of
12 reimbursement shall be renegotiated each fiscal year
13 thereafter.

§11-14B-17. 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, that judgment
4 shall not affect, impair or invalidate the remainder of
5 this article, but shall be confined in its operation to the
6 provision of this article directly involved in the contro-
7 versy in which such judgment was rendered and the
8 material facts therein, and the applicability of the
9 provision to other persons or circumstances shall not be
10 affected by the judgment.

CHAPTER 171

(Com. Sub. for S. B. 328—By Senators Ross, Sharpe, Helmick, Dittmar, Anderson,
Humphreys, Schoonover, Minard, Wooton, Manchin and Yoder)

[Passed March 12, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state consumers sales tax; and providing a definition of the phrase "production of natural resources".

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-2. Definitions.

1 For the purpose of this article:

2 (a) "Business" includes all activities engaged in or
3 caused to be engaged in with the object of gain or
4 economic benefit, direct or indirect, and all activities of
5 the state and its political subdivisions which involve
6 sales of tangible personal property or the rendering of
7 services when those service activities compete with or
8 may compete with the activities of other persons.

9 (b) "Communication" means all telephone, radio, light,
10 light wave, radio telephone, telegraph and other
11 communication or means of communication, whether
12 used for voice communication, computer data transmis-
13 sion or other encoded symbolic information transfers
14 and shall include commercial broadcast radio, commer-
15 cial broadcast television and cable television.

16 (c) "Contracting":

17 (1) *In general.* — "Contracting" means and includes
18 the furnishing of work, or both materials and work, for
19 another (by a sole contractor, general contractor, prime
20 contractor or subcontractor) in fulfillment of a contract
21 for the construction, alteration, repair, decoration or
22 improvement of a new or existing building or structure,
23 or any part thereof, or for removal or demolition of a
24 building or structure, or any part thereof, or for the
25 alteration, improvement or development of real
26 property.

27 (2) *Form of contract not controlling.* — An activity that
28 falls within the scope of the definition of contracting
29 shall constitute contracting regardless of whether such
30 contract governing the activity is written or verbal and
31 regardless of whether it is in substance or form a lump
32 sum contract, a cost-plus contract, a time and materials
33 contract, whether or not open-ended, or any other kind
34 of construction contract.

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

36 (A) The term "structure" includes, but is not limited

37 to, everything built up or composed of parts joined
38 together in some definite manner and attached or
39 affixed to real property, or which adds utility to real
40 property or any part thereof, or which adds utility to
41 a particular parcel of property and is intended to
42 remain there for an indefinite period of time.

43 (B) The term "alteration" means, and is limited to,
44 alterations which are capital improvements to a build-
45 ing or structure or to real property.

46 (C) The term "repair" means, and is limited to, repairs
47 which are capital improvements to a building or
48 structure or to real property.

49 (D) The term "decoration" means, and is limited to,
50 decorations which are capital improvements to a
51 building or structure or to real property.

52 (E) The term "improvement" means, and is limited to,
53 improvements which are capital improvements to a
54 building or structure or to real property.

55 (F) The term "capital improvement" means improve-
56 ments that are affixed to or attached to and become a
57 part of a building or structure or the real property or
58 which add utility to real property or any part thereof
59 and that last, or are intended to be relatively permanent.
60 As used herein, "relatively permanent" means lasting at
61 least a year or longer in duration without the necessity
62 for regularly scheduled recurring service to maintain
63 such capital improvement. "Regular recurring service"
64 means regularly scheduled service intervals of less than
65 one year.

66 (G) Contracting does not include the furnishing of
67 work, or both materials and work in the nature of
68 hookup, connection, installation or other services if such
69 service is incidental to the retail sale of tangible
70 personal property from the service provider's inventory:
71 *Provided*, That such hookup, connection or installation
72 of the foregoing is incidental to the sale of the same and
73 performed by the seller thereof or performed in
74 accordance with arrangements made by the seller
75 thereof. Examples of transactions that are excluded

76 from the definition of contracting pursuant hereto
77 include, but are not limited to, the sale of wall-to-wall
78 carpeting and the installation of wall-to-wall carpeting,
79 the sale, hookup and connection of mobile homes,
80 window air conditioning units, dishwashers, clothing
81 washing machines or dryers, other household applian-
82 ces, drapery rods, window shades, venetian blinds,
83 canvas awnings, free standing industrial or commercial
84 equipment and other similar items of tangible personal
85 property. Repairs made to the foregoing are within the
86 definition of contracting if such repairs involve perman-
87 ently affixing to or improving real property or some-
88 thing attached thereto which extends the life of the real
89 property or something affixed thereto or allows or is
90 intended to allow such real property or thing perman-
91 ently attached thereto to remain in service for a year
92 or longer.

93 (d) (1) "Directly used or consumed" in the activities
94 of manufacturing, transportation, transmission, com-
95 munication or the production of natural resources means
96 used or consumed in those activities or operations which
97 constitute an integral and essential part of such
98 activities, as contrasted with and distinguished from
99 those activities or operations which are simply inciden-
100 tal, convenient or remote to such activities.

101 (2) Uses of property or consumption of services which
102 constitute direct use or consumption in the activities of
103 manufacturing, transportation, transmission, communi-
104 cation or the production of natural resources includes
105 only:

106 (A) In the case of tangible personal property, physical
107 incorporation of property into a finished product
108 resulting from manufacturing production or the produc-
109 tion of natural resources;

110 (B) Causing a direct physical, chemical or other
111 change upon property undergoing manufacturing
112 production or production of natural resources;

113 (C) Transporting or storing property undergoing
114 transportation, communication, transmission, manufac-
115 turing production or production of natural resources;

116 (D) Measuring or verifying a change in property
117 directly used in transportation, communication, trans-
118 mission, manufacturing production or production of
119 natural resources;

120 (E) Physically controlling or directing the physical
121 movement or operation of property directly used in
122 transportation, communication, transmission, manufac-
123 turing production or production of natural resources;

124 (F) Directly and physically recording the flow of
125 property undergoing transportation, communication,
126 transmission, manufacturing production or production
127 of natural resources;

128 (G) Producing energy for property directly used in
129 transportation, communication, transmission, manufac-
130 turing production or production of natural resources;

131 (H) Facilitating the transmission of gas, water, steam
132 or electricity from the point of their diversion to
133 property directly used in transportation, communica-
134 tion, transmission, manufacturing production or produc-
135 tion of natural resources;

136 (I) Controlling or otherwise regulating atmospheric
137 conditions required for transportation, communication,
138 transmission, manufacturing production or production
139 of natural resources;

140 (J) Serving as an operating supply for property
141 undergoing transmission, manufacturing production or
142 production of natural resources, or for property directly
143 used in transportation, communication, transmission,
144 manufacturing production or production of natural
145 resources;

146 (K) Maintenance or repair of property, including
147 maintenance equipment, directly used in transportation,
148 communication, transmission, manufacturing produc-
149 tion or production of natural resources;

150 (L) Storage, removal or transportation of economic
151 waste resulting from the activities of manufacturing,
152 transportation, communication, transmission or the
153 production of natural resources;

154 (M) Pollution control or environmental quality or
155 protection activity directly relating to the activities of
156 manufacturing, transportation, communication, trans-
157 mission or the production of natural resources and
158 personnel, plant, product or community safety or
159 security activity directly relating to the activities of
160 manufacturing, transportation, communication, trans-
161 mission or the production of natural resources; or

162 (N) Otherwise be used as an integral and essential
163 part of transportation, communication, transmission,
164 manufacturing production or production of natural
165 resources.

166 (3) Uses of property or services which would not
167 constitute direct use or consumption in the activities of
168 manufacturing, transportation, transmission, communi-
169 cation or the production of natural resources include,
170 but are not limited to:

171 (A) Heating and illumination of office buildings;

172 (B) Janitorial or general cleaning activities;

173 (C) Personal comfort of personnel;

174 (D) Production planning, scheduling of work or
175 inventory control;

176 (E) Marketing, general management, supervision,
177 finance, training, accounting and administration; or

178 (F) An activity or function incidental or convenient to
179 transportation, communication, transmission, manufac-
180 turing production or production of natural resources,
181 rather than an integral and essential part of such
182 activities.

183 (e) (1) "Directly used or consumed" in the activities of
184 gas storage, the generation or production or sale of
185 electric power, the provision of a public utility service
186 or the operation of a utility business, means used or
187 consumed in those activities or operations which
188 constitute an integral and essential part of such
189 activities or operation, as contrasted with and distin-
190 guished from activities or operations which are simply
191 incidental, convenient or remote to such activities.

192 (2) Uses of property or consumption of services which
193 constitute direct use or consumption in the activities of
194 gas storage, the generation or production or sale of
195 electric power, the provision of a public utility service,
196 or the operation of a utility business include only:

197 (A) Tangible personal property or services, including
198 equipment, machinery, apparatus, supplies, fuel and
199 power and appliances, which are used immediately in
200 production or generation activities and equipment,
201 machinery, supplies, tools and repair parts used to keep
202 in operation exempt production or generation devices.
203 For purposes of this subsection, production or genera-
204 tion activities shall commence from the intake, receipt
205 or storage of raw materials at the production plant site;

206 (B) Tangible personal property or services, including
207 equipment, machinery, apparatus, supplies, fuel and
208 power, appliances, pipes, wires and mains which are
209 used immediately in the transmission or distribution of
210 gas, water and electricity to the public, and equipment,
211 machinery, tools, repair parts and supplies used to keep
212 in operation exempt transmission or distribution
213 devices, and such vehicles and their equipment as are
214 specifically designed and equipped for such purposes
215 are exempt from the tax when used to keep a transmis-
216 sion or distribution system in operation or repair. For
217 purposes of this subsection, transmission or distribution
218 activities shall commence from the close of production
219 at a production plant or wellhead when a product is
220 ready for transmission or distribution to the public and
221 shall conclude at the point where the product is received
222 by the public;

223 (C) Tangible personal property or services, including
224 equipment, machinery, apparatus, supplies, fuel and
225 power, appliance, pipes, wires and mains, which are
226 used immediately in the storage of gas or water, and
227 equipment, machinery, tools, supplies and repair parts
228 used to keep in operation exempt storage devices;

229 (D) Tangible personal property or services used
230 immediately in the storage, removal or transportation of
231 economic waste resulting from the activities of gas

232 storage, the generation or production or sale of electric
233 power, the provision of a public utility service, or the
234 operation of a utility business;

235 (E) Tangible personal property or services used
236 immediately in pollution control or environmental
237 quality or protection activity or community safety or
238 security directly relating to the activities of gas storage,
239 generation or production or sale of electric power, the
240 provision of a public utility service or the operation of
241 a utility business.

242 (3) Uses of property or services which would not
243 constitute direct use or consumption in the activities of
244 gas storage, generation or production or sale of electric
245 power, the provision of a public utility service or the
246 operation of a utility business include, but are not
247 limited to:

248 (A) Heating and illumination of office buildings;

249 (B) Janitorial or general cleaning activities;

250 (C) Personal comfort of personnel;

251 (D) Production planning, scheduling of work or
252 inventory control;

253 (E) Marketing, general management, supervision,
254 finance, training, accounting and administration; or

255 (F) An activity or function incidental or convenient to
256 the activities of gas storage, generation or production or
257 sale of electric power, the provision of public utility
258 service or the operation of a utility business.

259 (f) "Drugs" includes all sales of drugs or appliances
260 to a purchaser, upon prescription of a physician or
261 dentist and any other professional person licensed to
262 prescribe.

263 (g) "Gas storage" means the injection of gas into a
264 storage reservoir, or the storage of gas for any period
265 of time in a storage reservoir, or the withdrawal of gas
266 from a storage reservoir, engaged in by businesses
267 subject to the business and occupation tax imposed by
268 sections two and two-e, article thirteen of this chapter.

269 (h) "Generating or producing or selling of electric
270 power" means the generation, production or sale of
271 electric power engaged in by businesses subject to the
272 business and occupation tax imposed by section two,
273 two-d, two-m or two-n, article thirteen of this chapter.

274 (i) "Gross proceeds" means the amount received in
275 money, credits, property or other consideration from
276 sales and services within this state, without deduction
277 on account of the cost of property sold, amounts paid for
278 interest or discounts or other expenses whatsoever.
279 Losses shall not be deducted, but any credit or refund
280 made for goods returned may be deducted.

281 (j) "Management information services" means, and is
282 limited to, data processing, data storage, data recovery
283 and backup, programming recovery and backup,
284 telecommunications, computation and computer process-
285 ing, computer programming, electronic information and
286 data management activities, or any combination of such
287 activities, when such activity, or activities, is not subject
288 to regulation by the West Virginia public service
289 commission and such activity, or activities, is for the
290 purpose of managing, planning for, organizing or
291 operating, any industrial or commercial business, or any
292 enterprise, facility or facilities of an industrial or
293 commercial business, whether such industrial or
294 commercial business or enterprise, facility or facilities
295 of an industrial or commercial business is located within
296 or without this state and without regard to whether such
297 industrial or commercial business, or enterprise, facility
298 or facilities of an industrial or commercial business is
299 owned by the provider of the management information
300 services or by a "related person", as defined in Section
301 267(b) of the Internal Revenue Code of 1986, as
302 amended.

303 (k) "Management information services facility" means
304 a building, or any part thereof, or a complex of
305 buildings, or any part thereof, including the machinery
306 and equipment located therein, that is exclusively
307 dedicated to providing management information servi-
308 ces to the owner or operator thereof or to another person.

309 (l) "Manufacturing" means a systematic operation or
310 integrated series of systematic operations engaged in as
311 a business or segment of a business which transforms
312 or converts tangible personal property by physical,
313 chemical or other means into a different form, compo-
314 sition or character from that in which it originally
315 existed.

316 (m) "Personal service" includes those:

317 (1) Compensated by the payment of wages in the
318 ordinary course of employment; and

319 (2) Rendered to the person of an individual without,
320 at the same time, selling tangible personal property,
321 such as nursing, barbering, shoe shining, manicuring
322 and similar services.

323 (n) "Persons" means any individual, partnership,
324 association, corporation, state or its political subdivi-
325 sions or agency of either, guardian, trustee, committee,
326 executor or administrator.

327 (o) "Production of natural resources" means, except
328 for oil and gas, the performance, by either the owner
329 of the natural resources or another, of the act or process
330 of exploring, developing, severing, extracting, reducing
331 to possession and loading for shipment and shipment for
332 sale, profit or commercial use of any natural resource
333 products and any reclamation, waste disposal or
334 environmental activities associated therewith. For the
335 natural resources oil and gas, "production of natural
336 resources" means the performance, by either the owner
337 of the natural resources, a contractor, or a subcontractor,
338 of the act or process of exploring, developing,
339 drilling, well stimulation activities such as logging,
340 perforating or fracturing, well completion activities
341 such as the installation of the casing, tubing and other
342 machinery and equipment, and any reclamation, waste
343 disposal or environmental activities associated there-
344 with, including the installation of the gathering system
345 or other pipeline to transport the oil and gas produced
346 or environmental activities associated therewith and any
347 service work performed on the well or well site after
348 production of the well has initially commenced. All work

349 performed to install or maintain facilities up to the point
350 of sale for severance tax purposes would be included in
351 the "production of natural resources" and subject to the
352 direct use concept. "Production of natural resources"
353 does not include the performance or furnishing of work,
354 or materials or work, in fulfillment of a contract for the
355 construction, alteration, repair, decoration or improve-
356 ment of a new or existing building or structure, or any
357 part thereof, or for the alteration, improvement or
358 development of real property, by persons other than
359 those otherwise directly engaged in the activities
360 specifically set forth in this subsection as "production of
361 natural resources".

362 (p) "Providing a public service or the operating of a
363 utility business" means the providing of a public service
364 or the operating of a utility by businesses subject to the
365 business and occupation tax imposed by sections two and
366 two-d, article thirteen of this chapter.

367 (q) "Purchaser" means a person who purchases
368 tangible personal property or a service taxed by this
369 article.

370 (r) "Sale", "sales" or "selling" includes any transfer of
371 the possession or ownership of tangible personal
372 property for a consideration, including a lease or rental,
373 when the transfer or delivery is made in the ordinary
374 course of the transferor's business and is made to the
375 transferee or his agent for consumption or use or any
376 other purpose.

377 (s) "Service" or "selected service" includes all nonpro-
378 fessional activities engaged in for other persons for a
379 consideration, which involve the rendering of a service
380 as distinguished from the sale of tangible personal
381 property, but shall not include contracting, personal
382 services or the services rendered by an employee to his
383 employer or any service rendered for resale.

384 (t) "Tax" includes all taxes, interest and penalties
385 levied hereunder.

386 (u) "Tax commissioner" means the state tax commis-
387 sioner.

388 (v) "Taxpayer" means any person liable for the tax
389 imposed by this article.

390 (w) "Transmission" means the act or process of causing
391 liquid, natural gas or electricity to pass or be conveyed
392 from one place or geographical location to another place
393 or geographical location through a pipeline or other
394 medium for commercial purposes.

395 (x) "Transportation" means the act or process of
396 conveying, as a commercial enterprise, passengers or
397 goods from one place or geographical location to another
398 place or geographical location.

399 (y) "Ultimate consumer" or "consumer" means a
400 person who uses or consumes services or personal
401 property.

402 (z) "Vendor" means any person engaged in this state
403 in furnishing services taxed by this article or making
404 sales of tangible personal property.

CHAPTER 172

(H. B. 2473—By Delegate Pettit)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine-d, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three-d, article fifteen-a of said chapter, all relating to consumers sales tax and use tax and providing for permanently assigned direct pay permits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-9d. Direct pay permits.

1 (a) Notwithstanding any other provision of this article,
2 the tax commissioner may, pursuant to rules promul-
3 gated by him in accordance with article three, chapter
4 twenty-nine-a of this code, authorize a person (as defined
5 in section two) that is a user, consumer, distributor or
6 lessee to which sales or leases of tangible personal
7 property are made or services provided, to pay any tax
8 levied by this article or article fifteen-a of this chapter
9 directly to the tax commissioner and waive the collection
10 of the tax by that person's vendor. No such authority
11 shall be granted or exercised except upon application to
12 the tax commissioner and after issuance by the tax
13 commissioner of a direct pay permit. Each direct pay
14 permit granted pursuant to this section shall continue to
15 be valid until surrendered by the holder or canceled for
16 cause by the commissioner. The commissioner shall
17 prescribe by rules promulgated in accordance with
18 article three, chapter twenty-nine-a of this code, those
19 activities which will cause cancellation of a direct pay
20 permit issued pursuant to this section. Upon issuance of
21 such direct pay permit, payment of the tax imposed or
22 assertion of the exemptions allowed by this article or
23 article fifteen-a of this chapter on sales and leases of
24 tangible personal property and sales of taxable services
25 from the vendors thereof shall be made directly to the
26 tax commissioner by the permit holder.

27 (b) On or before the fifteenth day of each month, every
28 permit holder shall make and file with the tax commis-
29 sioner a consumer sales and use tax direct pay permit
30 return for the preceding month in the form prescribed
31 by the tax commissioner showing the total value of the
32 tangible personal property so used, the amount of
33 taxable services purchased, the amount of consumers
34 sales and use taxes due from the permit holder, which
35 amount shall be paid to the tax commissioner with such
36 return, and such other information as the tax commis-
37 sioner deems necessary: *Provided*, That if the amount of
38 consumers sales and use taxes due averages less than one
39 hundred dollars per month, the tax commissioner may
40 permit the filing of quarterly returns in lieu of monthly

41 returns and the amount of tax shown thereon to be due
42 shall be remitted on or before the fifteenth day following
43 the close of the calendar quarter; and if the amount due
44 averages less than fifty dollars per calendar quarter, the
45 tax commissioner may permit the filing of an annual
46 direct pay permit return and the amount of tax shown
47 thereon to be due shall be remitted on or before the last
48 day of January each year. The tax commissioner, upon
49 written request by the permit holder, may grant a
50 reasonable extension of time, upon such terms as the tax
51 commissioner may require, for the making and filing of
52 direct pay permit returns and paying the tax due.
53 Interest on such tax shall be chargeable on every such
54 extended payment at the rate specified in section
55 seventeen, article ten of this chapter.

56 (c) A permit issued pursuant to this section shall
57 continue to be valid until expiration of the taxpayers
58 registration year under article twelve of this chapter.
59 This permit shall automatically be renewed when the
60 taxpayers business registration certificate is issued for
61 the next succeeding fiscal year, unless the permit is
62 surrendered by the holder or canceled for cause by the
63 tax commissioner.

64 (d) Persons who hold a direct payment permit which
65 has not been canceled shall not be required to pay the
66 tax to the vendor as otherwise provided in this article
67 or article fifteen-a of this chapter. Such persons shall
68 notify each vendor from whom tangible personal prop-
69 erty is purchased or leased or from whom services are
70 purchased of their direct payment permit number and
71 that the tax is being paid directly to the tax commis-
72 sioner. Upon receipt of such notice, such vendor shall be
73 absolved from all duties and liabilities imposed by this
74 chapter for the collection and remittance of the tax with
75 respect to sales of tangible personal property and sales
76 of services to such permit holder. Vendors who make
77 sales upon which the tax is not collected by reason of the
78 provisions of this section shall maintain records in such
79 manner that the amount involved and identity of each
80 such purchaser may be ascertained.

81 (e) Upon the expiration, cancellation or surrender of

82 a direct payment permit, the provisions of this chapter,
83 without regard to this section, shall thereafter apply to
84 the person who previously held such permit, and such
85 person shall promptly so notify in writing vendors from
86 whom tangible personal property or services are pur-
87 chased or leased of such cancellation or surrender. Upon
88 receipt of such notice, the vendor shall be subject to the
89 provisions of this chapter, without regard to this section,
90 with respect to all sales, distributions, leases or storage
91 of tangible personal property, thereafter made to or for
92 such person.

ARTICLE 15A. USE TAX.

§11-15A-3d. Direct pay permits.

1 (a) Notwithstanding any other provision of this article,
2 the tax commissioner may, pursuant to rules promul-
3 gated by him in accordance with article three, chapter
4 twenty-nine-a of this code, authorize a person (as defined
5 in section two of article fifteen) that is a user, consumer,
6 distributor or lessee to which sales or leases of tangible
7 personal property are made or services provided to pay
8 any tax levied by this article or article fifteen of this
9 chapter directly to the tax commissioner and waive the
10 collection of the tax by that person's vendor. No such
11 authority shall be granted or exercised except upon
12 application to the tax commissioner and after issuance
13 by the tax commissioner of a direct pay permit. Each
14 direct pay permit granted pursuant to this section shall
15 continue to be valid until surrendered by the holder or
16 canceled for cause by the commissioner. The commis-
17 sioner shall prescribe by rules promulgated in accor-
18 dance with article three, chapter twenty-nine-a of this
19 code, those activities which will cause cancellation of a
20 direct pay permit issued pursuant to this section. Upon
21 issuance of such direct pay permit, payment of the tax
22 imposed or assertion of the exemptions allowed by this
23 article or article fifteen of this chapter on sales and
24 leases of tangible personal property and sales of taxable
25 services from the vendors thereof shall be made directly
26 to the tax commissioner by the permit holder.

27 (b) On or before the fifteenth day of each month, every

28 permit holder shall make and file with the tax commis-
29 sioner a consumers sales and use tax direct pay permit
30 return for the preceding month in the form prescribed
31 by the tax commissioner showing the total value of the
32 tangible personal property so used, the amount of
33 taxable services purchased, the amount of tax due from
34 the permit holder, which amount shall be paid to the tax
35 commissioner with such return, and such other informa-
36 tion as the tax commissioner deems necessary: *Provided,*
37 That if the amount of consumers sales and use taxes due
38 averages less than one hundred dollars per month, the
39 tax commissioner may permit the filing of quarterly
40 returns in lieu of monthly returns and the amount of tax
41 shown thereon to be due shall be remitted on or before
42 the fifteenth day following the close of the calendar
43 quarter; and if the amount due averages less than fifty
44 dollars per calendar quarter, the tax commissioner may
45 permit the filing of an annual direct pay permit return
46 and the amount of tax shown thereon to be due shall be
47 remitted on or before the last day of January each year.
48 The tax commissioner, upon written request filed by the
49 permit holder before the due date of the return, may
50 grant a reasonable extension of time, upon such terms
51 as the tax commissioner may require, for the making
52 and filing of direct pay permit returns and paying the
53 tax due. Interest on such tax shall be chargeable on
54 every such extended payment at the rate specified in
55 section seventeen, article ten of this chapter.

56 (c) A permit issued pursuant to this section shall
57 continue to be valid until expiration of the taxpayer's
58 registration year under article twelve of this chapter.
59 This permit shall automatically be renewed when the
60 taxpayer's business registration certificate is issued for
61 the next succeeding fiscal year, unless the permit is
62 surrendered by the holder or canceled for cause by the
63 tax commissioner.

64 (d) Persons who hold a direct payment permit which
65 has not been canceled shall not be required to pay the
66 tax to the vendor as otherwise provided in this article
67 or article fifteen of this chapter. Such persons shall
68 notify each vendor from whom tangible personal

69 property is purchased or leased or from whom services
70 are purchased of their direct payment permit number
71 and that the tax is being paid directly to the tax
72 commissioner. Upon receipt of such notice, such vendor
73 shall be absolved from all duties and liabilities imposed
74 by this chapter for the collection and remittance of the
75 tax with respect to sales, distributions, leases or storage
76 of tangible personal property and sales of services to
77 such permit holder. Vendors who make sales upon
78 which the tax is not collected by reason of the provisions
79 of this section shall maintain records in such manner
80 that the amount involved and identity of each such
81 purchaser may be ascertained.

82 (e) Upon the expiration, cancellation or surrender of
83 a direct payment permit, the provisions of this chapter,
84 without regard to this section, shall thereafter apply to
85 the person who previously held such permit, and such
86 person shall promptly so notify in writing vendors from
87 whom tangible personal property or services are
88 purchased of such cancellation or surrender. Upon
89 receipt of such notice, the vendor shall be subject to the
90 provisions of this chapter, without regard to this section,
91 with respect to all sales of tangible personal property
92 or taxable services, thereafter made to or for such
93 person.

CHAPTER 173

(H. B. 4175—By Delegates Kiss and Browning)

[Passed February 14, 1994: 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-two; 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-four, 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-three, or thereafter, but no amendment
16 to the laws of the United States made on or after the
17 first day of January, one thousand nine hundred ninety-
18 four, shall be given effect.

19 (b) *Effective date.* — The amendments to this section
20 enacted in the year one thousand nine hundred ninety-
21 four shall be retroactive and shall apply to taxable years
22 beginning on or after the first day of January, one
23 thousand nine hundred ninety-three, 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-three, the
27 law in effect for each of those years shall be fully
28 preserved as to each such year.

CHAPTER 174

(Com. Sub. for S. B. 55—By Senator Humphreys)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight and nine, article eight, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to stale dated checks held by state, local or federal entities; including stale dated checks as intangible property under the uniform disposition of unclaimed property act; relating to money order abandonment; and establishing time period for a presumption of abandonment of money orders as seven years.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT.

§36-8-8. Property held by courts and public officers and agencies.

§36-8-9. Miscellaneous personal property held for another person; exception; prohibiting the levying of charges on inactive savings account.

§36-8-8. Property held by courts and public officers and agencies.

1 (a) All intangible personal property, including stale
2 dated checks, held for the owner by any state or federal
3 court, public corporation, public authority or public
4 officer in this state, or a political subdivision thereof,
5 that has remained unclaimed by the owner for more
6 than five years is presumed abandoned: *Provided*, That
7 this provision shall in no way affect such property in the
8 custody or control of any state or federal court in any
9 pending action: *Provided, however*, That if any federal
10 statute provides for the distribution of any unclaimed
11 property subject to the jurisdiction of a federal court,
12 this statute 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.

**§36-8-9. Miscellaneous personal property held for
another person; exception; prohibiting the
levying of charges on inactive savings
account.**

1 (a) 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.

26 (b) Any amount held by any organization for the
27 payment of a money order on which such organization
28 is directly liable shall be presumed abandoned if such
29 amount is held or owing for payment of a money order
30 which may have been outstanding for more than seven
31 years from the date of its sale.

CHAPTER 175

(Com. Sub. for S. B. 377—By Senators Burdette, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 9, 1994; 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; to amend and reenact sections ten and ten-b, article five of said chapter; to amend and reenact sections one, ten and eleven, article six of said chapter; and to amend and reenact section four, article seven of said chapter, all relating to unemployment compensation; definitions; permissible earnings; surtax on foreign construction employers; transfers of businesses; contribution rates; eligibility requirements; updating benefit tables; and notice of hearings.

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; that sections ten and ten-b, article five of said chapter be amended and reenacted; that sections one, ten and eleven, article six of said chapter be amended and reenacted; that section four, article seven of

said chapter be amended and reenacted, all to read as follows:

Article

1. Unemployment Compensation.
5. Employer Coverage and Responsibility.
6. Employee Eligibility; Benefits.
7. Claim Procedure.

ARTICLE 1. UNEMPLOYMENT COMPENSATION.

§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), 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
166 base of operations, then the place from which such
167 service is directed or controlled, is in this state; or (ii)
168 the base of operations or place from which such service
169 is directed or controlled is not in any state in which some
170 part of the service is performed but the individual's
171 residence 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 incid-
187 ental 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
205 305 of an act of Congress entitled Social Security Act
206 Amendment of 1946, approved the tenth day of August,
207 one thousand nine hundred forty-six), on or in connec-
208 tion with such vessel: *Provided*, That the operating
209 office, from which the operations of such vessel operat-
210 ing on navigable waters within and without the United
211 States is ordinarily and regularly supervised, managed,
212 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 act
222 and is not excluded from "employment" under subdivi-
223 sion (11) of the exclusion from employment in this
224 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 from
235 "employment" under subdivision (15) of the exclusion
236 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 the Virgin Islands after the thirty-first day of
260 December, one thousand nine hundred seventy-one, and
261 before the first day of January, the year following the
262 year in which the secretary of labor approves for the
263 first time an unemployment insurance law submitted to
264 him by the Virgin Islands for approval) in the employ
265 of an 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 paragraphs (a) and (b) of
281 this subdivision is met but the employer has elected
282 coverage in this state or, the employer having failed to
283 elect coverage in any state, the individual has filed a
284 claim for benefits, based on such service, under the law
285 of this state.

286 An "American employer", for purposes of this
287 subdivision, 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; or (ii) for some portion of a day in each of
306 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, 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, in the case
335 of any individual who is furnished by a crew leader to
336 perform service in agricultural labor for any other
337 person and who is not treated as an employee of such
338 crew leader under paragraph (c) of this subdivision: (i)
339 Such other person and not the crew leader shall be
340 treated as the employer of such individual; and (ii) such
341 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, 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, 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 horticultural
434 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 maintenance
441 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 subparagraph
464 (i) of this paragraph, but only if such operators produced
465 more than one half of the commodity with respect to

466 which such service is performed; but the provisions of
467 subparagraphs (i) and (ii) of this paragraph are not
468 applicable with respect to service performed in connec-
469 tion with commercial canning or commercial freezing or
470 in connection with any agricultural or horticultural
471 commodity after its delivery to a terminal market for
472 distribution for consumption;

473 (e) On a farm operated for profit if such service is not
474 in the course of the employer's trade or business or is
475 domestic service in a private home of the employer. As
476 used in this subdivision, the term "farm" includes stock,
477 dairy, poultry, fruit, fur-bearing animals, truck farms,
478 plantations, ranches, greenhouses, ranges and nurseries,
479 or other similar land areas or structures used primarily
480 for the raising of any agricultural or horticultural
481 commodities;

482 (6) Domestic service in a private home except as
483 provided in subdivision (13) of the definition of "employ-
484 ment" in this section;

485 (7) Service performed by an individual in the employ
486 of his son, daughter or spouse;

487 (8) Service performed by a child under the age of
488 eighteen years in the employ of his father or mother;

489 (9) Service as an officer or member of a crew of an
490 American vessel, performed on or in connection with
491 such vessel, if the operating office, from which the
492 operations of the vessel operating on navigable waters
493 within or without the United States are ordinarily and
494 regularly supervised, managed, directed and controlled,
495 is without this state;

496 (10) Service performed by agents of mutual fund
497 broker-dealers or insurance companies, exclusive of
498 industrial insurance agents, or by agents of investment
499 companies, who are compensated wholly on a commis-
500 sion basis;

501 (11) Service performed: (i) In the employ of a church
502 or convention or association of churches, or an organi-
503 zation which is operated primarily for religious pur-
504 poses and which is operated, supervised, controlled or

505 principally supported by a church or convention or
506 association of churches; or (ii) by a duly ordained,
507 commissioned or licensed minister of a church in the
508 exercise of his ministry or by a member of a religious
509 order in the exercise of duties required by such order;
510 or (iii) prior to the first day of January, one thousand
511 nine hundred seventy-eight, in the employ of a school
512 which is not an institution of higher education; or (iv)
513 in a facility conducted for the purpose of carrying out
514 a program of rehabilitation for individuals whose
515 earning capacity is impaired by age or physical or
516 mental deficiency or injury or providing remunerative
517 work for individuals who because of their impaired
518 physical or mental capacity cannot be readily absorbed
519 in the competitive labor market by an individual
520 receiving such rehabilitation or remunerative work; or
521 (v) as part of an unemployment work-relief or work-
522 training program assisted or financed, in whole or in
523 part, by any federal agency or an agency of a state or
524 political subdivision thereof, by an individual receiving
525 such work relief or work training; or (vi) prior to the
526 first day of January, one thousand nine hundred
527 seventy-eight, for a hospital in a state prison or other
528 state correctional institution by an inmate of the prison
529 or correctional institution, and after the thirty-first day
530 of December, one thousand nine hundred seventy-seven,
531 by an inmate of a custodial or penal institution;

532 (12) Service performed in the employ of a school,
533 college or university, if such service is performed: (i) By
534 a student who is enrolled and is regularly attending
535 classes at such school, college or university; or (ii) by the
536 spouse of such a student, if such spouse is advised, at
537 the time such spouse commences to perform such
538 service, that: (I) The employment of such spouse to
539 perform such service is provided under a program to
540 provide financial assistance to such student by such
541 school, college or university; and (II) such employment
542 will not be covered by any program of unemployment
543 insurance;

544 (13) Service performed by an individual who is
545 enrolled at a nonprofit or public educational institution

546 which normally maintains a regular faculty and
547 curriculum and normally has a regularly organized
548 body of students in attendance at the place where its
549 educational activities are carried on as a student in a
550 full-time program, taken for credit at such institution,
551 which combines academic instruction with work expe-
552 rience, if such service is an integral part of such
553 program, and such institution has so certified to the
554 employer, except that this subdivision shall not apply to
555 service performed in a program established for or on
556 behalf of an employer or group of employers;

557 (14) Service performed in the employ of a hospital, if
558 such service is performed by a patient of the hospital,
559 as defined in this section; and

560 (15) Service in the employ of a governmental entity
561 referred to in subdivision (9) of the definition of
562 "employment" in this section if such service is per-
563 formed by an individual in the exercise of duties: (i) As
564 an elected official; (ii) as a member of a legislative body,
565 or a member of the judiciary, of a state or political
566 subdivision; (iii) as a member of the state national guard
567 or air national guard; (iv) as an employee serving on a
568 temporary basis in case of fire, storm, snow, earthquake,
569 flood or similar emergency; (v) in a position which,
570 under or pursuant to the laws of this state, is designated
571 as: (I) A major nontenured policymaking or advisory
572 position; or (II) a policymaking or advisory position the
573 performance of the duties of which ordinarily does not
574 require more than eight hours per week.

575 Notwithstanding the foregoing exclusions from the
576 definition of "employment", services, except agricultural
577 labor and domestic service in a private home, are in
578 employment if with respect to such services a tax is
579 required to be paid under any federal law imposing a
580 tax against which credit may be taken for contributions
581 required to be paid into a state unemployment compen-
582 sation fund, or which as a condition for full tax credit
583 against the tax imposed by the federal Unemployment
584 Tax Act are required to be covered under this chapter.

585 "Employment office" means a free employment office

586 or branch thereof, operated by this state, or any free
587 public employment office maintained as a part of a state
588 controlled system of public employment offices in any
589 other state.

590 "Fund" means the unemployment compensation fund
591 established by this chapter.

592 "Hospital" means an institution which has been
593 licensed, certified or approved by the state department
594 of health as a hospital.

595 "Institution of higher education" means an educa-
596 tional institution which:

597 (1) Admits as regular students only individuals
598 having a certificate of graduation from a high school,
599 or the recognized equivalent of such a certificate;

600 (2) Is legally authorized in this state to provide a
601 program of education beyond high school;

602 (3) Provides an educational program for which it
603 awards a bachelor's or higher degree, or provides a
604 program which is acceptable for full credit toward such
605 a degree, or provides a program of postgraduate or
606 postdoctoral studies, or provides a program of training
607 to prepare students for gainful employment in a
608 recognized occupation; and

609 (4) Is a public or other nonprofit institution.

610 Notwithstanding any of the foregoing provisions of
611 this definition all colleges and universities in this state
612 are institutions of higher education for purposes of this
613 section.

614 "Payments" means the money required to be paid or
615 that may be voluntarily paid into the state unemploy-
616 ment compensation fund as provided in article five of
617 this chapter.

618 "Reorganized employer" means: (1) An employer that
619 alters its legal status, including changing from a sole
620 proprietorship or a partnership to a corporation; or (2)
621 an employer that otherwise changes its trade name or
622 business identity while remaining under substantially

623 the same ownership.

624 "Separated from employment" means, for the pur-
625 poses of this chapter, the total severance, whether by
626 quitting, discharge or otherwise, of the employer-
627 employee relationship.

628 "State" includes, in addition to the states of the United
629 States, Puerto Rico, District of Columbia and the Virgin
630 Islands.

631 "Successor employer" means an employer that ac-
632 quires, by sale or otherwise, the entire organization,
633 trade or business, or substantially all the assets thereof
634 of another employer.

635 "Total and partial unemployment" means:

636 (1) An individual is totally unemployed in any week
637 in which such individual is separated from employment
638 for an employing unit and during which he performs no
639 services and with respect to which no wages are payable
640 to him.

641 (2) An individual who has not been separated from
642 employment is partially unemployed in any week in
643 which due to lack of full-time work wages payable to
644 him are less than his weekly benefit amount plus sixty
645 dollars: *Provided*, That said individual must have
646 earnings of at least sixty-one dollars.

647 "Wages" means all remuneration for personal service,
648 including commissions, gratuities customarily received
649 by an individual in the course of employment from
650 persons other than the employing unit, as long as such
651 gratuities equal or exceed an amount of not less than
652 twenty dollars each month and which are required to
653 be reported to the employer by the employee, bonuses,
654 and the cash value of all remuneration in any medium
655 other than cash except for agricultural labor and
656 domestic service: *Provided*, That the term "wages" does
657 not include:

658 (1) That part of the remuneration which, after
659 remuneration equal to three thousand dollars has been
660 paid to an individual by an employer with respect to

661 employment during any calendar year, is paid after the
662 thirty-first day of December, one thousand nine hundred
663 thirty-nine, and prior to the first day of January, one
664 thousand nine hundred forty-seven, to such individual
665 by such employer with respect to employment during
666 such calendar year; or that part of the remuneration
667 which, after remuneration equal to three thousand
668 dollars with respect to employment after the year one
669 thousand nine hundred thirty-eight, has been paid to an
670 individual by an employer during any calendar year
671 after one thousand nine hundred forty-six, is paid to
672 such individual by such employer during such calendar
673 year, except that for the purposes of sections one, ten,
674 eleven and thirteen, article six of this chapter, all
675 remuneration earned by an individual in employment
676 shall be credited to the individual and included in his
677 computation of base period wages: *Provided*, That
678 notwithstanding the foregoing provisions, on and after
679 the first day of January, one thousand nine hundred
680 sixty-two, the term "wages" does not include:

681 That part of the remuneration which, after remuner-
682 ation equal to three thousand six hundred dollars has
683 been paid to an individual by an employer with respect
684 to employment during any calendar year, is paid during
685 any calendar year after one thousand nine hundred
686 sixty-one; and shall not include that part of remunera-
687 tion which, after remuneration equal to four thousand
688 two hundred dollars is paid during a calendar year after
689 one thousand nine hundred seventy-one; and shall not
690 include that part of remuneration which, after remun-
691 eration equal to six thousand dollars is paid during a
692 calendar year after one thousand nine hundred seventy-
693 seven; and shall not include that part of remuneration
694 which, after remuneration equal to eight thousand
695 dollars is paid during a calendar year after one
696 thousand nine hundred eighty, to an individual by an
697 employer or his predecessor with respect to employment
698 during any calendar year, is paid to such individual by
699 such employer during such calendar year unless that
700 part of the remuneration is subject to a tax under a
701 federal law imposing a tax against which credit may be
702 taken for contributions required to be paid into a state

703 unemployment fund. For the purposes of this subdivi-
704 sion, the term "employment" includes service constitut-
705 ing employment under any unemployment compensation
706 law of another state; or which as a condition for full tax
707 credit against the tax imposed by the Federal Unem-
708 ployment Tax Act is required to be covered under this
709 chapter; and, except that for the purposes of sections
710 one, ten, eleven and thirteen, article six of this chapter,
711 all remuneration earned by an individual in employ-
712 ment shall be credited to the individual and included in
713 his computation of base period wages: *Provided*, That
714 the remuneration paid to an individual by an employer
715 with respect to employment in another state or other
716 states upon which contributions were required of and
717 paid by such employer under an unemployment compen-
718 sation law of such other state or states shall be included
719 as a part of the remuneration equal to the amounts of
720 three thousand six hundred dollars or four thousand two
721 hundred dollars or six thousand dollars or eight
722 thousand dollars herein referred to. In applying such
723 limitation on the amount of remuneration that is
724 taxable, an employer shall be accorded the benefit of all
725 or any portion of such amount which may have been
726 paid by its predecessor or predecessors: *Provided*,
727 *however*, That if the definition of the term "wages" as
728 contained in Section 3306(b) of the Internal Revenue
729 Code of 1954, as amended, is amended: (a) Effective
730 prior to the first day of January, one thousand nine
731 hundred sixty-two, to include remuneration in excess of
732 three thousand dollars; or (b) effective on or after the
733 first day of January, one thousand nine hundred sixty-
734 two, to include remuneration in excess of three thousand
735 six hundred dollars; or (c) effective on or after the first
736 day of January, one thousand nine hundred seventy-two,
737 to include remuneration in excess of four thousand two
738 hundred dollars; or (d) effective on or after the first day
739 of January, one thousand nine hundred seventy-eight, to
740 include remuneration in excess of six thousand dollars;
741 or (e) effective on or after the first day of January, one
742 thousand nine hundred eighty, to include remuneration
743 in excess of eight thousand dollars, paid to an individual
744 by an employer under the federal Unemployment Tax

745 Act during any calendar year, wages for the purposes
746 of this definition shall include remuneration paid in a
747 calendar year to an individual by an employer subject
748 to this article or his predecessor with respect to
749 employment during any calendar year up to an amount
750 equal to the amount of remuneration taxable under the
751 federal Unemployment Tax Act;

752 (2) The amount of any payment made after the thirty-
753 first day of December, one thousand nine hundred fifty-
754 two (including any amount paid by an employer for
755 insurance or annuities, or into a fund, to provide for any
756 such payment), to, or on behalf of, an individual in its
757 employ or any of his dependents, under a plan or system
758 established by an employer which makes provision for
759 individuals in its employ generally (or for such individ-
760 uals and their dependents), or for a class or classes of
761 such individuals (or for a class or classes of such
762 individuals and their dependents), on account of: (A)
763 Retirement; or (B) sickness or accident disability
764 payments made to an employee under an approved state
765 workers' compensation law; or (C) medical or hospital-
766 ization expenses in connection with sickness or accident
767 disability; or (D) death;

768 (3) Any payment made after the thirty-first day of
769 December, one thousand nine hundred fifty-two, by an
770 employer to an individual in its employ (including any
771 amount paid by an employer for insurance or annuities,
772 or into a fund, to provide for any such payment) on
773 account of retirement;

774 (4) Any payment made after the thirty-first day of
775 December, one thousand nine hundred fifty-two, by an
776 employer on account of sickness or accident disability,
777 or medical or hospitalization expenses in connection
778 with sickness or accident disability, to, or on behalf of,
779 an individual in its employ after the expiration of six
780 calendar months following the last calendar month in
781 which such individual worked for such employer;

782 (5) Any payment made after the thirty-first day of
783 December, one thousand nine hundred fifty-two, by an
784 employer to, or on behalf of, an individual in its employ

785 or his beneficiary: (A) From or to a trust described in
786 Section 401(a) which is exempt from tax under Section
787 501(a) of the federal Internal Revenue Code at the time
788 of such payments unless such payment is made to such
789 individual as an employee of the trust as remuneration
790 for services rendered by such individual and not as a
791 beneficiary of the trust; or (B) under or to an annuity
792 plan which, at the time of such payment, is a plan
793 described in Section 403(a) of the federal Internal
794 Revenue Code;

795 (6) The payment by an employer of the tax imposed
796 upon an employer under Section 3101 of the federal
797 Internal Revenue Code with respect to remuneration
798 paid to an employee for domestic service in a private
799 home or the employer of agricultural labor;

800 (7) Remuneration paid by an employer after the
801 thirty-first day of December, one thousand nine hundred
802 fifty-two, in any medium other than cash to an individ-
803 ual in its employ for service not in the course of the
804 employer's trade or business;

805 (8) Any payment (other than vacation or sick pay)
806 made by an employer after the thirty-first day of
807 December, one thousand nine hundred fifty-two, to an
808 individual in its employ after the month in which he
809 attains the age of sixty-five, if he did not work for the
810 employer in the period for which such payment is made;

811 (9) Payments, not required under any contract of hire,
812 made to an individual with respect to his period of
813 training or service in the armed forces of the United
814 States by an employer by which such individual was
815 formerly employed; and

816 (10) Vacation pay, severance pay or savings plans
817 received by an individual before or after becoming
818 totally or partially unemployed but earned prior to
819 becoming totally or partially unemployed: *Provided,*
820 That the term totally or partially unemployed shall not
821 be interpreted to include: (A) Employees who are on
822 vacation by reason of the request of the employees or
823 their duly authorized agent, for a vacation at a specific
824 time, and which request by the employees or their agent

825 is acceded to by their employer; (B) employees who are
826 on vacation by reason of the employer's request provided
827 they are so informed at least ninety days prior to such
828 vacation; or (C) employees who are on vacation by reason
829 of the employer's request where such vacation is in
830 addition to the regular vacation and the employer
831 compensates such employee at a rate equal to or
832 exceeding their regular daily rate of pay during the
833 vacation period.

834 The reasonable cash value of remuneration in any
835 medium other than cash shall be estimated and deter-
836 mined in accordance with rules prescribed by the
837 commissioner, except for remuneration other than cash
838 for services performed in agricultural labor and
839 domestic service.

840 "Week" means a calendar week, ending at midnight
841 Saturday, or the equivalent thereof, as determined in
842 accordance with the regulations prescribed by the
843 commissioner.

844 "Weekly benefit rate" means the maximum amount of
845 benefit an eligible individual will receive for one week
846 of total unemployment.

847 "Year" means a calendar year or the equivalent
848 thereof, as determined by the commissioner.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-10. Experience ratings; decreased rates; adjustment of accounts and rates; debit balance account rates.

§21A-5-10b. Transfer of business.

§21A-5-10. Experience ratings; decreased rates; adjustment of accounts and rates; debit balance account rates.

1 (a) On and after the first day of July, one thousand
2 nine hundred eighty-one, an employer's payment shall
3 remain two and seven-tenths percent, until:

4 (1) There have elapsed thirty-six consecutive months
5 immediately preceding the computation date throughout
6 which an employer's account was chargeable with
7 benefits.

8 (2) His payments credited to his account for all past
 9 years exceed the benefits charged to his account by an
 10 amount equal to at least the percent of his average
 11 annual payroll as shown in Column B of Table II. His
 12 rate shall be the amount appearing in Column C of
 13 Table II on line with the percentage in Column B.

14 When the total assets of the fund as of the first day
 15 of January of a calendar year equal or exceed one
 16 hundred percent but are less than one hundred twenty-
 17 five percent of the average benefit payments from the
 18 trust fund for the three preceding calendar years, an
 19 employer's rate shall be the amount appearing in
 20 Column D of Table II on line with the percentage in
 21 Column B.

22 When the total assets of the fund as of the first day
 23 of January of a calendar year equal or exceed one
 24 hundred twenty-five percent but are less than one
 25 hundred fifty percent, an employer's rate shall be the
 26 amount appearing in Column E of Table II on line with
 27 the percentage in Column B.

28 When the total assets of the fund as of the first day
 29 of January of a calendar year equal or exceed one
 30 hundred fifty percent, an employer's rate shall be the
 31 amount appearing in Column F of Table II on line with
 32 the percentage in Column B.

33

TABLE II

34	Col. A	Col. B	Col. C	Col. D	Col. E	Col. F
35		Percentage of				
36		Average				
37		Annual Payroll				
38		By Which				
39	Rate	Credits Exceed	Employer's			
40	Class	Charges	Rate			
41	(1)	0.0 to 6.0	4.5	3.5	2.5	1.5
42	(2)	6.0	4.1	3.1	2.1	1.1
43	(3)	7.0	3.9	2.9	1.9	0.9
44	(4)	8.0	3.7	2.7	1.7	0.7
45	(5)	9.0	3.5	2.5	1.5	0.5
46	(6)	10.0	3.3	2.3	1.3	0.3

47	(7)	10.5	3.1	2.1	1.1	0.1
48	(8)	11.0	2.9	1.9	0.9	0.0
49	(9)	11.5	2.7	1.7	0.7	0.0
50	(10)	12.0	2.5	1.5	0.5	0.0
51	(11)	12.5	2.3	1.3	0.3	0.0
52	(12)	13.0	2.1	1.1	0.1	0.0
53	(13)	14.0	1.9	0.9	0.0	0.0
54	(14)	16.0	1.7	0.7	0.0	0.0
55	(15)	18.0 and over	1.5	0.5	0.0	0.0

56 All employer accounts in which charges for all past
57 years exceed credits for such past years shall be
58 adjusted effective the thirtieth day of June, one thousand
59 nine hundred sixty-seven, so that as of said date, for the
60 purpose of determining such employer's rate of contri-
61 bution, the credits for all past years shall be deemed to
62 equal the charges to such accounts.

63 Effective on and after the computation date of the
64 thirtieth day of June, one thousand nine hundred eighty-
65 four, the noncredited contribution identified in section
66 seven of this article shall not be added to the employer's
67 debit balance to determine the employer contribution
68 rate.

69 Effective on and after the computation date of the
70 thirtieth day of June, one thousand nine hundred sixty-
71 seven, all employers with a debit balance account in
72 which the benefits charged to their account for all past
73 years exceed the payments credited to their account for
74 such past years by an amount up to and including ten
75 percent of their average annual payroll shall make
76 payments to the unemployment compensation fund at
77 the rate of three percent of wages paid by them with
78 respect to employment; except that effective on and
79 after the first day of July, one thousand nine hundred
80 eighty-one, all employers with a debit balance account
81 in which the benefits charged to their account for all
82 past years exceed the payments credited to their account
83 for such past years by an amount up to and including
84 five percent of their average annual payroll shall make
85 payments to the unemployment compensation fund at
86 the rate of five and five-tenths percent of wages paid by
87 them with respect to employment.

88 Effective on or after the first day of July, one
89 thousand nine hundred eighty-one, all employers with a
90 debit balance account in which the benefits charged to
91 their account for all past years exceed the payments
92 credited to their account for such past years by an
93 amount in excess of five percent but less than ten
94 percent of their average annual payroll shall make
95 payments to the unemployment compensation fund at
96 the rate of six and five-tenths percent of wages paid by
97 them with respect to employment.

98 Effective on and after the computation date of the
99 thirtieth day of June, one thousand nine hundred sixty-
100 seven, all employers with a debit balance account in
101 which the benefits charged to their account for all past
102 years exceed the payments credited to their account for
103 such past years by an amount of ten percent or above
104 of their average annual payroll shall make payments to
105 the unemployment compensation fund at the rate of
106 three and three-tenths percent of wages paid by them
107 with respect to employment; except that effective on and
108 after the first day July, one thousand nine hundred
109 eighty-one, such payments to the unemployment com-
110 pensation fund shall be at the rate of seven and five-
111 tenths percent of wages paid by them with respect to
112 employment or at such other rate authorized by this
113 article.

114 “Debit balance account” for the purpose of this section
115 means an account in which the benefits charged for all
116 past years exceed the payments credited for such past
117 years.

118 “Credit balance account” for the purposes of this
119 section means an account in which the payments
120 credited for all past years exceed the benefits charged
121 for such past years.

122 Once a debit balance account rate is established for
123 an employer’s account for a year, it shall apply for the
124 entire year.

125 “Due date” means the last day of the month next
126 following a calendar quarter. In determining the
127 amount in the fund on any due date, contributions

128 received, but not benefits paid, for such month next
129 following the end of a calendar quarter shall be
130 included.

131 (b) Notwithstanding any other provision of this
132 section, every debit balance employer subject to the
133 provisions of this chapter, and any foreign corporation
134 or business entity engaged in the construction trades
135 which has not been an employer in the state of West
136 Virginia for thirty-six consecutive months ending on the
137 computation date, shall, in addition to any other tax
138 provided for in this section, pay contributions at the rate
139 of one percent surtax on wages paid by him with respect
140 to employment.

141 (c) Effective the thirtieth day of June, one thousand
142 nine hundred eighty-five, and each computation date
143 thereafter, the reserve balance of a debit balance
144 employer shall be reduced to fifteen percent if such
145 balance exceeds fifteen percent. The amount of noncre-
146 dited tax shall be reduced by an amount equal to the
147 eliminated charges. If the eliminated charges exceed the
148 amount of noncredited tax, the noncredited tax shall be
149 reduced to zero.

150 (d) On and after the first day of January, one thousand
151 nine hundred ninety-one, an employer's payment shall
152 remain two and seven-tenths percent, until:

153 (1) There have elapsed thirty-six consecutive months
154 immediately preceding the computation date throughout
155 which an employer's account was chargeable with
156 benefits; and

157 (2) The payments credited to the account for all past
158 years exceed the benefits charged to the account by an
159 amount equal to at least the percent of the average
160 annual payroll as shown in Column B of Table III. The
161 rate shall be the amount appearing in Column C of
162 Table II on line with the percentage in Column B.

163 When the total assets of the fund as of the first day
164 of January of a calendar year equal or exceed one and
165 seventy-five one-hundredths percent but are less than
166 two and twenty-five one-hundredths percent of gross

167 covered wages for the twelve-month period ending on
 168 the thirtieth day of June of the preceding year, an
 169 employer's rate shall be the amount appearing in
 170 Column D of Table III on line with the percentage in
 171 Column B.

172 When the total assets of the fund as of the first day
 173 of January of a calendar year equal or exceed two and
 174 twenty-five one-hundredths percent but are less than
 175 two and seventy-five one-hundredths percent of gross
 176 covered wages for the twelve-month period ending on
 177 the thirtieth day of June of the preceding year, an
 178 employer's rate shall be the amount appearing in
 179 Column E of Table III on line with the percentage in
 180 Column B.

181 When the total assets of the fund as of the first day
 182 of January of a calendar year equal or exceed two and
 183 seventy-five one-hundredths percent but are less than
 184 three percent of gross covered wages for the twelve-
 185 month period ending on the thirtieth day of June of the
 186 preceding year, an employer's rate shall be the amount
 187 appearing in Column F of Table III on line with the
 188 percentage in Column B.

189 When the total assets of the fund as of the first day
 190 of January of a calendar year equal or exceed three
 191 percent of gross covered wages for the twelve-month
 192 period ending on the thirtieth day of June of the
 193 preceding year, an employer's rate shall be the amount
 194 appearing in Column G of Table III on line with the
 195 percentage in Column B.

196

TABLE III

197	Col. A	Col. B	Col. C	Col. D	Col. E	Col. F	Col. G
198		Percentage of					
199		Average					
200		Annual Payroll					
201		By Which					
202	Rate	Credits Exceed	Employer's				
203	Class	Charges	Rate				
204	(1)	0.0 to 6.0	4.5	4.0	3.5	3.0	2.0
205	(2)	6.0	4.1	3.6	3.1	2.6	1.6

206	(3)	7.0	3.9	3.4	2.9	2.4	1.4
207	(4)	8.0	3.7	3.2	2.7	2.2	1.2
208	(5)	9.0	3.5	3.0	2.5	2.0	1.0
209	(6)	10.0	3.3	2.8	2.3	1.8	0.8
210	(7)	10.5	3.1	2.6	2.1	1.6	0.6
211	(8)	11.0	2.9	2.4	1.9	1.4	0.4
212	(9)	11.5	2.7	2.2	1.7	1.2	0.2
213	(10)	12.0	2.5	2.0	1.5	1.0	0.0
214	(11)	12.5	2.3	1.8	1.3	0.8	0.0
215	(12)	13.0	2.1	1.6	1.1	0.6	0.0
216	(13)	14.0	1.9	1.4	0.9	0.4	0.0
217	(14)	16.0	1.7	1.2	0.7	0.2	0.0
218	(15)	18.0 and over	1.5	1.0	0.5	0.0	0.0

219 (e) Notwithstanding any other provision of this
 220 section, all employers' rates for the calendar year
 221 beginning the first day of January, one thousand nine
 222 hundred ninety, and ending on the thirty-first day of
 223 December, one thousand nine hundred ninety, shall be
 224 the amount in Column D of Table II on line with the
 225 percentage in Column B.

§21A-5-10b. Transfer of business.

1 If a subject employer shall transfer his entire
 2 organization, trade or business, or substantially all the
 3 assets thereof, to another employer, the commissioner
 4 shall combine the contribution records and the benefit
 5 experience records of the transferring and acquiring
 6 employers. The acquiring employer's contribution rate
 7 for the remainder of the calendar year shall not be
 8 affected by the transfer but such rate shall apply to the
 9 whole of his business, including the portion acquired by
 10 the transfer, through the following thirty-first day of
 11 December. If a subject employer shall make such
 12 transfer to an employing unit which is not an employer
 13 on the date of the transfer, such subject employer's rate
 14 shall continue as the rate of the acquiring employing
 15 unit until the next effective rate date. If an employing
 16 unit acquires simultaneously the entire organization,
 17 trade or business, or substantially all the assets thereof,
 18 of two or more covered employers, the successor shall
 19 be assigned as a contribution rate the then current rate

20 of the transferring employer which had, in the calendar
21 quarter immediately preceding the date of the transfer,
22 the higher or highest payroll. If a subject employer shall
23 transfer his entire organization, trade or business, or
24 substantially all the assets thereof, to two or more
25 employers or employing units, apportionment of the
26 contribution records and benefit experience records of
27 the transferring employer shall be made between the
28 acquiring units in accordance with the ratio that the
29 total assets acquired by each transferee bears to the
30 total assets transferred by the transferring employer as
31 of the date of the transfers. The current contribution
32 rate of the transferring employer shall in such case
33 continue as the rate of each transferee who or which is
34 an employing unit until the next effective rate date; the
35 current contribution rate of each transferee who or
36 which is an employer shall continue as his or its rate
37 until the next effective rate date. For the succeeding
38 calendar year the rate of each transferee shall be
39 determined as provided in section ten of this article. As
40 to any transfers which occur prior to the thirty-first day
41 of July of the current calendar year such rate shall
42 remain effective for the balance of that calendar year:
43 *Provided*, That if the transfers occur subsequent to the
44 thirty-first day of July such rate shall remain effective
45 for the balance of that calendar year and the rate for
46 the succeeding calendar year shall, notwithstanding
47 anything to the contrary provided in section seven of this
48 article, be recomputed on the basis of the combined
49 experience of the transferring employers as of the
50 thirty-first day of July of the year in which the transfers
51 occur. In case the transferring employer is delinquent
52 in the payment of contributions or interest thereof the
53 acquiring employer shall not be entitled to any benefit
54 of the contribution record of the transferring employer
55 unless payment of such delinquent contributions and
56 interest thereon is assumed by the acquiring employer.
57 The commissioner shall upon joint request of the
58 transferor and transferee furnish the transferee a
59 statement of the amount of any contribution and interest
60 due and unpaid by the transferor. A statement so
61 furnished shall be controlling for the purposes of the

62 foregoing proviso.

63 The provisions of this section shall not apply to any
64 employer which is established through the assistance of
65 any state economic development agency irrespective of
66 the contribution rate of any related predecessor.

67 A reorganized employer shall keep the contribution
68 rate of the employing unit before the reorganization and
69 be liable for all contributions, interest and penalties
70 owed by the employing unit before the reorganization.
71 If the predecessor does not remain in business after the
72 transfer of all or part of the assets, business, organiza-
73 tion, or trade of the predecessor employer: (1) The
74 successor employer is liable for all contributions,
75 interest and penalties owed by the predecessor employer
76 at the time of the transfer; and (2) if two or more
77 successor employers receive the transfer, the successor
78 employers shall be liable in the same proportion as the
79 assets of the unit being transferred is to the total assets
80 of the predecessor employer.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-1. Eligibility qualifications.

§21A-6-10. Benefit rate — Total unemployment; annual computation and publication of rates.

§21A-6-11. Benefit rate — Partial unemployment.

§21A-6-1. Eligibility qualifications.

1 An unemployed individual shall be eligible to receive
2 benefits only if the commissioner finds that:

3 (1) He has registered for work at and thereafter
4 continues to report at an employment office in accor-
5 dance with the regulations of the commissioner;

6 (2) He has made a claim for benefits in accordance
7 with the provisions of article seven of this chapter and
8 has furnished his social security number, or numbers if
9 he has more than one such number;

10 (3) He is able to work and is available for full-time
11 work for which he is fitted by prior training or
12 experience and is doing that which a reasonably prudent
13 person in his circumstances would do in seeking work;

14 (4) He has been totally or partially unemployed
15 during his benefit year for a waiting period of one week
16 prior to the week for which he claims benefits for total
17 or partial unemployment;

18 (5) He has within his base period been paid wages for
19 employment equal to not less than two thousand two
20 hundred dollars and must have earned wages in more
21 than one quarter of his base period; and

22 (6) Beginning the first day of November, one thousand
23 nine hundred ninety-four, he participates in reemploy-
24 ment services, such as job search assistance services, if
25 the individual has been determined to be likely to
26 exhaust regular benefits and needs reemployment
27 services pursuant to a profiling system established by
28 the commissioner, unless the commissioner determines
29 that:

30 (a) The individual has completed such services; or

31 (b) There is justifiable cause for the claimant's failure
32 to participate in such services.

**§21A-6-10. Benefit rate — Total unemployment; annual
computation and publication of rates.**

1 Each eligible individual who is totally unemployed in
2 any week shall be paid benefits with respect to that
3 week at the weekly rate appearing in Column (C) in the
4 benefit table in this section, on the line on which in
5 Column (A) there is indicated the employee's wage class,
6 except as otherwise provided under the term "total and
7 partial unemployment" in section three, article one of
8 this chapter. The employee's wage class shall be
9 determined by his base period wages as shown in
10 Column (B) in the benefit table. The right of an
11 employee to receive benefits shall not be prejudiced nor
12 the amount thereof be diminished by reason of failure
13 by an employer to pay either the wages earned by the
14 employee or the contribution due on such wages. An
15 individual who is totally unemployed but earns in excess
16 of sixty dollars as a result of odd-job or subsidiary work,
17 or is paid a bonus in any benefit week shall be paid
18 benefits for such week in accordance with the provisions

19 of this chapter pertaining to benefits for partial
20 unemployment.

21 The maximum benefit for each wage class shall be
22 equal to twenty-six times the weekly benefit rate.

23 On and after the first day of July, one thousand nine
24 hundred eighty-five, and until the first day of July, one
25 thousand nine hundred eighty-nine, the maximum
26 weekly benefit rate shall be seventy percent of the
27 average weekly wage in West Virginia, which average
28 weekly wage shall not exceed three hundred twenty-two
29 dollars per week; thereafter, the maximum benefit rate
30 shall be sixty-six and two-thirds percent of the average
31 weekly wage in West Virginia.

32 Beginning on the first day of July, one thousand nine
33 hundred eighty-nine, and on the first day of July of each
34 succeeding year thereafter, the commissioner shall
35 determine the maximum weekly benefit rate upon the
36 basis of the formula set forth above and shall establish
37 wage classes as are required, increasing or decreasing
38 the amount of the base period wages required for each
39 wage class by one hundred fifty dollars, establishing the
40 weekly benefit rate for each wage class by rounded
41 dollar amount to be fifty-five percent of one fifty-second
42 of the median dollar amount of wages in the base period
43 for such wage class, and establishing the maximum
44 benefit for each wage class as an amount equal to
45 twenty-six times the weekly benefit rate. The maximum
46 weekly benefit rate, when computed by the commis-
47 sioner, in accordance with the foregoing provisions, shall
48 be rounded to the next lowest multiple of one dollar.

49 BENEFIT TABLE

50				Maximum
51				Benefit in
52				Benefit Year
53				for Total
54	A	B	C	and/or
55	Wage	Wages in	Weekly	Partial Un-
56	Class	Base Period	Benefit	employment
57		Under \$ 2,200.00	Rate	
			Ineligible	

58	1	\$ 2,200.00	—	2,349.99	\$ 24.00	\$ 624.00
59	2	2,350.00	—	2,499.99	25.00	650.00
60	3	2,500.00	—	2,649.99	27.00	702.00
61	4	2,650.00	—	2,799.99	28.00	728.00
62	5	2,800.00	—	2,949.99	30.00	780.00
63	6	2,950.00	—	3,099.99	31.00	806.00
64	7	3,100.00	—	3,249.99	33.00	858.00
65	8	3,250.00	—	3,399.99	35.00	910.00
66	9	3,400.00	—	3,549.99	36.00	936.00
67	10	3,550.00	—	3,699.99	38.00	988.00
68	11	3,700.00	—	3,849.99	39.00	1,014.00
69	12	3,850.00	—	3,999.99	41.00	1,066.00
70	13	4,000.00	—	4,149.99	43.00	1,118.00
71	14	4,150.00	—	4,299.99	44.00	1,144.00
72	15	4,300.00	—	4,449.99	46.00	1,196.00
73	16	4,450.00	—	4,599.99	47.00	1,222.00
74	17	4,600.00	—	4,749.99	49.00	1,274.00
75	18	4,750.00	—	4,899.99	51.00	1,326.00
76	19	4,900.00	—	5,049.99	52.00	1,352.00
77	20	5,050.00	—	5,199.99	54.00	1,404.00
78	21	5,200.00	—	5,349.99	55.00	1,430.00
79	22	5,350.00	—	5,499.99	57.00	1,482.00
80	23	5,500.00	—	5,649.99	58.00	1,508.00
81	24	5,650.00	—	5,799.99	60.00	1,560.00
82	25	5,800.00	—	5,949.99	62.00	1,612.00
83	26	5,950.00	—	6,099.99	63.00	1,638.00
84	27	6,100.00	—	6,249.99	65.00	1,690.00
85	28	6,250.00	—	6,399.99	66.00	1,716.00
86	29	6,400.00	—	6,549.99	68.00	1,768.00
87	30	6,550.00	—	6,699.99	70.00	1,820.00
88	31	6,700.00	—	6,849.99	71.00	1,846.00
89	32	6,850.00	—	6,999.99	73.00	1,898.00
90	33	7,000.00	—	7,149.99	74.00	1,924.00
91	34	7,150.00	—	7,299.99	76.00	1,976.00
92	35	7,300.00	—	7,449.99	78.00	2,028.00
93	36	7,450.00	—	7,599.99	79.00	2,054.00
94	37	7,600.00	—	7,749.99	81.00	2,106.00
95	38	7,750.00	—	7,899.99	82.00	2,132.00
96	39	7,900.00	—	8,049.99	84.00	2,184.00
97	40	8,050.00	—	8,199.99	85.00	2,210.00
98	41	8,200.00	—	8,349.99	87.00	2,262.00
99	42	8,350.00	—	8,499.99	89.00	2,314.00

100	43	8,500.00	—	8,649.99	90.00	2,340.00
101	44	8,650.00	—	8,799.99	92.00	2,392.00
102	45	8,800.00	—	8,949.99	93.00	2,418.00
103	46	8,950.00	—	9,099.99	95.00	2,470.00
104	47	9,100.00	—	9,249.99	97.00	2,522.00
105	48	9,250.00	—	9,399.99	98.00	2,548.00
106	49	9,400.00	—	9,549.99	100.00	2,600.00
107	50	9,550.00	—	9,699.99	101.00	2,626.00
108	51	9,700.00	—	9,849.99	103.00	2,678.00
109	52	9,850.00	—	9,999.99	104.00	2,704.00
110	53	10,000.00	—	10,149.99	106.00	2,756.00
111	54	10,150.00	—	10,299.99	108.00	2,808.00
112	55	10,300.00	—	10,449.99	109.00	2,834.00
113	56	10,450.00	—	10,599.99	111.00	2,886.00
114	57	10,600.00	—	10,749.99	112.00	2,912.00
115	58	10,750.00	—	10,899.99	114.00	2,964.00
116	59	10,900.00	—	11,049.99	116.00	3,016.00
117	60	11,050.00	—	11,199.99	117.00	3,042.00
118	61	11,200.00	—	11,349.99	119.00	3,094.00
119	62	11,350.00	—	11,499.99	120.00	3,120.00
120	63	11,500.00	—	11,649.99	122.00	3,172.00
121	64	11,650.00	—	11,799.99	124.00	3,224.00
122	65	11,800.00	—	11,949.99	125.00	3,250.00
123	66	11,950.00	—	12,099.99	127.00	3,302.00
124	67	12,100.00	—	12,249.99	128.00	3,328.00
125	68	12,250.00	—	12,399.99	130.00	3,380.00
126	69	12,400.00	—	12,549.99	131.00	3,406.00
127	70	12,550.00	—	12,699.99	133.00	3,458.00
128	71	12,700.00	—	12,849.99	135.00	3,510.00
129	72	12,850.00	—	12,999.99	136.00	3,536.00
130	73	13,000.00	—	13,149.99	138.00	3,588.00
131	74	13,150.00	—	13,299.99	139.00	3,614.00
132	75	13,300.00	—	13,449.99	141.00	3,666.00
133	76	13,450.00	—	13,599.99	143.00	3,718.00
134	77	13,600.00	—	13,749.99	144.00	3,744.00
135	78	13,750.00	—	13,899.99	146.00	3,796.00
136	79	13,900.00	—	14,049.99	147.00	3,822.00
137	80	14,050.00	—	14,199.99	149.00	3,874.00
138	81	14,200.00	—	14,349.99	150.00	3,900.00
139	82	14,350.00	—	14,499.99	152.00	3,952.00
140	83	14,500.00	—	14,649.99	154.00	4,004.00
141	84	14,650.00	—	14,799.99	155.00	4,030.00

142	85	14,800.00	—	14,949.99	157.00	4,082.00
143	86	14,950.00	—	15,099.99	158.00	4,108.00
144	87	15,100.00	—	15,249.99	160.00	4,160.00
145	88	15,250.00	—	15,399.99	162.00	4,212.00
146	89	15,400.00	—	15,549.99	163.00	4,238.00
147	90	15,550.00	—	15,699.99	165.00	4,290.00
148	91	15,700.00	—	15,849.99	166.00	4,316.00
149	92	15,850.00	—	15,999.99	168.00	4,368.00
150	93	16,000.00	—	16,149.99	170.00	4,420.00
151	94	16,150.00	—	16,299.99	171.00	4,446.00
152	95	16,300.00	—	16,449.99	173.00	4,498.00
153	96	16,450.00	—	16,599.99	174.00	4,524.00
154	97	16,600.00	—	16,749.99	176.00	4,576.00
155	98	16,750.00	—	16,899.99	177.00	4,602.00
156	99	16,900.00	—	17,049.99	179.00	4,654.00
157	100	17,050.00	—	17,199.99	181.00	4,706.00
158	101	17,200.00	—	17,349.99	182.00	4,732.00
159	102	17,350.00	—	17,499.99	184.00	4,784.00
160	103	17,500.00	—	17,649.99	185.00	4,810.00
161	104	17,650.00	—	17,799.99	187.00	4,862.00
162	105	17,800.00	—	17,949.99	189.00	4,914.00
163	106	17,950.00	—	18,099.99	190.00	4,940.00
164	107	18,100.00	—	18,249.99	192.00	4,992.00
165	108	18,250.00	—	18,399.99	193.00	5,018.00
166	109	18,400.00	—	18,549.99	195.00	5,070.00
167	110	18,550.00	—	18,699.99	196.00	5,096.00
168	111	18,700.00	—	18,849.99	198.00	5,148.00
169	112	18,850.00	—	18,999.99	200.00	5,200.00
170	113	19,000.00	—	19,149.99	201.00	5,226.00
171	114	19,150.00	—	19,299.99	203.00	5,278.00
172	115	19,300.00	—	19,449.99	204.00	5,304.00
173	116	19,450.00	—	19,599.99	206.00	5,356.00
174	117	19,600.00	—	19,749.99	208.00	5,408.00
175	118	19,750.00	—	19,899.99	209.00	5,434.00
176	119	19,900.00	—	20,049.99	211.00	5,486.00
177	120	20,050.00	—	20,199.99	212.00	5,512.00
178	121	20,200.00	—	20,349.99	214.00	5,564.00
179	122	20,350.00	—	20,499.99	216.00	5,616.00
180	123	20,500.00	—	20,649.99	217.00	5,642.00
181	124	20,650.00	—	20,799.99	219.00	5,694.00
182	125	20,800.00	—	20,949.99	220.00	5,720.00
183	126	20,950.00	—	21,099.99	222.00	5,772.00

184	127	21,100.00	—	21,249.99	223.00	5,798.00
185	128	21,250.00	—	21,399.99	225.00	5,850.00
186	129	21,400.00	—	21,549.99	227.00	5,902.00
187	130	21,550.00	—	21,699.99	228.00	5,928.00
188	131	21,700.00	—	21,849.99	230.00	5,980.00
189	132	21,850.00	—	21,999.99	231.00	6,006.00
190	133	22,000.00	—	22,149.99	233.00	6,058.00
191	134	22,150.00	—	22,299.99	235.00	6,110.00
192	135	22,300.00	—	22,449.99	236.00	6,136.00
193	136	22,450.00	—	22,599.99	238.00	6,188.00
194	137	22,600.00	—	22,749.99	239.00	6,214.00
195	138	22,750.00	—	22,899.99	241.00	6,266.00
196	139	22,900.00	—	23,049.99	243.00	6,318.00
197	140	23,050.00	—	23,199.99	244.00	6,344.00
198	141	23,200.00	—	23,349.99	246.00	6,396.00
199	142	23,350.00	—	23,499.99	247.00	6,422.00
200	143	23,500.00	—	23,649.99	249.00	6,474.00
201	144	23,650.00	—	23,799.99	250.00	6,500.00
202	145	23,800.00	—	23,949.99	252.00	6,552.00
203	146	23,950.00	—	24,099.99	254.00	6,604.00
204	147	24,100.00	—	24,249.99	255.00	6,630.00
205	148	24,250.00	—	24,399.99	257.00	6,682.00
206	149	24,400.00	—	24,549.99	258.00	6,708.00
207	150	24,550.00	—	24,699.99	260.00	6,760.00
208	151	24,700.00	—	24,849.99	262.00	6,812.00
209	152	24,850.00	—	24,999.99	263.00	6,838.00
210	153	25,000.00	—	25,149.99	265.00	6,890.00
211	154	25,150.00	—	25,299.99	266.00	6,916.00
212	155	25,300.00	—	25,449.99	268.00	6,968.00
213	156	25,450.00	—	25,599.99	269.00	6,994.00
214	157	25,600.00	—	25,749.99	271.00	7,046.00
215	158	25,750.00	—	25,899.99	273.00	7,098.00
216	159	25,900.00	—	26,049.99	274.00	7,124.00
217	160	26,050.00	—	26,199.99	276.00	7,176.00
218	161	26,200.00	—	26,349.99	277.00	7,202.00
219	162	26,350.00	—	26,499.99	279.00	7,254.00
220	163	26,500.00	—	AND OVER	280.00	7,280.00

221 After he has established such wage classes, the
 222 commissioner shall prepare and publish a table setting
 223 forth such information.

224 Average weekly wage shall be computed by dividing
 225 the number of employees in West Virginia earning

226 wages in covered employment into the total wages paid
227 to employees in West Virginia in covered employment,
228 and by further dividing said result by fifty-two, and
229 shall be determined from employer wage and contribu-
230 tion reports for the previous calendar year which are
231 furnished to the department on or before the first day
232 of June following such calendar year. The average
233 weekly wage, as determined by the commissioner, shall
234 be rounded to the next higher dollar.

235 The computation and determination of rates as
236 aforesaid shall be completed annually before the first
237 day of July, and any such new wage class, with its
238 corresponding wages in base period, weekly benefit rate,
239 and maximum benefit in a benefit year established by
240 the commissioner in the foregoing manner effective on
241 a first day of July, shall apply only to a new claim
242 established by a claimant on and after said first day of
243 July, and shall not apply to continued claims of a
244 claimant based on his new claim established before said
245 first day of July.

§21A-6-11. Benefit rate — Partial unemployment.

1 An eligible individual who is partially unemployed in
2 any week shall, upon claim therefor filed within such
3 time and in such manner as the commissioner may by
4 regulation prescribe, be paid benefits for such partial
5 unemployment in an amount equal to his weekly benefit
6 rate, as determined in accordance with section ten of
7 this article, less that part of wages from any source
8 payable or bonus paid to him with respect to such week
9 which is in excess of sixty dollars: *Provided*, That such
10 amount of benefits if not a multiple of one dollar shall
11 be computed to the next lowest multiple of one dollar.
12 Such partial benefits shall be paid to such individual for
13 the week for which he is claiming benefits without
14 regard to the provisions of subdivision (1), section one
15 of this article.

ARTICLE 7. CLAIM PROCEDURE.

**§21A-7-4. Investigation by deputy; notice and hearing
before deputy; referral of labor dispute
claims for hearing and determination by
appeal tribunal; initial determination of**

other claims by deputy; notice of findings and decision.

1 (a) A deputy shall promptly investigate all claims.

2 (b) Upon the filing of any claim for benefits, notice
3 thereof shall promptly be given by the commissioner or
4 his designee to the employer concerned, in writing. The
5 employer shall have a period of four calendar days from
6 the receipt of such notice within which to furnish to the
7 deputy or his local office initial information respecting
8 the claim and the facts and circumstances pertaining to
9 the claimant's unemployment. If, within said four-day
10 period, any party shall request a hearing before the
11 deputy, such hearing shall be held, upon notice to all
12 parties by the commissioner or his designee, either by
13 delivery in person or by mail, within five calendar days
14 of receipt of such request. Such hearing shall be
15 informal in nature, but shall afford the parties reason-
16 able opportunity to present, in person, information
17 relevant to the eligibility and disqualification of the
18 claimant.

19 (c) If it appears from the deputy's investigation and
20 from all of the information before him, that a claim
21 relates to a labor dispute or to a disqualification under
22 subdivision (4), section three, article six of this chapter,
23 the claim shall be transferred to the board for full
24 hearing and initial determination by an appeal tribunal.

25 (d) If it appears from the deputy's investigation, and
26 from all of the information before him, that a claim does
27 not relate to a labor dispute or to a disqualification
28 under subdivision (4), section three, article six of this
29 chapter, the deputy shall determine whether or not such
30 claim is valid, and, if valid, shall determine:

31 (1) The week with respect to which benefits will
32 commence;

33 (2) The amount of benefit;

34 (3) The maximum duration of benefits.

35 (e) After any finding or determination by a deputy,
36 the deputy shall promptly notify the claimant and the
37 employer of his findings and decision.

CHAPTER 176

(H. B. 4308—By Delegates Manuel, Vest and Doyle)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two hundred three, article one, chapter thirty-six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one hundred one, one hundred three and one hundred eight, article four of said chapter, all relating to the uniform common interest ownership act; increasing maximum annual assessment; modifying exemptions for making public offerings; providing for amendments to declaration by a majority of unit owners rather than by unanimous consent; requiring a showing of actual damages by a purchaser who did not receive public offering; and imposing a three-year statute of limitation on claims for damages.

Be it enacted by the Legislature of West Virginia:

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

Article

1. General Provisions.
4. Protection of Purchasers.

ARTICLE 1. GENERAL PROVISIONS.

§36B-1-203. Applicability to new common interest communities. — Exception for small and limited expense liability planned communities.

- 1 If a planned community:
 - 2 (1) Contains no more than twelve units and is not
 - 3 subject to any development rights; or
 - 4 (2) Provides, in its declaration, that the annual

5 average common expense liability of all units restricted
6 to residential purposes, exclusive of optional user fees
7 and any insurance premiums paid by the association,
8 may not exceed three hundred dollars as adjusted
9 pursuant to section 1-114 (adjustment of dollar
10 amounts), it is subject only to sections 1-105 (separate
11 titles and taxation), 1-106 (applicability of local ordinan-
12 ces, regulations and building codes) and 1-107 (eminent
13 domain) unless the declaration provides that this entire
14 chapter is applicable.

ARTICLE 4. PROTECTION OF PURCHASERS.

§36B-4-101. Applicability; waiver.

§36B-4-103. Public offering statement; general provisions.

§36B-4-108. Purchaser's right to cancel.

§36B-4-101. Applicability; waiver.

1 (a) This article applies to all units subject to this
2 chapter except as provided in subsection (b) or as
3 modified or waived by agreement of purchasers of units
4 in a common interest community in which all units are
5 restricted to nonresidential use.

6 (b) Neither a public offering statement nor a resale
7 certificate need be prepared or delivered in the case of:

8 (1) A gratuitous disposition of a unit;

9 (2) A disposition pursuant to court order;

10 (3) A disposition by a government or governmental
11 agency;

12 (4) A disposition by foreclosure or deed in lieu of
13 foreclosure;

14 (5) A disposition to a dealer;

15 (6) A disposition that may be canceled at any time and
16 for any reason by the purchaser without penalty; or

17 (7) A disposition of a unit in a planned community in
18 which the declaration limits the maximum annual
19 assessment of any unit to not more than five hundred
20 dollars, as adjusted pursuant to section 1-114 (Adjust-
21 ment of dollar amounts) if:

22 (i) The declarant has a reasonable and good faith
23 belief that the maximum stated assessment will be
24 sufficient to pay the expenses of the planned community;

25 (ii) The declaration cannot be amended to increase the
26 assessment during the period of declarant or declarant's
27 family control without the consent of a majority of unit
28 owners other than the declarant; and

29 (iii) The planned community is not subject to any
30 development rights.

§36B-4-103. Public offering statement; general provisions.

1 (a) Except as provided in subsection (b), a public
2 offering statement must contain or fully and accurately
3 disclose:

4 (1) The name and principal address of the declarant
5 and of the common interest community and a statement
6 that the common interest community is either a
7 condominium, cooperative or planned community;

8 (2) A general description of the common interest
9 community, including to the extent possible, the types,
10 number, and declarant's schedule of commencement and
11 completion of construction of buildings and amenities
12 that the declarant anticipates including in the common
13 interest community;

14 (3) The number of units in the common interest
15 community;

16 (4) Copies and a brief narrative description of the
17 significant features of the declaration, other than any
18 plats and plans and any other recorded covenants,
19 conditions, restrictions and reservations affecting the
20 common interest community; the bylaws and any rules
21 or regulations of the association; copies of any contracts
22 and leases to be signed by purchasers at closing and a
23 brief narrative description of any contracts or leases
24 that will or may be subject to cancellation by the
25 association under section 3-105;

26 (5) Any current balance sheet and a projected budget
27 for the association, either within or as an exhibit to the

28 public offering statement, for one year after the date of
29 the first conveyance to a purchaser and thereafter the
30 current budget of the association, a statement of who
31 prepared the budget and a statement of the budget's
32 assumptions concerning occupancy and inflation factors.
33 The budget must include, without limitation:

34 (i) A statement of the amount or a statement that
35 there is no amount, included in the budget as a reserve
36 for repairs and replacement;

37 (ii) A statement of any other reserves;

38 (iii) The projected common expense assessment by
39 category of expenditures for the association; and

40 (iv) The projected monthly common expense assess-
41 ment for each type of unit;

42 (6) Any services not reflected in the budget that the
43 declarant provides, or expenses that he pays and which
44 he expects may become at any subsequent time a
45 common expense of the association and the projected
46 common expense assessment attributable to each of
47 those services or expenses for the association and for
48 each type of unit;

49 (7) Any initial or special fee due from the purchaser
50 at closing, together with a description of the purpose
51 and method of calculating the fee;

52 (8) A description of any liens, defects, or encumbran-
53 ces on or affecting the title to the common interest
54 community;

55 (9) A description of any financing offered or arranged
56 by the declarant;

57 (10) The terms and significant limitations of any
58 warranties provided by the declarant, including statu-
59 tory warranties and limitations on the enforcement
60 thereof or on damages;

61 (11) A statement that:

62 (i) Within fifteen days after receipt of a public
63 offering statement a purchaser, before conveyance, may
64 cancel any contract for purchase of a unit from a

65 declarant;

66 (ii) If a declarant fails to provide a public offering
67 statement to a purchaser before conveying a unit, that
68 purchaser may recover from the declarant ten percent
69 of the sales price of the unit plus ten percent of the
70 share, proportionate to his common expense liability, of
71 any indebtedness of the association secured by security
72 interests encumbering the common interest community:
73 *Provided*, That purchaser is required to show that he or
74 she has been actually damaged as a result of the failure
75 to provide such offering statement and that his or her
76 action to recover such damage and the penalty provided
77 in this paragraph is instituted within three years from
78 the date on which purchaser's right of action shall have
79 accrued; and

80 (iii) If a purchaser receives the public offering
81 statement more than fifteen days before signing a
82 contract, he cannot cancel the contract;

83 (12) A statement of any unsatisfied judgments or
84 pending suits against the association and the status of
85 any pending suits material to the common interest
86 community of which a declarant has actual knowledge;

87 (13) A statement that any deposit made in connection
88 with the purchase of a unit will be held in an escrow
89 account until closing and will be returned to the
90 purchaser if the purchaser cancels the contract pursu-
91 ant to section 4-108, together with the name and address
92 of the escrow agent;

93 (14) Any restraints on alienation of any portion of the
94 common interest community and any restrictions: (i) On
95 use, occupancy, and alienation of the units; and (ii) on
96 the amount for which a unit may be sold or on the
97 amount that may be received by a unit owner on sale,
98 condemnation or casualty loss to the unit or to the
99 common interest community or on termination of the
100 common interest community;

101 (15) A description of the insurance coverage provided
102 for the benefit of unit owners;

103 (16) Any current or expected fees or charges to be

104 paid by unit owners for the use of the common elements
105 and other facilities related to the common interest
106 community;

107 (17) The extent to which financial arrangements have
108 been provided for completion of all improvements that
109 the declarant is obligated to build pursuant to section
110 4-119 (Declarant's Obligation to Complete and Restore);

111 (18) A brief narrative description of any zoning and
112 other land use requirements affecting the common
113 interest community;

114 (19) All unusual and material circumstances, features
115 and characteristics of the common interest community
116 and the units; and

117 (20) In a cooperative, (i) whether the unit owners will
118 be entitled, for federal, state and local income tax
119 purposes, to a pass through of deductions for payments
120 made by the association for real estate taxes and interest
121 paid the holder of a security interest encumbering the
122 cooperative; and (ii) a statement as to the effect on every
123 unit owner if the association fails to pay real estate taxes
124 or payments due the holder of a security interest
125 encumbering the cooperative.

126 (b) If a common interest community composed of not
127 more than twelve units is not subject to any development
128 rights and no power is reserved to a declarant to make
129 the common interest community part of a larger
130 common interest community, group of common interest
131 communities, or other real estate, a public offering
132 statement may but need not include the information
133 otherwise required by paragraphs (9), (10), (15), (16),
134 (17), (18) and (19) of subsection (a) and the narrative
135 descriptions of documents required by subsection (a)(4).

136 (c) A declarant promptly shall amend the public
137 offering statement to report any material change in the
138 information required by this section.

§36B-4-108. Purchaser's right to cancel.

1 (a) A person required to deliver a public offering
2 statement pursuant to section 4-102(c) shall provide a
3 purchaser with a copy of the public offering statement
4 and all amendments thereto before conveyance of the

5 unit, and not later than the date of any contract of sale.
6 Unless a purchaser is given the public offering state-
7 ment more than fifteen days before execution of a
8 contract for the purchase of a unit, the purchaser, before
9 conveyance, may cancel the contract within fifteen days
10 after first receiving the public offering statement.

11 (b) If a purchaser elects to cancel a contract pursuant
12 to subsection (a), he may do so by hand delivering notice
13 thereof to the offeror or by mailing notice thereof by
14 prepaid United States mail to the offeror or to his agent
15 for service of process. Cancellation is without penalty,
16 and all payments made by the purchaser before
17 cancellation must be refunded promptly.

18 (c) If a person required to deliver a public offering
19 statement pursuant to section 4-102(c) fails to provide a
20 purchaser to whom a unit is conveyed with that public
21 offering statement and all amendments thereto as
22 required by subsection (a), the purchaser, in addition to
23 any rights to damages or other relief, is entitled to
24 receive from that person an amount equal to ten percent
25 of the sale price of the unit, plus ten percent of the share,
26 proportionate to his common expense liability, of any
27 indebtedness of the association secured by security
28 interests encumbering the common interest community:
29 *Provided*, That purchaser must show that he or she has
30 been actually damaged as a result of the failure to
31 provide such offering statement and that his or her
32 action to recover such damage and the penalty provided
33 in this subsection is instituted within three years from
34 the date on which purchaser's right of action shall have
35 accrued.

CHAPTER 177

(H. B. 4068—By Delegates Bennett and Manuel)

[Passed March 3, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article thirteen,
chapter six of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the

veterans' preference on written examinations used to fill nonpartisan merit system positions in state government; and revising the definition of veteran to specifically include certain periods of active and reserve service and disabled veterans.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. PREFERENCE RATING OF VETERANS ON WRITTEN EXAMINATION ON NONPARTISAN MERIT BASIS.

§6-13-1. Preference rating of veterans on written examinations for positions in state departments filled under nonpartisan merit system.

1 For positions in any department or agency in which
2 positions are filled under civil service or any job
3 classification system, a preference of five points in
4 addition to the regular numerical score received on
5 examination shall be awarded to all veterans having
6 qualified for appointment by making a minimum
7 passing grade; and to all veterans awarded the purple
8 heart, or having a compensable service-connected
9 disability, as established by any proper veterans' bureau
10 or department of the federal government, an additional
11 five points shall be allowed.

12 For the purpose of this article, a person is defined as
13 a "veteran" if he or she fulfills the requirements of one
14 of the following subsections:

15 (a) Served on active duty anytime between the seventh
16 day of December, one thousand nine hundred forty-one,
17 and the first day of July, one thousand nine hundred
18 fifty-five. However, any person who was a reservist
19 called to active duty between the first day of February,
20 one thousand nine hundred fifty-five, and the fourteenth
21 day of October, one thousand nine hundred seventy-six
22 must meet condition (b) stated below;

23 (b) Served on active duty anytime between the second
24 day of July, one thousand nine hundred fifty-five, and

25 the fourteenth day of October, one thousand nine
26 hundred seventy-six, or a reservist called to active duty
27 between the first day of February, one thousand nine
28 hundred fifty-five, and the fourteenth day of October,
29 one thousand nine hundred seventy-six, and who served
30 for more than one hundred eighty days;

31 (c) Entered on active duty between the fifteenth day
32 of October, one thousand nine hundred seventy-six, and
33 the seventh day of September, one thousand nine
34 hundred eighty, or a reservist who entered on active
35 duty between the fifteenth day of October, one thousand
36 nine hundred seventy-six, and the thirteenth day of
37 October, one thousand nine hundred eighty-two, and
38 received a campaign badge or expeditionary medal or
39 is a disabled veteran; or

40 (d) Enlisted in the armed forces after the seventh day
41 of September, one thousand nine hundred eighty, or
42 entered active duty other than by enlistment on or after
43 the fourteenth day of October, one thousand nine
44 hundred eighty-two; and

45 (1) Completed twenty-four months of continuous
46 active duty or the full period called or ordered to active
47 duty, or was discharged under 10 U.S.C. 1171, or for
48 hardship under 10 U.S.C. 1173, and received or was
49 entitled to receive a campaign badge or expeditionary
50 medal; or

51 (2) Is a disabled veteran.

52 To receive veteran preference, separation from active
53 duty must have been under honorable conditions. This
54 includes honorable and general discharges. A clemency
55 discharge does not meet the requirements of the Veteran
56 Preference Act. Active duty for training in the military
57 reserve and national guard programs is not considered
58 active duty for purposes of veteran preference.

59 These awards shall be made for the benefit and
60 preference in appointment of all veterans who have
61 heretofore or who shall hereafter take examinations, but
62 shall not operate to the detriment of any person
63 heretofore appointed to a position in a department or
64 agency.

CHAPTER 178

(Com. Sub. for S. B. 360—By Senators Manchin, Wiedebusch,
Wooton, Holliday, Macnaughtan, Schoonover and Chernenko)

[Passed March 9, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article one, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to regulation of trade; and weights and measures.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. WEIGHTS AND MEASURES.

- §47-1-1. Definitions.
- §47-1-2. State standards.
- §47-1-3. Commissioner of labor to be commissioner of weights and measures; powers and duties; appointment of deputies and inspectors.
- §47-1-4. Systems of weights and measures; technical requirements for weighing and measuring devices.
- §47-1-5. Requirements for packaging and labeling.
- §47-1-6. Requirements for the method of sale of commodities.
- §47-1-7. Requirements for unit pricing.
- §47-1-8. Requirements for the registration of service persons and service agencies for commercial weighing and measuring devices.
- §47-1-9. Requirements for open dating.
- §47-1-10. Requirements for type evaluation.
- §47-1-11. Requirements for motor fuel.
- §47-1-12. Misrepresentation of quantity.
- §47-1-13. Misrepresentation of pricing.
- §47-1-14. Method of sale.
- §47-1-15. Sale from bulk.
- §47-1-16. Information required on packages.
- §47-1-17. Declarations of unit price on random weight packages.
- §47-1-18. Advertising packages for sale.
- §47-1-19. State weights and measures division.
- §47-1-20. State measurement laboratory.
- §47-1-21. Registration of business.
- §47-1-22. Civil penalties.
- §47-1-23. Criminal penalties.

§47-1-1. Definitions.

1 (a) "Commercial business" means any business, which
2 in the course of normal operation, offers or exposes
3 goods or services for sale, for the purpose of financial
4 or monetary gain.

5 (b) "Commercial location" means a physical location
6 or address where businesses conduct commercial
7 transactions. Each physical address or location consti-
8 tutes a separate "commercial location".

9 (c) "Commercial transaction" means the buying or
10 selling of goods or services.

11 (d) "Weight(s)" and/or "measure(s)" means all weights
12 and measures of every kind, instruments and devices for
13 weighing and measuring and any appliance and acces-
14 sories associated with any or all such instruments and
15 devices.

16 (e) "Weight" as used in connection with any commod-
17 ity or service means net weight. When a commodity is
18 sold by drained weight, the term means net drained
19 weight.

20 (f) "Correct" as used in connection with weights and
21 measures means conformance to all applicable require-
22 ments of this article.

23 (g) "Primary standards" means the physical standards
24 of the state that serve as the legal reference from which
25 all other standards and weights and measures are
26 derived.

27 (h) "Secondary standards" means the physical stand-
28 ards that are traceable to the primary standards
29 through comparisons, using acceptable laboratory
30 procedures, and used in the enforcement of weights and
31 measures laws and regulations.

32 (i) "Commissioner" means the commissioner of the
33 West Virginia division of labor.

34 (j) "Person" means both plural and the singular, as the
35 case demands, and includes individuals, partnerships,
36 corporations, companies, societies, associations and
37 government entities.

38 (k) "Sale from bulk" means the sale of commodities
39 when the quantity is determined at the time of sale.

40 (l) "Package", whether standard package or random
41 package, means any commodity:

42 (1) Enclosed in a container or wrapped in any manner
43 in advance of wholesale or retail sale; or

44 (2) Whose weight or measure has been determined in
45 advance of wholesale or retail sale.

46 An individual item or lot of any commodity on which
47 there is marked a selling price based on an established
48 price per unit of weight or measure shall be considered
49 a package (or packages).

50 (m) "Net weight" means the weight of a commodity
51 excluding any materials, substances or items not
52 considered to be part of the commodity. Materials,
53 substances or items not considered to be part of the
54 commodity include, but are not limited to, containers,
55 conveyances, bags, wrappers, packaging materials,
56 labels, individual piece coverings, decorative accompan-
57 iments and coupons, except that, depending on the type
58 of service rendered, packaging materials may be
59 considered to be part of the service. For example, the
60 service of shipping includes the weight of packing
61 materials.

62 (n) "Random weight package" means a package that
63 is one of a lot, shipment or delivery of packages of the
64 same commodity with no fixed pattern of weights.

65 (o) "Standard package" means a package that is one
66 of a lot, shipment or delivery of packages of the same
67 commodity with identical net contents declarations. For
68 example, one liter bottles of carbonated soda, five pound
69 bags of sugar or 9.4 ounce packages of luncheon meat.

§47-1-2. State standards.

1 Weights and measures that are traceable to the
2 United States prototype standards supplied by the
3 federal government, or approved as being satisfactory
4 by the national institute of standards and technology,
5 shall be the state primary standards of weights and

6 measures, and shall be maintained in such calibration
7 as prescribed by the national institute of standards and
8 technology. All secondary standards may be prescribed
9 by the commissioner and shall be verified upon their
10 initial receipt, and as often thereafter as deemed
11 necessary by the commissioner.

12 In addition to the state primary standards of weights
13 and measures provided in this article, there shall be
14 supplied by the state at least one complete set of copies
15 of these standards, to be known as secondary standards;
16 and such other weights, measures and apparatus as may
17 be found necessary to carry out the provisions of this
18 article, to be known as working standards. Such
19 weights, measures and apparatus shall be verified by
20 the commissioner, or at his discretion by his deputy or
21 inspectors, upon the initial receipt of such weights,
22 measures and apparatus and at least once in each year
23 thereafter, the secondary standards by direct compar-
24 ison with the primary standards, the working standards
25 by comparison with the secondary standards. When
26 found accurate upon these tests of secondary and
27 working standards, the standards shall be marked as
28 correct. The secondary standards shall be used in
29 making all comparisons of weights, measures and
30 weighing and measuring devices submitted for test in
31 the office of the commissioner, and the primary
32 standards shall be used only in verifying the primary
33 standards and for scientific purposes.

**§47-1-3. Commissioner of labor to be commissioner of
weights and measures; powers and duties;
appointment of deputies and inspectors.**

1 The state commissioner of labor is the commissioner
2 of weights and measures. He may appoint such deputies
3 and inspectors as may be required to carry out the
4 provisions and purposes of this article within the limits
5 of such appropriation as may be made by the Legisla-
6 ture for the maintenance of the work of the division of
7 labor.

8 The commissioner shall:

9 (a) Maintain traceability of the primary standards to

- 10 the national standards in the possession of the national
11 institute of standards and technology;
- 12 (b) Enforce the provisions of this article;
- 13 (c) Promulgate rules for the enforcement of this
14 article, which rules shall have the force and effect of
15 law;
- 16 (d) Establish labeling requirements, establish re-
17 quirements for the presentation of cost-per-unit infor-
18 mation, establish standards of weight, measure or count
19 and reasonable standards of fill for any packaged
20 commodity, and may establish requirements for open
21 dating information;
- 22 (e) Grant any exemptions from the provisions of this
23 article or any rule promulgated pursuant thereto when
24 appropriate to the maintenance of good consumer
25 practices within the state;
- 26 (f) Conduct investigations to ensure compliance with
27 this article;
- 28 (g) Delegate to appropriate personnel any of these
29 responsibilities for the proper administration of this
30 office;
- 31 (h) Test annually the standards of weights and
32 measures used within the state, and approve the same
33 when found to be correct;
- 34 (i) Inspect and test weights and measures kept,
35 offered or exposed for sale;
- 36 (j) Inspect and test, to ascertain if they are correct,
37 weights and measures commercially used:
- 38 (1) In determining the weight, measure or count of
39 commodities or things sold, or offered or exposed for
40 sale, on the basis of weight, measure or count; or
- 41 (2) In computing the basic charge or payment for
42 services rendered on the basis of weight, measure or
43 count;
- 44 (k) Test all weights and measures used in checking
45 the receipt or disbursement of supplies in every

46 institution, for the maintenance of which funds are
47 appropriated by the Legislature;

48 (l) Approve for use, and shall mark, such weights and
49 measures as are found to be correct, and shall reject and
50 mark as rejected such weights and measures as are
51 found to be incorrect. Weights and measures that have
52 been rejected may be seized if not corrected within the
53 time specified or if used or disposed of in a manner not
54 specifically authorized. The commissioner shall con-
55 demn and may seize and destroy the weights and
56 measures found to be incorrect that are not capable of
57 being made correct;

58 (m) Weigh, measure or inspect packaged commodities
59 kept, offered or exposed for sale, sold or in the process
60 of delivery, to determine whether they contain the
61 amounts represented and whether they are kept, offered
62 or exposed for sale in accordance with this article or
63 rules promulgated pursuant thereto. In carrying out the
64 provisions of this article, the commissioner shall employ
65 recognized sampling procedures, such as are designated
66 in national institute of standards and technology
67 handbook 133, "Checking the Net Contents of Packaged
68 Goods";

69 (n) Prescribe, by rule, the appropriate term or unit
70 of weight or measure to be used, whenever the commis-
71 sioner determines that an existing practice of declaring
72 the quantity of a commodity or setting charges for a
73 service by weight, measure, numeric count, time or
74 combination thereof, does not facilitate value compari-
75 sons by consumers, or offers an opportunity for consu-
76 mer confusion;

77 (o) Allow reasonable variations from the stated
78 quantity of contents, which shall include those caused by
79 loss or gain of moisture during the course of good
80 distribution practice or by unavoidable deviations in
81 good manufacturing practice only after the commodity
82 has entered intrastate commerce;

83 (p) Provide for the training of weights and measures
84 personnel, and may also establish minimum training
85 and performance requirements which shall then be met

86 by all weights and measures personnel, whether county,
87 municipal or state. The commissioner may adopt the
88 training standards of the national conference on weights
89 and measures national training program; and

90 (q) From time to time, randomly inspect and test the
91 quality of motor fuels offered or exposed for sale in the
92 state, to determine compliance with the provisions of
93 this article. He shall also, as budget levels provide, act
94 on complaints from consumers in this state where fuel
95 quality is in question.

96 When necessary for the enforcement of this article or
97 rules promulgated pursuant thereto, the commissioner
98 is:

99 (1) Authorized to enter any commercial premises
100 during normal business hours, without formal warrant,
101 for the purpose of enforcement of this article;

102 (2) Empowered to issue stop-use, hold and removal
103 orders with respect to any weights and measures
104 commercially used, and stop-sale, hold and removal
105 orders with respect to any packaged commodities or
106 bulk commodities kept, offered or exposed for sale;

107 (3) Empowered to seize, for use as evidence, without
108 formal warrant, any incorrect or unapproved weight,
109 measure, package or commodity found to be used,
110 retained, offered or exposed for sale or sold in violation
111 of the provisions of this article or rules promulgated
112 pursuant thereto;

113 (4) Empowered to stop any commercial vehicle and,
114 after presentation of his credentials, inspect the
115 contents, require that the person in charge of that
116 vehicle produce any documents in his possession
117 concerning the contents, and require him or her to
118 proceed with the vehicle to some specified place for
119 inspection; and

120 (5) With respect to the enforcement of this article, the
121 commissioner is hereby vested with special police
122 powers, and is authorized to arrest, without formal
123 warrant, any violator of this article.

§47-1-4. Systems of weights and measures; technical requirements for weighing and measuring devices.

1 The system of weights and measures in customary use
2 in the United States and the metric system of weights
3 and measures are jointly recognized, and either one or
4 both of these systems shall be used for all commercial
5 purposes in the state. The definitions of basic units of
6 weight and measure, the tables and measure, and
7 weights and measures equivalents as published by the
8 national institute of standards and technology are
9 recognized and shall govern weighing and measuring
10 equipment and transactions in the state.

11 The specifications, tolerances and other technical
12 requirements for commercial, law enforcement, data
13 gathering and other weighing and measuring devices as
14 adopted by the national conference on weights and
15 measures and published in national institute of stand-
16 ards and technology handbook 44, "Specifications,
17 Tolerances, and Other Technical Requirements for
18 Weighing and Measuring Devices" and supplements
19 thereto or revisions thereof, shall apply to weighing and
20 measuring devices in the state, except insofar as
21 modified or rejected by legislative rule.

§47-1-5. Requirements for packaging and labeling.

1 The uniform packaging and labeling regulation as
2 adopted by the national conference on weights and
3 measures and published in the national institute of
4 standards and technology handbook 130, "Uniform Laws
5 and Regulations" and supplements thereto or revisions
6 thereof, shall apply to packaging and labeling in the
7 state, except insofar as modified or rejected by legisla-
8 tive rule.

§47-1-6. Requirements for the method of sale of commodities.

1 The uniform regulation for the method of sale of
2 commodities as adopted by the national conference on
3 weights and measures and published in the national
4 institute of standards and technology handbook 130,

5 "Uniform Laws and Regulations" and supplements
6 thereto and revisions thereof, shall apply to the method
7 of sale of commodities in the state, except insofar as
8 modified or rejected by legislative rule.

§47-1-7. Requirements for unit pricing.

1 The uniform unit pricing regulation as adopted by the
2 national conference on weights and measures and
3 published in national institute of standards and technol-
4 ogy handbook 130, "Uniform Laws and Regulations" and
5 supplements thereto and revisions thereof, shall apply to
6 unit pricing in the state, except insofar as modified or
7 rejected by legislative rule.

**§47-1-8. Requirements for the registration of service
persons and service agencies for commercial
weighing and measuring devices.**

1 The uniform regulation for the voluntary registration
2 of service persons and service agencies for commercial
3 weighing and measuring devices as adopted by the
4 national conference of weights and measures and
5 published in national institute of standards and technol-
6 ogy handbook 130, "Uniform Laws and Regulations" and
7 supplements thereto or revisions thereof, shall apply to
8 the registration of service persons and service agencies
9 in the state, except insofar as modified or rejected by
10 legislative rule.

§47-1-9. Requirements for open dating.

1 The uniform open dating regulation as adopted by the
2 national conference on weights and measures and
3 published in national institute of standards and technol-
4 ogy handbook 130, "Uniform Laws and Regulations" and
5 supplements thereto and revisions thereof, shall apply to
6 open dating in the state, except insofar as modified or
7 rejected by legislative rule.

§47-1-10. Requirements for type evaluation.

1 The uniform regulation for national type evaluation
2 as adopted by the national conference on weights and
3 measures and published in national institute of stand-
4 ards and technology handbook 130, "Uniform Laws and

5 Regulations” and supplements thereto and revisions
6 thereof, shall apply to type evaluation in the state,
7 except insofar as modified or rejected by legislative rule.

§47-1-11. Requirements for motor fuel.

1 The uniform regulation for motor fuel as adopted by
2 the national conference on weights and measures and
3 published in national institute of standards and technol-
4 ogy handbook 130, “Uniform Laws and Regulations” and
5 supplements thereto and revisions thereof, shall apply to
6 motor fuel quality in the state, except insofar as
7 modified or rejected by legislative rule.

§47-1-12. Misrepresentation of quantity.

1 No person may:

2 (a) Sell, offer or expose for sale less than the quantity
3 represented; nor

4 (b) Take more than the represented quantity when, as
5 buyer, he furnishes the weight or measure by means of
6 which the quantity is determined; nor

7 (c) Represent the quantity in any manner calculated
8 or tending to mislead or in any way deceive another
9 person.

§47-1-13. Misrepresentation of pricing.

1 No person may misrepresent the price of any com-
2 modity or service sold, offered, exposed or advertised for
3 sale by weight, measure or count, nor represent the
4 price in any manner calculated or tending to mislead or
5 in any way deceive a person.

§47-1-14. Method of sale.

1 Except as otherwise provided by the commissioner or
2 by firmly established trade custom and practice:

3 (a) Commodities in liquid form shall be sold by liquid
4 measure or by weight; and

5 (b) Commodities not in liquid form shall be sold by
6 weight, by measure or by count.

7 The method of sale shall provide accurate and

- 8 adequate quantity information that permits the buyer to
9 make price and quantity comparisons.

§47-1-15. Sale from bulk.

1 All bulk sales in which the buyer and seller are not
2 both present to witness the measurement, all bulk
3 deliveries of heating fuel and all other bulk sales
4 specified by rule of the commissioner, shall be accom-
5 panied by a delivery ticket containing the following
6 information:

7 (a) The name and address of the buyer and seller;

8 (b) The date delivered;

9 (c) The quantity delivered and the quantity upon
10 which the price is based, if this differs from the
11 delivered quantity, for example, when temperature
12 compensated sales are made;

13 (d) The unit price, unless otherwise agreed upon by
14 both buyer and seller;

15 (e) The identity in the most descriptive terms com-
16 mercially practicable, including any quality representa-
17 tion made in connection with the sale; and

18 (f) The count of individually wrapped packages, if
19 more than one, in the instance of commodities bought
20 from bulk but delivered in packages.

§47-1-16. Information required on packages.

1 Except as otherwise provided in this article or by rule
2 promulgated pursuant thereto, any package whether a
3 random package or a standard package, kept for the
4 purpose of sale or offered or exposed for sale shall bear
5 on the outside of the package a definite, plain and
6 conspicuous declaration of:

7 (a) The identity of the commodity in the package,
8 unless the same can easily be identified through the
9 wrapper or container;

10 (b) The quantity of contents in terms of weight,
11 measure or count; and

12 (c) The name and place of business of the manufac-

13 turer, packer or distributor, in the case of any package
14 kept, offered, or exposed for sale or sold in any place
15 other than on the premises where packed.

§47-1-17. Declarations of unit price on random weight packages.

1 In addition to the declarations required by section
2 fifteen of this article, any package being one of a lot
3 containing random weights of the same commodity, at
4 the time it is offered or exposed for sale at retail, shall
5 bear on the outside of the package a plain and conspic-
6 uous declaration of the price per kilogram or pound and
7 the total selling price of the package.

§47-1-18. Advertising packages for sale.

1 Whenever a packaged commodity is advertised in any
2 manner with the retail price stated, there shall be
3 closely and conspicuously associated with the retail price
4 a declaration of quantity as is required by law or rule
5 to appear on the package. Where a dual declaration is
6 required, only the declaration that sets forth the
7 quantity in terms of the smaller unit of weight or
8 measure need appear in the advertisement.

§47-1-19. State weights and measures division.

1 There shall be a state division of weights and
2 measures located for administrative purposes within the
3 division of labor. The division is charged with, but not
4 limited to, performing the following functions on behalf
5 of the citizens of the state:

6 (a) Assuring that weights and measures in commer-
7 cial service with the state are suitable for their intended
8 use, properly installed and accurate and are so main-
9 tained by their owner or user;

10 (b) Preventing unfair or deceptive dealing by weight
11 or measure in any commodity or service advertised,
12 packaged, sold or purchased within the state;

13 (c) Making available to all users of physical standards
14 or weighing and measuring equipment who are regis-
15 tered under the provisions of section twenty-one of this
16 article, the precision calibration and related metrolog-

17 ical certification capabilities of the weights and mea-
18 sures facilities of the division;

19 (d) Promoting uniformity, to the extent practicable
20 and desirable, between weights and measures require-
21 ments of the state and those of other states and federal
22 agencies;

23 (e) Encouraging desirable economic growth while
24 protecting the consumer through the adoption by rule
25 of weights and measures requirements as necessary to
26 assure equity among buyers and sellers.

§47-1-20. State measurement laboratory.

1 The commissioner shall operate and maintain a state
2 measurement laboratory certified and approved by the
3 national institute of standards and technology. The
4 laboratory shall be used to both house and maintain the
5 state primary standards and secondary standards as
6 traceable to the national standards and to test or
7 calibrate any secondary or working standards which are
8 submitted for test as required by this article.

9 The commissioner shall provide such personnel as
10 required to operate the laboratory in a manner which
11 is consistent with the needs of this article. Personnel
12 shall be trained and certified to perform all such
13 calibrations and tests as required by the national
14 institute of standards and technology to maintain
15 traceability of the state standards to national standards,
16 and to properly maintain the laboratory facility as
17 certified and traceable to the national institute of
18 standards and technology.

§47-1-21. Registration of business.

1 On or before the first day of October, one thousand
2 nine hundred ninety-four, every commercial business in
3 the state which, in the course of conducting business,
4 utilizes weights, measures and weighing and measuring
5 devices covered by this article shall obtain a certificate
6 of device registration for the commercial devices
7 covered by this article, from the division. After the first
8 day of October, one thousand nine hundred ninety-four,
9 it shall be unlawful in the state to conduct business

10 subject to the provisions of this article without having
11 first obtained a certificate of device registration from
12 the division. Application for a certificate of device
13 registration shall be made on a form provided by the
14 division.

15 A certificate of device registration is valid for twelve
16 months from the date of issue. The certificate of device
17 registration shall be posted within the place of business.

18 Application for the renewal of a certificate of device
19 registration shall be made on a form provided by the
20 division at least thirty days prior to the renewal due
21 date. The commissioner may deny the renewal of device
22 registration for cause where the cause is the result of
23 the conviction of the applicant, in a court of competent
24 jurisdiction, for a violation of this article.

§47-1-22. Civil penalties.

1 (a) No person shall:

2 (1) Use or have in possession for use in commerce any
3 incorrect weight or measure;

4 (2) Sell or offer for sale for use in commerce any
5 incorrect weight or measure;

6 (3) Remove any tag, seal or mark from any weight or
7 measure, without specific authorization from the
8 weights and measures section; or

9 (4) Violate any provisions of this article or rules
10 promulgated under it, not defined in subsection (a),
11 section twenty-three of this article.

12 (b) Any person who violates subsection (a) of this
13 section or any rule promulgated by the commissioner
14 may be assessed a civil penalty by the commissioner,
15 which penalty shall not be more than one thousand
16 dollars for each violation. Each violation shall constitute
17 a separate offense. In determining the amount of the
18 penalty, the commissioner shall consider the person's
19 history of previous violations, the appropriateness of
20 such penalty to the size of the business of the person
21 charged, the gravity of the violation and the demon-
22 strated good faith of the person charged in attempting
23 to achieve rapid compliance after notification of a

24 violation.

25 A civil penalty may be assessed by the commissioner
26 only after the commissioner shall have given at least ten
27 days notice to the person. Notice shall be in writing,
28 shall contain a short, plain statement of the matter
29 asserted, and shall designate a time and place for a
30 hearing where the person may show cause why the civil
31 penalty should not be imposed. Notice of hearing shall
32 be sent by registered mail. The person may, at the time
33 designated for the hearing, produce evidence on his or
34 her behalf and be represented by council.

35 Any person aggrieved by a decision of the commis-
36 sioner shall have the right to a contested case hearing
37 under the provisions of article five, chapter twenty-nine-
38 a of this code, et seq.

§47-1-23. Criminal penalties.

1 (a) No person shall:

2 (1) Hinder or obstruct any weights and measures
3 official in the performance of his duties;

4 (2) Impersonate in any way the commissioner, his
5 assistants, deputies or inspectors;

6 (3) Use in commerce any weight or measure which
7 has not been inspected and approved by the commis-
8 sioner of weights and measures of his or her authorized
9 inspectors or deputies; or

10 (4) Use or have in his or her possession for the purpose
11 of selling or using any device or instrument to be used
12 to or calculated to falsify any weight or measure.

13 (b) Any person who, by himself or herself or by his
14 or her servant or agent, or as the servant or agent of
15 another person, knowingly violates subsection (a) of this
16 section, is guilty of a misdemeanor, and, upon a first
17 conviction, shall be fined not more than one hundred
18 dollars, or imprisoned for not more than ninety days, or
19 both fined and imprisoned; and upon a second or
20 subsequent conviction, he or she shall be fined not less
21 than one hundred nor more than one thousand dollars,
22 or imprisoned for not more than six months, or both
23 fined and imprisoned.

CHAPTER 179

(S. B. 232—By Senator Wooton)

[Passed March 1, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article five, chapter forty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reducing the time to appeal an order or judgment of the county commission admitting or refusing to admit a will to probate.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PRODUCTION, PROBATE AND RECORD OF WILLS.

§41-5-7. Appeal from probate order — When to be taken; procedure.

1 Any person feeling himself aggrieved by any order or
2 judgment of the county commission admitting or
3 refusing to admit any will to probate may, within three
4 months, or, if such a person be under any disability
5 within three months after such disability ceases, file his
6 petition in the circuit court of such county, or before the
7 clerk thereof, appealing to the circuit court from such
8 order or judgment, stating in the petition the grounds
9 of appeal and the parties interested in the probate of the
10 will; and, in case of appeal, it shall be the duty of the
11 clerk of the county commission promptly to transmit to
12 the clerk of the circuit court, the will and all original
13 papers filed or used in the proceedings for probate,
14 together with copies of all orders made therein. The
15 clerk of the circuit court shall, upon the filing of such
16 petition, issue process thereon, and the case shall be
17 proceeded in, tried and determined in such court,
18 regardless of the proceedings before the county commis-
19 sion, and in the same manner and in all respects as if
20 the application for such probate had been originally
21 made to the circuit court.

CHAPTER 180

(S. B. 246—By Senator Wooton)

[Passed March 2, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article five, chapter forty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reducing the appeal periods for impeaching or establishing a will.

Be it enacted by the Legislature of West Virginia:

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

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.

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 six months 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 six months from the date of such
20 order of the county commission. If no such complaint be
21 filed within the time prescribed, the judgment or order

22 shall 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.

CHAPTER 181

(S. B. 410—By Senators Burdette, Mr. President, and Boley)
 [By Request of the Executive]

[Passed March 10, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to repeal section four-b, article five, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one-c, six, six-d, seven-b, nine and fourteen, article four of said chapter, all relating to workers' compensation; obtaining of wage information; correcting reference to unemployment compensation division; minimum level of temporary total disability benefits; exceptions; the information to be used in determining wages; extending the termination provisions related to trial return to work and to the vocational rehabilitation program; removing the expired time period for the adoption of legislative rules; and repealing the requirement that certain jurisdictional decisions be appealed directly to the appeal board.

Be it enacted by the Legislature of West Virginia:

That section four-b, article five, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one-c, six, six-d, seven-b, nine and fourteen, article four of said chapter be amended and reenacted, all to read as follows:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

- §23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of commissioner to collect payments improperly made.
- §23-4-6. Classification of and criteria for disability benefits.
- §23-4-6d. Benefits payable to part-time employees.
- §23-4-7b. Trial return to work.
- §23-4-9. Physical and vocational rehabilitation.

§23-4-14. Computation of benefits.

§23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of commissioner to collect payments improperly made.

1 (a) In any claim for benefits under this chapter, the
2 commissioner shall determine whether the claimant has
3 sustained a compensable injury within the meaning of
4 section one of this article and he shall enter an order
5 giving all parties immediate notice of such decision. Any
6 party shall have the right to protest the order of the
7 commissioner and obtain an evidentiary hearing as
8 provided in section one, article five of this chapter.

9 (b) Where it appears from the employer's report, or
10 from proper medical evidence, that a compensable
11 injury will result in a disability which will last longer
12 than three days as provided in section five of this article,
13 the commissioner may immediately enter an order
14 commencing the payment of temporary total disability
15 benefits to the claimant in the amounts provided for in
16 sections six and fourteen of this article, and the payment
17 of the expenses provided for in subsection (a), section
18 three of this article, relating to said injury, without
19 waiting for the expiration of the thirty-day period
20 during which objections may be filed to such findings
21 as provided in section one, article five of this chapter.
22 The commissioner shall enter an order commencing the
23 payment of temporary total disability or medical
24 benefits within fifteen days of receipt of either the
25 employee's or employer's report of injury, whichever is
26 received sooner, and also upon receipt of either a proper
27 physician's report or any other information necessary
28 for a determination. The commissioner shall give to the
29 parties immediate notice of any order granting tempor-
30 ary total disability or medical benefits.

31 (c) The commissioner may enter orders granting
32 temporary total disability benefits upon receipt of
33 medical evidence justifying the payment of such
34 benefits. In no claim shall the commissioner enter an

35 order granting prospective temporary total disability
36 benefits for a period of more than ninety days: *Provided,*
37 That when the commissioner determines that the
38 claimant remains disabled beyond the period specified
39 in the prior order granting temporary total disability
40 benefits, the commissioner shall enter an order contin-
41 uing the payment of temporary total disability benefits
42 for an additional period not to exceed ninety days, and
43 shall give immediate notice to all parties of such
44 decision.

45 (d) Upon receipt of the first report of injury in claim,
46 the commissioner shall request from the employer or
47 employers any wage information necessary for deter-
48 mining the rate of benefits to which the employee is
49 entitled. If an employer does not furnish the commis-
50 sioner with this information within fifteen days from the
51 date the commissioner received the first report of injury
52 in the case, the employee shall be paid temporary total
53 disability benefits for lost time at the rate the commis-
54 sioner obtains from reports made to him or her pursuant
55 to section eleven, article ten, chapter twenty-one-a of this
56 code. If no such wages have been reported, then the
57 commissioner shall make such payments at the rate he
58 or she believes would be justified by the usual rate of
59 pay for the occupation of the injured employee. The
60 commissioner shall adjust the rate of benefits both
61 retroactively and prospectively upon receipt of proper
62 wage information. The commissioner shall have access
63 to all wage information in the possession of any state
64 agency, including wage information received by the
65 unemployment compensation division under said chap-
66 ter, pertinent to such determination.

67 (e) Upon a finding of the commissioner that a
68 claimant who has sustained a previous compensable
69 injury which has been closed by any order of the
70 commissioner, or by the claimant's return to work,
71 suffers further temporary total disability or requires
72 further medical or hospital treatment resulting from the
73 compensable injury, the commissioner shall imme-
74 diately enter an order commencing the payment of
75 temporary total disability benefits to the claimant in the

76 amount provided for in sections six and fourteen of this
77 article, and the expenses provided for in subsection (a),
78 section three of this article, relating to said disability,
79 without waiting for the expiration of the thirty-day
80 period during which objections may be filed to such
81 findings as provided in section one, article five of this
82 chapter. The commissioner shall give immediate notice
83 to the parties of his order.

84 (f) Where the employer is a subscriber to the workers'
85 compensation fund under the provisions of article three
86 of this chapter, and upon the findings aforesaid, the
87 commissioner shall mail all workers' compensation
88 checks paying temporary total disability benefits
89 directly to the claimant and not to the employer for
90 delivery to the claimant.

91 (g) Where the employer has elected to carry his own
92 risk under section nine, article two of this chapter, and
93 upon the findings aforesaid, the commissioner shall
94 immediately issue a pay order directing the employer
95 to pay such amounts as are due the claimant for
96 temporary total disability benefits. A copy of the order
97 shall be sent to the claimant. The self-insured employer
98 shall commence such payments by mailing or delivering
99 the payments directly to the employee within ten days
100 of the date of the receipt of the pay order by the
101 employer. If the self-insured employer believes that his
102 employee is entitled to benefits, he may start payments
103 before receiving a pay order from the commissioner.

104 (h) In the event that an employer files a timely
105 objection to any order of the commissioner with respect
106 to compensability, or any order denying an application
107 for modification with respect to temporary total
108 disability benefits, or with respect to those expenses
109 outlined in subsection (a), section three of this article,
110 the commissioner shall continue to pay to the claimant
111 such benefits and expenses during the period of such
112 disability. Where it is subsequently found by the
113 commissioner that the claimant was not entitled to
114 receive such temporary total disability benefits or
115 expenses, or any part thereof, so paid, the commissioner
116 shall, when the employer is a subscriber to the fund,

117 credit said employer's account with the amount of the
118 overpayment; and, when the employer has elected to
119 carry its own risk, the commissioner shall refund to such
120 employer the amount of the overpayment. The amounts
121 so credited to a subscriber or repaid to a self insurer
122 shall be charged by the commissioner to the surplus
123 fund created in section one, article three of this chapter.

124 (i) When the employer has protested the compensabil-
125 ity or applied for modification of a temporary total
126 disability benefit award or expenses and the final
127 decision in such case determines that the claimant was
128 not entitled to such benefits or expenses, the amount of
129 such benefits or expenses shall be considered overpaid.
130 The commissioner may only recover the amount of such
131 benefits or expenses by withholding, in whole or in part,
132 as determined by the commissioner, future permanent
133 partial disability benefits payable to the individual in
134 the same or other claims and credit such amount against
135 the overpayment until it is repaid in full.

136 (j) In the event that the commissioner finds that based
137 upon the employer's report of injury, the claim is not
138 compensable, the commissioner shall provide a copy of
139 such employer's report in addition to the order denying
140 the claim.

§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. In no
46 event, however, shall such minimum weekly benefits
47 exceed the level of benefits determined by use of the
48 then applicable federal minimum hourly wage: *Pro-*
49 *vided*, That any claimant receiving permanent total
50 disability benefits, permanent partial disability benefits
51 or dependents' benefits prior to the first day of July, one
52 thousand nine hundred ninety-four, shall not have his or
53 her benefits reduced based upon the requirement herein
54 that the minimum weekly benefit shall not exceed the
55 applicable federal minimum hourly wage.

56 (c) Subdivision (b) of this section shall be limited as
57 follows: Aggregate award for a single injury causing
58 temporary disability shall be for a period not exceeding
59 two hundred eight weeks.

60 (d) If the injury causes permanent total disability,
61 benefits shall be payable during the remainder of life
62 at the maximum or minimum weekly benefits as
63 provided in subdivision (b) of this section for temporary
64 total disability. A permanent disability of eighty-five
65 percent or more shall entitle the employee to a rebut-
66 table presumption of a permanent total disability for the
67 purpose of this section. Under no circumstances shall
68 the commissioner grant an additional permanent
69 disability award to a claimant receiving a permanent
70 total disability award, or to a claimant who has
71 previously been granted permanent disability awards
72 totaling eighty-five percent or more and has been
73 granted a permanent total disability award: *Provided,*
74 That if any claimant thereafter sustains another
75 compensable injury and has permanent partial disabili-
76 ty resulting therefrom, the total permanent disability
77 award benefit rate shall be computed at the highest
78 benefit rate justified by any of the compensable injuries,
79 and the cost of any increase in the permanent total
80 disability benefit rate shall be paid from the second
81 injury reserve created by section one, article three of
82 this chapter. In any claim in which a claimant aggre-
83 gates permanent partial disability awards in the amount
84 of eighty-five percent or more after the effective date of
85 this subsection, the claimant shall be entitled to a
86 permanent total disability award unless the evidence
87 establishes that the claimant is not permanently and
88 totally disabled pursuant to subdivision (n) of this
89 section.

90 (e) If the injury causes permanent disability less than
91 permanent total disability, the percentage of disability
92 to total disability shall be determined and the award
93 computed on the basis of four weeks' compensation for
94 each percent of disability determined, at the following
95 maximum or minimum benefit rates: Seventy percent
96 of the average weekly wage earnings, wherever earned,

97 of the injured employee, at the date of injury, not to
98 exceed the percentage of the average weekly wage in
99 West Virginia, as follows: On or after the first day of
100 July, one thousand nine hundred sixty-nine, forty-five
101 percent; on or after the first day of July, one thousand
102 nine hundred seventy, fifty percent; on or after the first
103 day of July, one thousand nine hundred seventy-one,
104 fifty-five percent; on or after the first day of July, one
105 thousand nine hundred seventy-three, sixty percent; on
106 or after the first day of July, one thousand nine hundred
107 seventy-five, sixty-six and two-thirds percent.

108 The minimum weekly benefit under this subdivision
109 shall be as provided in subdivision (b) of this section for
110 temporary total disability.

111 (f) If the injury results in the total loss by severance
112 of any of the members named in this subdivision, the
113 percentage of disability shall be determined by the
114 commissioner, with the following table establishing the
115 minimum percentage of disability. In determining the
116 percentage of disability, the commissioner may be
117 guided by, but shall not be limited to, the disabilities
118 enumerated in the following table, and in no event shall
119 the disability be less than that specified in the following
120 table:

121 The loss of a great toe shall be considered a ten
122 percent disability.

123 The loss of a great toe (one phalanx) shall be
124 considered a five percent disability.

125 The loss of other toes shall be considered a four
126 percent disability.

127 The loss of other toes (one phalanx) shall be consi-
128 dered a two percent disability.

129 The loss of all toes shall be considered a twenty-five
130 percent disability.

131 The loss of forepart of foot shall be considered a thirty
132 percent disability.

133 The loss of a foot shall be considered a thirty-five
134 percent disability.

135 The loss of a leg shall be considered a forty-five
136 percent disability.

137 The loss of thigh shall be considered a fifty percent
138 disability.

139 The loss of thigh at hip joint shall be considered a
140 sixty percent disability.

141 The loss of a little or fourth finger (one phalanx) shall
142 be considered a three percent disability.

143 The loss of a little or fourth finger shall be considered
144 a five percent disability.

145 The loss of ring or third finger (one phalanx) shall be
146 considered a three percent disability.

147 The loss of ring or third finger shall be considered a
148 five percent disability.

149 The loss of middle or second finger (one phalanx) shall
150 be considered a three percent disability.

151 The loss of middle or second finger shall be considered
152 a seven percent disability.

153 The loss of index or first finger (one phalanx) shall
154 be considered a six percent disability.

155 The loss of index or first finger shall be considered
156 a ten percent disability.

157 The loss of thumb (one phalanx) shall be considered
158 a twelve percent disability.

159 The loss of thumb shall be considered a twenty
160 percent disability.

161 The loss of thumb and index finger shall be consi-
162 dered a thirty-two percent disability.

163 The loss of index and middle finger shall be consi-
164 dered a twenty percent disability.

165 The loss of middle and ring finger shall be considered
166 a fifteen percent disability.

167 The loss of ring and little finger shall be considered
168 a ten percent disability.

- 169 The loss of thumb, index and middle finger shall be
170 considered a forty percent disability.
- 171 The loss of index, middle and ring finger shall be
172 considered a thirty percent disability.
- 173 The loss of middle, ring and little finger shall be
174 considered a twenty percent disability.
- 175 The loss of four fingers shall be considered a thirty-
176 two percent disability.
- 177 The loss of hand shall be considered a fifty percent
178 disability.
- 179 The loss of forearm shall be considered a fifty-five
180 percent disability.
- 181 The loss of arm shall be considered a sixty percent
182 disability.
- 183 The total and irrecoverable loss of the sight of one eye
184 shall be considered a thirty-three percent disability. For
185 the partial loss of vision in one, or both eyes, the
186 percentages of disability shall be determined by the
187 commissioner, using as a basis the total loss of one eye.
- 188 The total and irrecoverable loss of the hearing of one
189 ear shall be considered a twenty-two and one-half
190 percent disability. The total and irrecoverable loss of
191 hearing of both ears shall be considered a fifty-five
192 percent disability.
- 193 For the partial loss of hearing in one, or both ears,
194 the percentage of disability shall be determined by the
195 commissioner, using as a basis the total loss of hearing
196 in both ears.
- 197 Should a claimant sustain a compensable injury
198 which results in the total loss by severance of any of the
199 bodily members named in this subdivision, die from
200 sickness or noncompensable injury before the commis-
201 sioner makes the proper award for such injury, the
202 commissioner shall make such award to claimant's
203 dependents as defined in this chapter, if any; such
204 payment to be made in the same installments that would
205 have been paid to claimant if living: *Provided, That no*

206 payment shall be made to any surviving spouse of such
207 claimant after his or her remarriage, and that this
208 liability shall not accrue to the estate of such claimant
209 and shall not be subject to any debts of, or charges
210 against, such estate.

211 (g) Should a claimant to whom has been made a
212 permanent partial award of from one percent to eighty-
213 four percent, both inclusive, die from sickness or
214 noncompensable injury, the unpaid balance of such
215 award shall be paid to claimant's dependents as defined
216 in this chapter, if any; such payment to be made in the
217 same installments that would have been paid to claimant
218 if living: *Provided*, That no payment shall be made
219 to any surviving spouse of such claimant after his or her
220 remarriage, and that this liability shall not accrue to the
221 estate of such claimant and shall not be subject to any
222 debts of, or charges against, such estate.

223 (h) For the purposes of this chapter, a finding of the
224 occupational pneumoconiosis board shall have the force
225 and effect of an award.

226 (i) The award for permanent disabilities intermediate
227 to those fixed by the foregoing schedule and permanent
228 disability of from one percent to eighty-four percent
229 shall be the same proportion and shall be computed and
230 allowed by the commissioner.

231 (j) The percentage of all permanent disabilities other
232 than those enumerated in subdivision (f) of this section
233 shall be determined by the commissioner, and awards
234 made in accordance with the provisions of subdivision
235 (d) or (e) of this section. Where there has been an injury
236 to a member as distinguished from total loss by
237 severance of that member, the commissioner in deter-
238 mining the percentage of disability may be guided by,
239 but shall not be limited to, the disabilities enumerated
240 in subdivision (f) of this section.

241 (k) Compensation payable under any subdivision of
242 this section shall not exceed the maximum nor be less
243 than the weekly benefits specified in subdivision (b) of
244 this section.

245 (l) Except as otherwise specifically provided in this
246 chapter, temporary total disability benefits payable
247 under subdivision (b) of this section shall not be
248 deductible from permanent partial disability awards
249 payable under subdivision (e) or (f) of this section.
250 Compensation, either temporary total or permanent
251 partial, under this section shall be payable only to the
252 injured employee and the right thereto shall not vest in
253 his or her estate, except that any unpaid compensation
254 which would have been paid or payable to the employee
255 up to the time of his or her death, if he or she had lived,
256 shall be paid to the dependents of such injured employee
257 if there be such dependents at the time of death.

258 (m) The following permanent disabilities shall be
259 conclusively presumed to be total in character:

260 Loss of both eyes or the sight thereof.

261 Loss of both hands or the use thereof.

262 Loss of both feet or the use thereof.

263 Loss of one hand and one foot or the use thereof.

264 In all other cases permanent disability shall be
265 determined by the commissioner in accordance with the
266 facts in the case and award made in accordance with
267 the provisions of subdivision (d) or (e) of this section.

268 (n) A disability which renders the injured employee
269 unable to engage in substantial gainful activity requir-
270 ing skills or abilities comparable to those of any gainful
271 activity in which he or she has previously engaged with
272 some regularity and over a substantial period of time
273 shall be considered in determining the issue of total
274 disability. In addition, the vocational standards adopted
275 pursuant to subsection (m), section seven, article three,
276 chapter twenty-one-a of this code shall be considered
277 once they are effective.

§23-4-6d. Benefits payable to part-time employees.

1 (a) For purposes of this section, a part-time employee
2 means an employee who, at the date of injury, is
3 customarily employed twenty-five hours per week or less
4 on a regular basis and is classified by the employer as

5 a part-time employee: *Provided*, That the term “part-
6 time employee” shall not include an employee who
7 regularly works more than twenty-five hours per week
8 for the employer, nor shall it include an employee who
9 regularly works for more than one employer and whose
10 regular combined working hours total more than
11 twenty-five hours per week when that employee is
12 rendered unable to perform the duties of all such
13 employment as a result of the injury, nor shall it include
14 any employee in the construction industry who works
15 less than twenty-five hours per week.

16 (b) For purposes of establishing temporary total
17 disability weekly benefits pursuant to subdivision (b),
18 section six of this article for part-time employees, the
19 “average weekly wage earnings, wherever earned, of the
20 injured person, at the date of injury”, shall be computed:

21 (1) Until the first day of July, one thousand nine
22 hundred ninety-four, based upon the average gross pay,
23 wherever earned, which is received by the employee
24 during the two months, six months or twelve months
25 immediately preceding the date of the injury, whichever
26 is most favorable to the injured employee; or

27 (2) On and after the first day of July, one thousand
28 nine hundred ninety-four, based upon the best average
29 weekly gross pay, wherever earned, which is received
30 by the employee during the best quarter of wages out
31 of the preceding four quarters of wages as reported to
32 the commissioner pursuant to section eleven, article ten,
33 chapter twenty-one-a of this code: *Provided*, That for
34 part-time employees who have been employed less than
35 two months but more than one week prior to the date
36 of injury or any employee whose wages have not yet been
37 reported to the commissioner, the average weekly wage
38 earnings shall be calculated based upon the average
39 gross earnings in the weeks actually worked: *Provided*,
40 *however*, That for part-time employees who have been
41 employed one week or less, the average weekly wage
42 earnings shall be calculated based upon the average
43 weekly wage prevailing for the same or similar part-
44 time employment at the time of injury except that when
45 an employer has agreed to pay a certain hourly wage

46 to such part-time employee, the average weekly wage
47 shall be computed by multiplying such hourly wage by
48 the regular numbers of hours contracted to be worked
49 each week: *Provided further*, That notwithstanding any
50 provision of this article to the contrary, no part-time
51 employee shall receive temporary total disability
52 benefits greater than his or her average weekly wage
53 earnings as so calculated.

54 (c) Notwithstanding any other provisions of this
55 article to the contrary, benefits payable to a part-time
56 injured employee for any permanent disability shall be
57 computed and paid on the same basis as if the injured
58 employee is not a part-time employee within the
59 meaning of this section.

§23-4-7b. Trial return to work.

1 (a) The Legislature hereby finds and declares that it
2 is in the interest of employees, employers and the
3 commissioner that injured employees be encouraged to
4 return to work as quickly as possible after an injury and
5 that appropriate protections be afforded to injured
6 employees who return to work on a trial basis.

7 (b) Notwithstanding any other provisions of this
8 chapter to the contrary, the injured employee shall not
9 have his or her eligibility to receive temporary total
10 disability benefits terminated when he or she returns to
11 work on a trial basis as set forth herein. An employee
12 shall be eligible to return to work on a trial basis when
13 he or she is released to work on a trial basis by the
14 treating physician.

15 (c) When an injured employee returns to work on a
16 trial basis, the employer shall provide a trial return to
17 work notification to the commissioner. Upon receipt
18 thereof, the commissioner shall note the date of the first
19 day of work pursuant to the trial return and shall
20 continue the claimant's eligibility for temporary total
21 disability benefits, but shall temporarily suspend the
22 payment of temporary total disability benefits during
23 the period actually worked by the injured employee. The
24 claim shall be closed on a temporary total disability
25 basis either when the injured employee or the autho-

26 rized treating physician notifies the commissioner that
27 the injured employee is able to perform his or her job
28 or automatically at the end of a period of three months
29 from the date of the first day of work unless the
30 employee notifies the commissioner that he or she is
31 unable to perform the duties of the job, whichever
32 occurs first. If the injured employee is unable to
33 continue working due to the compensable injury for a
34 three-month period, the injured employee shall notify
35 the commissioner and temporary total disability benefits
36 shall be reinstated immediately and he or she shall be
37 referred for a rehabilitation evaluation as provided in
38 section nine of this article. No provision of this section
39 shall be construed to prohibit the commissioner from
40 referring the injured employee for any permanent
41 disability evaluation required or permitted by any other
42 provision of this article.

43 (d) Nothing in this section shall prevent the employee
44 from returning to work without a trial return to work
45 period.

46 (e) Nothing in this section shall be construed to
47 require an injured employee to return to work on a trial
48 basis.

49 (f) The provisions of this section shall be terminated
50 and be of no further force and effect on the first day
51 of July, one thousand nine hundred ninety-eight.

§23-4-9. Physical and vocational rehabilitation.

1 (a) The Legislature hereby finds that it is a goal of
2 the workers' compensation program to assist workers to
3 return to suitable gainful employment after an injury.
4 In order to encourage workers to return to employment
5 and to encourage and assist employers in providing
6 suitable employment to injured employees, it shall be a
7 priority of the commissioner to achieve early identifica-
8 tion of individuals likely to need rehabilitation services
9 and to assess the rehabilitation needs of these injured
10 employees. It shall be the goal of rehabilitation to return
11 injured workers to employment which shall be compar-
12 able in work and pay to that which the individual
13 performed prior to the injury. If a return to comparable

14 work is not possible, the goal of rehabilitation shall be
15 to return the individual to alternative suitable employ-
16 ment, using all possible alternatives of job modification,
17 restructuring, reassignment and training, so that the
18 individual will return to productivity with his or her
19 employer or, if necessary, with another employer. The
20 Legislature further finds that it is the shared respon-
21 sibility of the employer, the employee, the physician and
22 the commissioner to cooperate in the development of a
23 rehabilitation process designed to promote reemploy-
24 ment for the injured employee.

25 (b) In cases where an employee has sustained a
26 permanent disability, or has sustained an injury likely
27 to result in temporary disability in excess of one
28 hundred twenty days, and such fact has been deter-
29 mined by the commissioner, the commissioner shall at
30 the earliest possible time determine whether the
31 employee would be assisted in returning to remunera-
32 tive employment with the provision of rehabilitation
33 services and if the commissioner determines that the
34 employee can be physically and vocationally rehabili-
35 tated and returned to remunerative employment by the
36 provision of rehabilitation services including, but not
37 limited to, vocational or on-the-job training, counseling,
38 assistance in obtaining appropriate temporary or
39 permanent work site, work duties or work hours
40 modification, by the provision of crutches, artificial
41 limbs, or other approved mechanical appliances, or
42 medicines, medical, surgical, dental or hospital treat-
43 ment, the commissioner shall forthwith develop a
44 rehabilitation plan for the employee and, after due
45 notice to the employer, expend such an amount as may
46 be necessary for the aforesaid purposes: *Provided*, That
47 such expenditure for vocational rehabilitation shall not
48 exceed ten thousand dollars for any one injured em-
49 ployee: *Provided, however*, That no payment shall be
50 made for such vocational rehabilitation purposes as
51 provided in this section unless authorized by the
52 commissioner prior to the rendering of such physical or
53 vocational rehabilitation, except that payments shall be
54 made for reasonable medical expenses without prior
55 authorization if sufficient evidence exists which would

56 relate the treatment to the injury and the attending
57 physician or physicians have requested authorization
58 prior to the rendering of such treatment: *Provided*
59 *further*, That payment for physical rehabilitation,
60 including the purchase of prosthetic devices and other
61 equipment and training in use of such devices and
62 equipment, shall be considered expenses within the
63 meaning of section three of this article and shall be
64 subject to the provisions of sections three, three-a, three-
65 b and three-c of this article. The provision of any
66 rehabilitation services shall be pursuant to a rehabili-
67 tation plan to be developed and monitored by a rehabil-
68 itation professional for each injured employee.

69 (c) In every case in which the commissioner shall
70 order physical or vocational rehabilitation of a claimant
71 as provided herein, the claimant shall, during the time
72 he or she is receiving any vocational rehabilitation or
73 rehabilitative treatment that renders him or her totally
74 disabled during the period thereof, be compensated on
75 a temporary total disability basis for such period.

76 (d) In every case in which the claimant returns to
77 gainful employment as part of a rehabilitation plan, and
78 the employee's average weekly wage earnings are less
79 than the average weekly wage earnings earned by the
80 injured employee at the time of the injury, he or she
81 shall receive temporary partial rehabilitation benefits
82 calculated as follows: The temporary partial rehabilita-
83 tion benefit shall be seventy percent of the difference
84 between the average weekly wage earnings earned at
85 the time of the injury and the average weekly wage
86 earnings earned at the new employment, both to be
87 calculated as provided in sections six, six-d and fourteen
88 of this article as such calculation is performed for
89 temporary total disability benefits, subject to the
90 following limitations: In no event shall such benefits be
91 subject to the minimum benefit amounts required by the
92 provisions of subdivision (b), section six of this article,
93 nor shall such benefits exceed the temporary total
94 disability benefits to which the injured employee would
95 be entitled pursuant to sections six, six-d and fourteen
96 of this article during any period of temporary total

97 disability resulting from the injury in the claim:
98 *Provided*, That no temporary total disability benefits
99 shall be paid for any period for which temporary partial
100 rehabilitation benefits are paid. The amount of tempor-
101 ary partial rehabilitation benefits payable under this
102 subsection shall be reviewed every ninety days to
103 determine whether the injured employee's average
104 weekly wage in the new employment has changed and,
105 if such change has occurred, the amount of benefits
106 payable hereunder shall be adjusted prospectively.
107 Temporary partial rehabilitation benefits shall only be
108 payable when the injured employee is receiving voca-
109 tional rehabilitation services in accordance with a
110 rehabilitation plan developed under this section.

111 (e) The commissioner shall promulgate rules for the
112 purpose of developing a comprehensive rehabilitation
113 program which will assist injured workers to return to
114 suitable gainful employment after an injury in a manner
115 consistent with the provisions and findings of this
116 section. Such rules shall provide definitions for rehabil-
117 itation facilities and rehabilitation services pursuant to
118 this section.

119 (f) The provisions of this section shall be terminated
120 and be of no further force or effect on the first day of
121 July, one thousand nine hundred ninety-eight.

§23-4-14. Computation of benefits.

1 (a) The average weekly wage earnings, wherever
2 earned, of the injured person at the date of injury, and
3 the average weekly wage in West Virginia as deter-
4 mined by the commissioner, in effect at the date of
5 injury, shall be taken as the basis upon which to
6 compute the benefits.

7 (1) In cases involving occupational pneumoconiosis or
8 other occupational diseases, the "date of injury" shall be
9 the date of the last exposure to the hazards of occupa-
10 tional pneumoconiosis or other occupational diseases.

11 (2) In computing benefits payable on account of
12 occupational pneumoconiosis, the commissioner shall
13 deduct the amount of all prior workers' compensation

14 benefits paid to the same claimant on account of
15 silicosis, but a prior silicosis award shall not, in any
16 event, preclude an award for occupational pneumoconi-
17 osis otherwise payable under this article.

18 (b) (1) Until the first day of July, one thousand nine
19 hundred ninety-four, the expression "average weekly
20 wage earnings, wherever earned, of the injured person,
21 at the date of injury", within the meaning of this
22 chapter, shall be computed based upon the daily rate of
23 pay at the time of the injury or upon the average pay
24 received during the two months, six months or twelve
25 months immediately preceding the date of the injury,
26 whichever is most favorable to the injured employee,
27 except for the purpose of computing temporary total
28 disability benefits for part-time employees pursuant to
29 the provisions of section six-d of this article.

30 (2) On and after the first day of July, one thousand
31 nine hundred ninety-four, the expression "average
32 weekly wage earnings, wherever earned, of the injured
33 person, at the date of injury", within the meaning of this
34 chapter, shall be computed based upon the daily rate of
35 pay at the time of the injury or upon the weekly average
36 derived from the best quarter of wages out of the
37 preceding four quarters of wages as reported to the
38 commissioner pursuant to section eleven, article ten,
39 chapter twenty-one-a of this code, whichever is most
40 favorable to the injured employee, except for the
41 purpose of computing temporary total disability benefits
42 for part-time employees pursuant to the provisions of
43 section six-d of this article.

44 (c) The expression "average weekly wage in West
45 Virginia", within the meaning of this chapter, shall be
46 the average weekly wage in West Virginia as deter-
47 mined by the commissioner in accordance with the
48 provisions of sections ten and eleven, article six, chapter
49 twenty-one-a of this code, and other applicable provi-
50 sions of said chapter.

51 (d) In any claim for injuries, including occupational
52 pneumoconiosis and other occupational diseases, occur-
53 ring on or after the first day of July, one thousand nine

54 hundred seventy-one, any award for temporary total,
55 permanent partial or permanent total disability benefits
56 or for dependent benefits, shall be paid at the weekly
57 rates or in the monthly amount in the case of dependent
58 benefits applicable to the claimant therein in effect on
59 the date of such injury. If during the life of such award
60 for temporary total, permanent partial or permanent
61 total disability benefits or for dependent benefits, the
62 weekly rates or the monthly amount in the case of
63 dependent benefits are increased or decreased, the
64 claimant shall receive such increased or decreased
65 benefits beginning as of the effective date of said
66 increase or decrease.

CHAPTER 182

(H. B. 4056—By Delegate Everson)

[Passed February 16, 1994: in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Barbour County to meet as a levying body for the purpose of presenting to the voters of the county an election to consider an excess levy for the fire departments and emergency squads in Barbour County, 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:

BARBOUR COUNTY EXCESS LEVY.

§1. Extended time for Barbour County commission to meet as levying body for election to consider an excess levy for fire departments and emergency squads.

1 Notwithstanding the provisions of article eight,
2 chapter eleven of the code of West Virginia, one
3 thousand nine hundred thirty-one, as amended, to the
4 contrary, the county commission of Barbour County is
5 hereby authorized to extend the time for its meeting as
6 a levying body, setting the levy rate and certifying its

7 actions to the state tax commissioner from the third
8 Tuesday in April, until the last Thursday in May, one
9 thousand nine hundred ninety-four, for the purpose of
10 submitting to the voters of Barbour County the consid-
11 eration of an excess levy for fire departments and
12 emergency squads.

CHAPTER 183

(H. B. 4587—By Delegates Rowe, Wallace, Compton, Martin and Proudfoot)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to establish a multicounty economic development authority for the counties of Greenbrier, Monroe and Pocahontas; to provide such authority with power to plan and coordinate economic development within these counties; to provide for a board of directors to manage and control the authority; to provide for appointment of representatives to the board; and to provide for the support and operation of the authority.

Be it enacted by the Legislature of West Virginia:

**GREENBRIER, MONROE AND POCAHONTAS MULTICOUNTY
ECONOMIC DEVELOPMENT AUTHORITY.**

**§1. Economic development authority for Greenbrier,
Monroe and Pocahontas counties created;
functions.**

1 There is hereby created a multicounty economic
2 development authority, consisting of the counties of
3 Greenbrier, Monroe and Pocahontas, which shall plan
4 and coordinate economic development within these
5 counties. The Greenbrier economic development corpo-
6 ration is hereby abolished and its powers and assets
7 transferred to the multicounty economic development
8 authority created by this act.

9 No county member may withdraw from this authority
10 without an amendment to this act.

§2. Definitions.

1 (a) "Corporate member" means any individual,
2 association, corporation, partnership, estate or govern-
3 ment body, excluding county members, who supports
4 the objectives and purposes of the multicounty develop-
5 ment authority and who has paid membership fees as
6 determined by the board of directors. Members in good
7 standing of the Greenbrier economic development
8 corporation as of the thirtieth day of June, one thousand
9 nine hundred ninety-four, shall become members of the
10 newly created multicounty development authority.

11 (b) "County member" means one of the three counties
12 designated in section one.

**§3. Board of directors; appointment; terms; removal;
compensation.**

1 The management and control of the authority, its
2 property, operations, business and affairs is lodged in a
3 board of directors, consisting of not fewer than twelve
4 persons entitled to vote. The number of directors
5 entitled to vote shall be equally apportioned among
6 persons representing interests in the counties of
7 Greenbrier, Monroe and Pocahontas. The president of
8 the county commission of each county member or his
9 designee shall serve on the board as a voting member.
10 Within thirty days after the effective date of this act,
11 the county members and corporate members of the
12 multicounty economic development authority shall begin
13 meeting and selecting the remaining directors. The
14 board of directors shall not be authorized to act until
15 a minimum of twelve members has been elected.

16 Directors, excluding representatives of each county
17 member, shall serve three-year terms, except that the
18 initial terms shall be staggered so that at least three of
19 the initial directors will serve for one year, at least three
20 of the initial directors serve for two years, and at least
21 three of the initial directors serve for three years.
22 Directors may be reappointed to additional terms.
23 Directors shall continue to serve until their successors
24 have been chosen. Directors may be removed, excluding
25 the representatives of each county member, by a
26 majority vote of the board of directors.

27 No director of the authority shall receive any compen-
28 sation for his services as such board member.

§4. Authority as a public corporation.

1 The authority constitutes a public corporation to be
2 known as the Greenbrier Valley economic development
3 corporation and, as such has perpetual succession, may
4 contract and be contracted with, may sue and be sued,
5 may plead and be pleaded, and may have and use a
6 common seal.

**§5. Funding for support, maintenance and operation;
audit.**

1 In order to provide for the support, maintenance and
2 operation of the authority hereby created, beginning the
3 first day of July, one thousand nine hundred ninety-four,
4 each county member shall contribute annually at least
5 one dollar twenty-five cents per capita, based on the
6 most recent decennial census, for those residing within
7 its corporate boundaries. The state tax commissioner
8 shall not approve the budget of any county member of
9 the authority which does not contain the funding
10 hereinabove set forth.

11 In addition to the aforesaid amounts, any county
12 member may support the authority with any other
13 general or special revenues or excess levies at any time
14 after the effective date of this act.

15 Corporate members shall make annual contributions
16 as determined by the board of directors.

§6. Powers.

1 Except as otherwise specially provided in this act, the
2 authority has the powers and duties which are conferred
3 and imposed, respectively, upon county or municipal
4 development authorities by sections seven, seven-a,
5 eight, nine, ten, eleven, twelve, thirteen and fourteen,
6 article twelve, chapter seven of the code of West
7 Virginia, as amended.

8 In addition to the powers referred to above, the
9 authority has the power to maintain such office or
10 offices as it deems necessary to carry out its responsi-
11 bilities and to staff and equip such office or offices.

CHAPTER 184

(H. B. 4510—By Delegates Rowe and Wallace)

[Passed March 11, 1994: in effect from passage. Approved by the Governor.]

AN ACT to authorize the county commission of Greenbrier County to convey a parcel of county-owned land to the Greenbrier Historical Society; reserving certain rever-sionary rights.

Be it enacted by the Legislature of West Virginia:

GREENBRIER COUNTY.

§1. County commission authorized to convey land to the Greenbrier Historical Society.

1 The Legislature hereby recognizes that the Green-
2 brier Historical Society has leased the North House
3 Museum property from the county commission since one
4 thousand nine hundred seventy-five and has made
5 significant improvements to the North House Museum
6 property while providing faithful stewardship over this
7 valuable historical and educational community asset.
8 The Legislature further recognizes that ownership of
9 the North House Museum property by the Greenbrier
10 Historical Society will enable the Society to attract more
11 private sector financial support to enable an expansion
12 of its educational and historical programs to children
13 and adults who visit the Museum. Accordingly, the
14 Legislature hereby finds and declares that transfers of
15 any property, real or personal, made by county commis-
16 sions to any person, organization or corporation for the
17 furtherance of such activities promotes the cultural and
18 educational welfare of the public and, therefore, is a
19 public purpose.

20 The county commission of Greenbrier County is
21 hereby authorized and empowered to transfer and
22 convey unto the Greenbrier Historical Society all that
23 certain parcel of land situated within Lewisburg
24 Municipal Tax District, in Central Magisterial District
25 of Greenbrier County, West Virginia, more particularly
26 bounded and described as:

27 **DESCRIPTION OF PARCEL FOR**
28 **NORTH HOUSE MUSEUM PROPERTY**

29 That certain parcel of land situated within Lewisburg
30 Municipal Tax District, in Central Magisterial District
31 of Greenbrier County, West Virginia, being all of that
32 certain lot or parcel of land containing seven hundred
33 twenty-two thousandths of an acre on which is situate
34 that certain building known as "North House," together
35 with the improvements thereon, including said "North
36 House," and appurtenances thereunto belonging, and
37 being more particularly bounded and described as:

38 "Beginning at a hub on the south line of U. S.
39 Route No. 60 and at the west side of the driveway
40 leading into the Mental Health Facility in the City
41 of Lewisburg, West Virginia, said hub being situate
42 N 46-15 W 120 feet from a SDH right-of-way
43 marker at the southwest corner of the intersection
44 of U. S. Route No. 60 and Church Street; thence
45 following the south line of U. S. Route No. 60 N 48-
46 32 W 176.05 feet to a hub at the edge of the parking
47 lot pavement; thence leaving U. S. Route 60 with
48 the edge of the parking lot and driveway pavements
49 S 36-24 W 138.49 feet, S 07-29 W 73.81 feet, S 48-
50 13 E 84.30 feet, S 82-57 E 33.53 feet to a 20" maple
51 tree, N 58.44 E 28.48 feet, N 42-14 E 153.63 feet
52 to the point of beginning, containing in all 31,457
53 square feet, or 0.722 acres, together with a right of
54 way from Washington Street, or U. S. Route No. 60,
55 across the parking lot situate on this property and
56 on the westerly side of the above described property
57 to the rear of said property, and also together with
58 the use of the parking facilities on said parking lot
59 situate on the westerly side of the above described
60 property"

61 and being the same real estate which was conveyed unto
62 the county commission by the State of West Virginia by
63 deed dated the twenty-seventh day of May, 1975, of
64 record in the office of the Clerk of the County Commis-
65 sion of Greenbrier County, West Virginia, in Deed Book
66 297 at page 230.

67 Any proper conveyance made by the county commis-
68 sion of Greenbrier County transferring ownership of the
69 above described parcel to the Greenbrier Historical
70 Society shall contain a provision that ownership of such
71 property shall revert to the county commission should
72 the land cease to be used for the purpose of operating
73 a museum.

CHAPTER 185

(H. B. 4527—By Delegates Ashcraft, Fragale, Linch and Warner)

[Passed March 3, 1994; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Harrison County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of said county an election on the question of continuing the excess levy for bus services in Harrison County, from between the seventh and twenty-eighth days of March until the first Thursday in June, one thousand nine hundred ninety-four.

Be it enacted by the Legislature of West Virginia:

HARRISON COUNTY COMMISSION MEETING AS A LEVYING BODY EXTENDED FOR AN ELECTION ON THE QUESTION OF CONTINUING THE EXCESS LEVY FOR BUS SERVICES.

§1. Extending time for the Harrison County Commission to meet as a levying body for an election on the question of continuing the excess levy for bus services.

1 Notwithstanding the provisions of article eight,
2 chapter eleven of the code of West Virginia, one
3 thousand nine hundred thirty-one, as amended, the
4 county commission of Harrison County, West Virginia,
5 is hereby authorized to extend the time for its meeting
6 as a levying body, setting the levy rate and certifying
7 its actions to the state tax commissioner from between
8 the seventh and twenty-eighth days of March until the
9 first Thursday in June, one thousand nine hundred
10 ninety-four, for the purpose of submitting to the voters
11 of Harrison County the question of continuing the excess
12 levy for bus services in Harrison County.

CHAPTER 186

(H. B. 4656—By Delegate Facemyer)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to authorize the county commission of Jackson County to convey a parcel of county-owned land to the Jackson County Library; and reserving certain reversionary rights.

Be it enacted by the Legislature of West Virginia:

JACKSON COUNTY.

§1. County commission authorized to convey land to the Jackson County Library.

1 The Legislature hereby recognizes that the Jackson
2 County Library provides valuable educational and
3 community services for the people of Jackson County.
4 The Legislature further recognizes that ownership of
5 the property described below will enable the Jackson
6 County Library to improve its services. Accordingly, the
7 Legislature hereby finds and declares that transfers of
8 any property, real or personal, made by county commis-
9 sions to any person, organization or corporation for the
10 furtherance of such activities promotes the cultural and
11 educational welfare of the public and, therefore, is a
12 public purpose.

13 Subject to a new survey, the county commission of
14 Jackson County is hereby authorized and empowered to
15 transfer and convey unto the Jackson County Library a
16 portion of that certain parcel of land situate, lying and
17 being at the southwest intersection of Church Street and
18 Sycamore Street in the City of Ripley, Jackson County,
19 West Virginia bounded and described as follows:

20 On the north by Sycamore Street;

21 On the east by Church Street;

22 On the south by Library;

23 On the west by Library;

24 said lot fronting and abutting 63-1/2 feet on Church

25 Street and 84 feet on Sycamore Street, containing 5.334
26 feet, more or less, and being the same lot, tract or parcel
27 of land, commonly known as the "Wolfe Lot," conveyed
28 unto the Jackson County Commission by the First
29 National Bank of Ripley, Ripley, West Virginia on the
30 sixteenth day of November, 1973, of record in the office
31 of the Clerk of the County Commission of Jackson
32 County, West Virginia in Deed Book 214, page 422.

33 Any proper conveyance made by the county commis-
34 sion of Jackson County transferring ownership of the
35 above described parcel to the Jackson County Library
36 shall contain a provision that ownership of such
37 property shall revert to the county commission should
38 the land cease to be used in conjunction with the
39 operation of a library.

CHAPTER 187

(H. B. 4035—By Delegates Fantasia, Prezioso and Stewart)

[Passed February 7, 1994: in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Marion County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of said county an election on the question of continuing the excess levy for mass transit, parks and recreation, and library services and equipment, from between the seventh and twenty-eighth days of March until the first Thursday in June, one thousand nine hundred ninety-four.

Be it enacted by the Legislature of West Virginia:

MARION COUNTY COMMISSION MEETING AS A LEVYING BODY EXTENDED FOR AN ELECTION ON THE QUESTION OF CONTINUING THE EXCESS LEVY FOR MASS TRANSIT, PARKS AND RECREATION, AND LIBRARY SERVICES AND EQUIPMENT.

- §1. Extending time for the Marion County Commission to meet as a levying body for an election on the question of continuing the excess levy for mass transit, parks and recreation, and library services and equipment.

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, the
4 county commission of Marion County, West Virginia, is
5 hereby authorized to extend the time for its meeting as
6 a levying body, setting the levy rate and certifying its
7 actions to the state tax commissioner from between the
8 seventh and twenty-eighth days of March until the first
9 Thursday in June, one thousand nine hundred ninety-
10 four, for the purpose of submitting to the voters of
11 Marion County the question of continuing the excess
12 county levy for mass transit, parks and recreation, and
13 library services and equipment.

CHAPTER 188

(H. B. 4362—By Delegates Phillips, P. White, Vest and Paxton)

[Passed March 11, 1994; in effect from passage. Approved by the Governor.]

AN ACT to authorize the Rock Branch Industrial Park to maintain an industrial maintenance association in Putnam County.

Be it enacted by the Legislature of West Virginia:

MAINTENANCE ASSOCIATIONS.

§1. Definitions.

1 In this bill unless a different meaning plainly is
2 required:

3 (1) "Industrial maintenance association member"
4 means any person, corporation or other business entity
5 that owns property that fronts on either side of a road
6 in an industrial park or area where industry occupies
7 at least sixty percent of land fronting the road under
8 consideration for designation.

9 (2) "Maintenance association" means an association
10 established pursuant to the requirements of this bill.

11 (3) "Maintenance association documents" means
12 documents approved by the county commission as

13 meeting the requirements of this bill and filed with the
14 clerk of the county commission.

§2. Purpose of the maintenance association.

1 A maintenance association may be established in
2 Putnam County at the Rock Branch Industrial Park to
3 protect the health, safety and welfare of persons,
4 businesses and the general public located within the
5 Rock Branch Industrial Park. The maintenance associ-
6 ation shall be created with the objective of establishing
7 and maintaining improvements for the Rock Branch
8 Industrial Park, which may include constructing and
9 maintaining shared streets, drainage facilities, side-
10 walks, water and sewer systems, signs and other
11 improvements necessary for the protection of health,
12 safety and welfare of persons, businesses and the
13 general public.

§3. Petition to establish maintenance association.

1 (a) A petition in writing may be made to the county
2 commission, that duly verifies that property owners
3 owning jointly at least sixty percent of the frontage of
4 the lots on both sides of the Rock Bridge Industrial Park
5 in any unincorporated area requesting the approval of
6 the formation of a maintenance association. The petition
7 shall be accompanied by the proposed maintenance
8 association's recordable documents that establish the
9 association.

10 (b) Upon the filing of such petition and the proposed
11 maintenance association documents, the county commis-
12 sion shall fix a time and place for hearing protests and
13 shall require the petitioners to post notice of such
14 hearing in at least two conspicuous places on the
15 industrial subdivision road of the area affected, and to
16 give notice thereof by publication of such notice as a
17 Class I legal advertisement in compliance with the
18 provisions of article three, chapter fifty-nine of the code
19 of West Virginia, one thousand nine hundred thirty-one.
20 The publication area for such publication shall be in
21 Putnam County. The hearing shall be held not less than
22 ten nor more than thirty days after the filing of such
23 petition.

24 (c) At the time and place set for hearing protests, the
25 county commission may examine witnesses and consider
26 other evidence to show that:

27 (1) Said petition was filed in good faith;

28 (2) The signatures on the petition are genuine;

29 (3) The maintenance association document addresses
30 the maintenance association purpose; and

31 (4) The proposed maintenance association will result
32 in special benefits to all owners of property abutting on
33 said industrial subdivision road.

34 The commission shall within ten days thereafter enter
35 a formal order stating its decision.

36 (d) Any owner of property abutting upon said
37 industrial subdivision road aggrieved by such order
38 shall have the right to review the order on the record
39 made before the county commission by filing a petition
40 with the clerk of the circuit court within ten days after
41 the entry of such order. The owner shall give bond in
42 an amount to be fixed by the circuit court sufficient to
43 pay costs or expenses incurred by the court and the
44 maintenance association upon appeal if the order of the
45 county commission is affirmed. The circuit court shall
46 proceed to review the matter as in other appeals from
47 the county commission.

§4. Assessment and collection of fees; notice.

1 (a) A maintenance association which furnishes essen-
2 tial services, including, but not limited to, construction
3 and maintenance of shared streets, drainage facilities,
4 sidewalks, water and sewer systems, signs and other
5 improvements necessary for the health, safety and
6 welfare of persons, businesses and the general public,
7 may impose reasonable fees and charges on persons
8 owning lots abutting the frontage of both sides of roads
9 listed in the maintenance association document.

10 (b) Any new fee or fee increase assessed under this
11 section shall not be collectable unless notice of the
12 proposed fee or increase is sent by certified mail to each
13 person owning property listed in the maintenance

14 association document. If thirty percent of the members,
15 by signed petition, protest the assessment to the associ-
16 ation within fifteen days of the mailing, the fee shall not
17 become effective until it is ratified by sixty percent of
18 the members.

19 (c) All fees assessed under this section are declared to
20 be debts owing to the maintenance association for which
21 the debtor shall be personally liable. The maintenance
22 association, or an individual designated to act for it, may
23 enforce this liability by appropriate civil action in a
24 court of competent jurisdiction. After being reduced to
25 judgment and filed with the clerk of the county commis-
26 sion, such liability shall be a lien on property owned by
27 the maintenance association member and designated in
28 the maintenance association document.

CHAPTER 189

(Com. Sub. for S. B. 450—By Senators Ross and Helmick)

[Passed March 11, 1994; in effect from passage. Approved by the Governor.]

AN ACT to provide a stable method of financing the operation of the Upshur county public library located in Upshur county, West Virginia, as the same was organized under the provisions of article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by creating a separate library board with power to operate the public library to serve the residents of the county of Upshur as a joint venture of the Upshur county board of education and the Upshur county commission; appointment of board of directors, members, terms; meetings of the board of directors; powers of the board of directors; incorporation of the board of directors; requiring levy at the request of the board of directors with an annual cap of seventy-five thousand dollars; deposit and disbursement of funds; providing workers' compensation, social security and retirement coverage for library employees; vesting title to library property; and providing for application of future amendments to general law.

Be it enacted by the Legislature of West Virginia:

UPSHUR COUNTY PUBLIC LIBRARY.

§1. Public library board created; joint support by the county board of education and county commission of Upshur county, West Virginia.

1 There is hereby created a public library board, which
2 shall operate the Upshur county public library. The
3 library shall be supported by the board of education of
4 the county of Upshur and by the county commission of
5 Upshur county, as a joint endeavor of two governing
6 authorities in the manner hereinafter provided.

§2. Board of directors; appointment, powers and duties generally; officers, bylaws and rules.

1 There shall be a board of directors consisting of five
2 directors who shall serve without compensation. Before
3 the first day of July, one thousand nine hundred ninety-
4 four, the board of education of the county of Upshur shall
5 appoint two members of the board of directors, appoint-
6 ing one member for the term of one year and one
7 member for the term of four years. The county commis-
8 sion of Upshur county shall appoint three members to
9 the board of directors, appointing one member for the
10 term of two years, one member for a term of three years
11 and one member for the term of five years. The initial
12 terms of these appointees shall commence on the first
13 day of July, one thousand nine hundred ninety-four.
14 Annually thereafter, on or before the first day of July
15 in each year beginning on the first day of July, one
16 thousand nine hundred ninety-five, the two supporting
17 entities shall in rotation, appoint one member of the
18 board of directors annually, the first appointment to be
19 made by the board of education of Upshur county and
20 the second appointment to be made by the county
21 commission of Upshur county. Each appointment to the
22 board of directors of the library shall be for a term of
23 five years, except that any person appointed to fill a
24 vacancy occurring before the expiration of that term
25 shall serve only for the unexpired portion of the term.
26 Any member of the board is eligible for reappointment
27 and the governing authority which appointed any

28 member to the board may remove that member for
29 cause.

30 There shall be an annual meeting of the board of
31 directors in July of each year and a monthly meeting on
32 the day of each month which the board may designate.
33 A special meeting may be called by the president, the
34 secretary or any two members of the board and such
35 special meeting shall be held only after all of the
36 directors are given notice of the special meeting. At all
37 meetings three members constitutes a quorum and at
38 each annual meeting of the board of directors it shall
39 elect, from its membership, a president, a vice president,
40 a secretary and a treasurer: *Provided*, That the director
41 of the library may be elected as the secretary. The board
42 of directors shall adopt such bylaws and rules as are
43 necessary for its own guidance and for the administra-
44 tion, supervision and protection of the library and all of
45 the property belonging to the library. The board of
46 directors shall have all of the powers necessary, conve-
47 nient and advisable for the proper operation, equipment
48 and management of the library; and except as otherwise
49 especially provided in this article, shall have the powers
50 and be subject to the duties which are conferred and
51 imposed, respectively, upon library directors by sections
52 six through eleven, article one, chapter ten of the code
53 of West Virginia, one thousand nine hundred thirty-one,
54 as amended, or by subsequent enactments of the
55 Legislature of West Virginia.

§3. A body corporate.

1 The public library hereby created shall be a corpora-
2 tion. As such it may contract and be contracted with, sue
3 and be sued, plead and be impleaded and shall have and
4 use a common seal.

§4. Title to property.

1 The title to all property, both real and personal,
2 hereinafter devoted to public library purposes by the
3 board of education or the county of Upshur, in connection
4 with the operation of it by a public library in the county
5 of Upshur, and any branches of the library shall, on the
6 first day of July, one thousand nine hundred ninety-four,

7 vest in the board of directors of the Upshur county public
8 library, hereby created.

§5. Levies for support, maintenance and operation.

1 In order to provide for the support, maintenance and
2 operations of the Upshur county public library and any
3 branches thereof, the supporting governing authorities
4 shall, upon written request by the board of directors of
5 the public library, levy annually within the respective
6 taxing districts of the governing authorities, on each one
7 hundred dollars of assessed valuation of the respective
8 classes of property taxable in the area served by it
9 according to the last assessment for state and county
10 purposes, up to the following rates beginning with the
11 fiscal year beginning on the first day of July, one
12 thousand nine hundred ninety-four.

13 (a) The county commission of Upshur county, for the
14 first year and annually thereafter:

15 Class I, six-tenths cents;

16 Class II, III and IV, eight-tenths cents.

17 (b) The board of education of the county of Upshur for
18 the first year and annually thereafter:

19 Class I, nine-tenths cents;

20 Class II, III and IV, one and one-tenths cents.

21 Each year the board of directors shall request each of
22 the two supporting authorities to levy within the rates
23 prescribed above, at the rates specified by the board, on
24 each one hundred dollars of assessed valuation of
25 property of the same class; and each of the two support-
26 ing authorities shall levy at the rates requested by the
27 board of directors: *Provided*, That the sum of the
28 revenues or levies shall not exceed seventy-five thousand
29 dollars in any one year. Nothing herein shall prevent any
30 of the supporting authorities from contributing to the
31 public library, from time to time, any other general or
32 specific revenues or excess levies.

§6. Deposit and disbursement of funds.

1 All money collected or appropriated by the two

2 governing authorities for library purposes shall be
3 deposited on a quarterly basis directed by the board of
4 directors of the Upshur county public library in a bank
5 or savings account specified by the board.

6 All moneys appropriated to the Upshur county public
7 library and all income realized by the operation of the
8 public library from any sources other than the above
9 levies shall be used by the board of directors for the
10 support, maintenance and operation of the public library
11 and its branches.

12 The board is hereby vested with authority to accum-
13 ulate a surplus from year to year over and above the
14 amount currently required for the proper operation,
15 maintenance and management of the library. The
16 accumulated surplus may be used if and as needed for
17 support, maintenance and operation of the library, and
18 for capital improvements, additions or extensions to
19 library facilities.

§7. Status of employees.

1 All full-time employees of the Upshur county public
2 library shall be entitled to the benefits of the provisions
3 of chapter twenty-three, and articles seven and ten,
4 chapter five of the code of West Virginia, one thousand
5 nine hundred thirty-one, as amended.

§8. Effect of future amendments of general law.

1 Amendments to article one, chapter ten of the code of
2 West Virginia, one thousand nine hundred thirty-one, as
3 amended, and other general laws shall control this
4 article only to the extent that they do not conflict with
5 the special features hereof, or unless the intent to amend
6 this article is clear and unmistakable.

RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 3

(By Mr. Speaker, Mr. Chambers, and Delegate Burk)

[Adopted March 2, 1994]

Amending Joint Rules of the Senate and House of Delegates, relating to bill processing for bills which authorize the promulgation of proposed legislative rules.

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 Rule 5a, to read as follows:

Processing of bills authorizing the promulgation of proposed legislative rules; duplication and distribution of proposed legislative rules.

5a. A "bill authorizing the promulgation of proposed legislative rules" or a "bill of authorization" is a measure intended to be enacted as general law, which incorporates by reference a proposed legislative rule, with or without amendments or substitutions set forth in the bill, and which authorizes the promulgation and implementation of the proposed legislative rule. The processing of bills authorizing the promulgation of proposed legislative rules shall be governed by the standing rules of the Senate and the House of Delegates, which are supplemented by the provisions of this joint rule. In the case of any conflict between this rule and a standing rule of the Senate or the House of Delegates, the provisions of this rule control.

(1) The requirement of either house that bills shall be presented in quadruplicate applies to bills authorizing the promulgation of proposed legislative rules, but does not apply to the proposed legislative rule which the bill incorporates by reference. Of the quadruplicate copies, only the designated original copy shall have appended thereto the full text of the proposed legislative rule as finally approved by the agency

seeking permission for its promulgation. Other copies of the full text of the proposed legislative rule shall be made available to members of the Legislature as hereinafter provided.

(2) Copies of the full text of each proposed legislative rule shall be reproduced by printing or duplication by the Clerk prior to, or as soon as is reasonably practicable after, the introduction of the bill which would authorize by law the promulgation of the proposed legislative rule. Prior to such printing or duplication, a notation shall be affixed to the proposed legislative rule which identifies the bill number of the introduced bill which would authorize its promulgation and which also identifies the committee or committees of the house to which the bill is to be referred by the presiding officer following its introduction. Otherwise, the copies printed or duplicated shall conform to the copy of the proposed legislative rule appended to the original bill, so as to facilitate the consideration and amendment of the rule throughout the legislative process.

(3) The clerk shall furnish to any member, upon his or her request, without cost, one copy of the full text of a proposed legislative rule as reproduced by the clerk in accordance with the provisions of subsection (2) of this joint rule. For any request for an additional copy or copies of the proposed legislative rule, the member requesting the copy or copies shall pay to the clerk, in advance, a charge which the clerk has reasonably determined to be adequate to cover the actual cost of the printing or duplication: *Provided*, That the provisions herein for the clerk to furnish a member with an additional copy or copies, with a cost charged, may not interfere with or delay the prompt and otherwise timely consideration of bills of authorization by the house or its committees or subcommittees.

(4) Whenever the standing rules of either house require the printing or reprinting of a bill, the rules apply to bills authorizing the promulgation of a proposed legislative rule with the same force and effect as they apply to other bills. However, no printing or reprinting of the proposed legislative rule which is incorporated by reference in the bill of authorization shall be required, other than the printing required by subsection (2) of this joint rule.

(5) Whenever the standing rules of either house require a bill to be read, or fully and distinctly read, the rules apply to bills authorizing the promulgation of a proposed legislative rule with the same force and effect as they apply to other bills. However, no reading of the proposed legislative rule which is incorporated by reference in the bill of authorization is required.

And,

That Rule 14 of the Joint Rules of the Senate and the House of Delegates be amended to read as follows:

Printing Enrolled Bills

14. After a bill has been passed by both houses, the type from which it was originally printed shall be corrected as to any typographical errors that may not previously have been corrected and to include any amendments that may have been made by either house since the last printing of the bill. After the type has been so corrected, three hundred fifty copies of the bill shall be printed (except charter bills, of which only twenty-five of each shall be printed). Twelve of these copies shall be on seven and one-fourth by ten bond paper, twenty-pound basis of at least fifty percent rag content for the use of the Joint Committee on Enrolled Bills, one of which copies, when properly authenticated, shall become the Enrolled Bill, and the remainder shall be on twenty-pound basis, sulphite bond paper. From these copies all judges shall be furnished enrolled bills as provided for in section fourteen, article one, chapter four of the code. In the case of enrolled bills authorizing the promulgation of a proposed legislative rule, a copy of the full text of the proposed legislative rule which the bill incorporates by reference shall be appended to the bill which has been properly authenticated and designated to be the Enrolled Bill. The copy appended to the Enrolled Bill shall conform to the copy of the full text of the proposed legislative rule appended to the introduced bill. Copies of the proposed legislative rule shall not be appended to the additional copies of the enrolled bill. Following action by the Governor, or the failure or refusal of the Governor to approve or disapprove a bill of authorization, the copy of the Enrolled Bill with the proposed legislative rule appended shall be the copy of the bill filed with the Secretary of State in accordance with the provisions of Rule 18 of these Joint Rules.

HOUSE CONCURRENT RESOLUTION 31

(By Mr. Speaker, Mr. Chambers, and Delegates Burk, McKinley, Kiss, Browning, Flanigan, Ashcraft, Spencer, Brown, Staton, Manuel, Higgins, Pethtel, Pettit, Walters, Leach, Phillips, Farris, Houvouras, Doyle, Fealy, McGraw, Brum, Warner, Preece, Dempsey, Douglas, Sorah, Fragale, D. Cook, Compton, Petersen, Linch, Mezzatesta, S. Williams, Faircloth, Oliverio, Rutledge, Paxton, H. White, Kessel and Gallagher)

[Adopted March 12, 1994]

Requesting the Joint Committee on Government and Finance to study the diverse impacts of, and future funding options for, the Nongame Wildlife and Natural Heritage Program.

WHEREAS, It is estimated that nongame wildlife and other natural heritage pursuits enrich the lives of over 1.2 million West Virginia citizens; and

WHEREAS, West Virginia residents contribute over \$60,000,000 annually to the State's economy through nongame wildlife and natural heritage-related expenditures; and

WHEREAS, Nongame wildlife and natural heritage resources draw some 267,000 visitors to the State annually, generating \$110,000,000 in tourism income; and

WHEREAS, Maintaining diversity of the State of West Virginia's unique nongame wildlife and plant communities is critical to the economy and quality of life in West Virginia; and

WHEREAS, The Nongame Wildlife and Natural Heritage Program is charged with the stewardship of over ninety percent of our State's wildlife resources and rare plant resources; and

WHEREAS, The Nongame Wildlife and Natural Heritage Program has lacked permanent adequate funding to carry out the stewardship of West Virginia's nongame wildlife and plant resources; and

WHEREAS, The \$400,000 general revenue appropriation currently in the Governor's 1995 budget constitutes an

important beginning for funding the Nongame Wildlife and Natural Heritage Program; and

WHEREAS, The Legislature recognizes the need for future permanent and adequate funding in order for the Nongame Wildlife and Natural Heritage Program to continue and strengthen its stewardship goals; therefore, be it

Resolved by the Legislature of West Virginia:

That a study committee be appointed by the Speaker of the House and President of the Senate to include three members each of the House and Senate, the Director of the Division of Natural Resources, a staff member of the Nongame Wildlife and Natural Heritage Program of the Division of Natural Resources, a representative from the Division of Parks and Tourism, two members of the environmental community, a member of the Nongame Advisory Council, a member of the current Nongame/Natural Heritage Committee, two professional ecologists from universities in West Virginia, two industry representatives, and two members of the hunting and fishing community; and, be it

Further Resolved, That the committee examine the benefits and potential of the nongame wildlife assets of West Virginia, to examine funding needs of the Nongame Wildlife and Natural Heritage Program, to make recommendations, expand the public's appreciation of nongame wildlife through presentations, programs and reports, and to develop recommendations to the Legislature for future permanent and adequate funding methods; and, be it

Further Resolved, That the committee report to the regular session of the Legislature by January 15, 1995, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations.

HOUSE CONCURRENT RESOLUTION 37

(By Mr. Speaker, Mr. Chambers, and Delegates Rowe,
Staton, Burk and Ashley)

[Adopted March 12, 1994]

Requesting the Joint Committee on Government and Finance,
in cooperation with the Secretary of Tax and Revenue,
to create an interim committee to study the taxation of

pollution control facilities, and to develop appropriate policies and procedures respecting the property tax assessment of personal property installed at coal waste electric generating facilities.

WHEREAS, The development of environmentally productive coal waste electric generating facilities that create new jobs and new property tax revenues is in the best interest of the citizens of this State; and

WHEREAS, The West Virginia Legislature acted to encourage the installation of some types of pollution control facilities in 1973 by enacting chapter eleven, article six-a which provides special property tax valuation treatment for such pollution control facilities; and

WHEREAS, Since 1992 three new coal waste electric generating plants, one in each of Monongalia, Grant and Marion Counties, have become operational in West Virginia employing technology and equipment not available in 1973 to burn and dispose of coal waste and generate electricity; and

WHEREAS, The property tax treatment of coal waste electric generating facilities under said article six-a, as expressed and applied by the State Department of Tax and Revenue, is now in dispute in Monongalia County with respect to the plant located in Monongalia County; and

WHEREAS, The appropriate manner for valuing personal property associated with coal waste electric generating facilities is of great concern to the citizens of this State; to the employees of the three coal waste electric generating facilities and to those employees filling the hundreds of indirectly affected jobs; to West Virginia University and its students; to all of the counties in this State in which gob piles are located; and to other potential developers of these types of facilities as they evaluate investing in this State; therefore, be it

Resolved by the Legislature of West Virginia:

That, without intending to affect any pending litigation, the Legislature finds the issues relating to the application of said article six-a to personal property installed at such coal waste electric generating facilities is a matter of great concern and importance to the State and its citizens; and, be it

Further Resolved, That in order to study article six-a and to address the issues involved in determining sound policies and procedures respecting the appropriate manner of assessment for personal property installed at coal waste electric generating facilities that a seven member subcommittee, consisting of three members of the House to be appointed by its Speaker, three members of the Senate appointed by its President and the Secretary of Tax and Revenue, is directed to examine the provisions of chapter eleven, article six-a of the West virginia code, as amended, as well as policies and practices adopted by other states in this area of great public importance to report their recommendations for any statutory revisions to the Joint Committee no later than January 1, 1995, so that the Legislature can take any necessary actions during the 1994-1995 session.

SENATE CONCURRENT RESOLUTION 24

(By Senators Macnaughtan, Humphreys, Minard,
Claypole, Miller, Yoder and Holliday)

[Adopted March 12, 1994]

Requesting the Joint Committee on Government and Finance to make a study of the standards of training and competence on the part of workers employed by contractors performing repair and construction in hazardous industries.

WHEREAS, The release of toxic, reactive or flammable liquids and gases in processes involving hazardous chemicals has been widely reported for a number of years; and

WHEREAS, Accidents have occurred in some industries which use or create hazardous chemicals; and

WHEREAS, Federal regulations exist which require process safety training for some industries which contract for service to repair, maintain or construct such facilities; and

WHEREAS, The use of unskilled, untrained or marginally trained workers employed by contractors on construction projects located near population centers in these industries may pose a risk of death or injury in these communities due to the potential for defectively built, repaired or maintained plant structures and equipment; and

WHEREAS, The continued employment of unskilled, untrained or marginally trained workers employed by contractors on such projects may be dangerous to those employed at the site and to residents of surrounding communities; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to review, examine and study the possible risks presented by the employment of unskilled, untrained or marginally trained workers employed by contractors on construction sites at plant facilities, wherein hazardous materials are used or discharged, to determine possible risk to the human safety and the environment; and, be it

Further Resolved, That the Joint Committee on Government and Finance report back to the full Legislature with their findings on or before the first day of January, one thousand nine hundred ninety-five; and be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the president of the Senate, the speaker of the House and the governor of the State of West Virginia.

SENATE CONCURRENT RESOLUTION 26

(By Senators Burdette, Mr. President, Wooton, Manchin, Helmick, Chernenko, Ross, Schoonover, Whitlow, Holliday, Dittmar, Anderson, Bailey, Wiedebusch, Tomblin and Humphreys)

[Adopted March 12, 1994]

Requesting the joint committee on government and finance to make a study of possible dispositions in pension benefits for law-enforcement officers.

WHEREAS, There are approximately six hundred fifty sheriff's deputies in the state of West Virginia; and

WHEREAS, Sheriff's deputies receive thirty-three and one-third percent of their highest three consecutive aggregate years of service of the previous ten years as a pension upon retirement; and

WHEREAS, Municipal police officers receive sixty percent of their three years service as a pension upon retirement; and

WHEREAS, State police receive as a pension five and one-half percent of their salaries over their total years of service as a pension upon retirement; and

WHEREAS, The means of computation of law-enforcement officers' pensions may cause dispositions in benefits for similar forms of public service; and

WHEREAS, Disability pensions for disabled law-enforcement officers may be based upon dissimilar criteria; therefore, be it

Resolved by the Legislature of West Virginia:

That the joint committee on government and finance is hereby requested to review, examine and study possible disparities in law-enforcement pension laws and make recommendations regarding a comprehensive redrafting on such laws; and, be it

Further Resolved, That the joint committee on government and finance report back to the Legislature with their findings on or before the first day of January, one thousand nine hundred ninety-five; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the president of the Senate, the speaker of the House and the governor of the State of West Virginia.

SENATE CONCURRENT RESOLUTION 36

(By Senators Helmick, Withers Blatnik, Sharpe, Dalton, Dittmar, Plymale, Miller, Anderson, Ross, Chernenko, Craig, Wehrle, Jones, Manchin, Whitlow, Walker, Boley, Yoder, Humphreys, Burdette, Mr. President, Bailey and Minard)

[Adopted March 12, 1994]

Requesting the joint committee on government and finance to study the rapid rise in solid waste tipping fees and its effect on the environment.

WHEREAS, Protection of the environment is a concern of everyone; and

WHEREAS, The enormous costs involved in the protection of the environment are also realized by everyone; and

WHEREAS, Since 1988, the aggregate of the various tipping fees of solid waste have risen from \$1.25 to \$8.25 per ton; and

WHEREAS, The financial impact of such high fees places a heavy burden on the citizens of West Virginia of modest means, often causing a counterproductive effect on the environment; therefore, be it

Resolved by the Legislature of West Virginia:

That in order for the protection of the environment to continue without counterproductivity, the tipping fees for the disposal of solid waste should be carefully studied by the joint committee on government and finance in order to maintain an environmentally productive solid waste disposal program.

HOUSE RESOLUTION 5

(By Delegates Martin and Proudfoot)

[Adopted February 24, 1994]

Requesting the Joint Committee on Government and Finance to make a study of air quality in schools in West Virginia.

WHEREAS, The health of students and employees in school buildings in West Virginia is and should be a matter of highest priority; and

WHEREAS, Windows in school buildings in West Virginia in past decades have been designed, manufactured and installed so that they do not open and close; and

WHEREAS, An expanding body of knowledge on the quality of air and its effect on health now exists, and, as a result of this increased knowledge, there are today more stringent requirements on what constitutes acceptable air quality; and

WHEREAS, A need exists to assess the magnitude of our schools' air quality problem statewide, including the preparation of a cost estimate for correcting the problem and the

development of a proposal for solving the problem over a period of time; therefore, be it

Resolved by the House of Delegates:

That the Joint Committee on Government and Finance is hereby requested to review, examine and study the status of air quality in West Virginia schools, including how air quality is affected by windows which do not open and close, and to prepare a cost estimate for correcting the problem, and to develop a proposal to solve the problem over a period of time, and to make recommendations to the Legislature regarding the same; and, be it

Further Resolved, That the Joint Committee on Government and Finance report its findings, conclusions and recommendations, together with any drafts of legislation necessary to effectuate its recommendations, to the 1995 regular session of the West Virginia Legislature; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare the report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

COMMITTEE SUBSTITUTE FOR HOUSE RESOLUTION 8

(By Delegates Brown, P. White, Spencer, Kessel, Douglas, Reed, Facemyer, Phillips, Brum, Leach, Warner, Pettit, Rutledge, Compton, D. Cook and Yeager)

[Adopted February 15, 1994]

Memorializing the President and Congress of the United States to propose the adoption of the Equal Rights Amendment to the United States Constitution.

WHEREAS, Legal injustice and discrimination on the basis of gender have long existed; and

WHEREAS, The citizens of West Virginia clearly support an end to discrimination on the basis of gender through an amendment to the Constitution of this Nation, as the United States has previously renounced slavery, racial discrimination, and denial of the right to vote on the basis of race or gender; and

WHEREAS, Congress in 1972 proposed a federal Equal Rights Amendment to the United States Constitution to provide for equality of the law regardless of gender, which was narrowly defeated in 1982; and

WHEREAS, The West Virginia House of Delegates prefers that each state ratify the federal Equal Rights Amendment to achieve a uniform national policy; and

WHEREAS, The Equal Rights Amendment provides that gender should not be a factor in determining the legal rights of men and women and thereby recognizes the fundamental dignity, individuality, and worth of each human being; and

WHEREAS, The West Virginia House of Delegates again stands ready to ratify a federal Equal Rights Amendment when approved by Congress for state ratification; therefore, be it

Resolved by the House of Delegates:

That the House of Delegates of the State of West Virginia respectfully memorializes the President and the Congress of the United States to propose to the several states an amendment to the Constitution of the United States stating that all men and women are equal under the law; and, be it

Further Resolved, That the Clerk of the House of Delegates is hereby directed to forward a copy of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from West Virginia in the Congress of the United States.

HOUSE RESOLUTION 17

(By Delegates Burk, Trump, Facemyer, Miller, Ashley,
Riggs, L. White, Henderson, Walters, Anderson,
Wallace, Oliverio, Richards, Nesbitt, Evans,
Harrison, Pulliam, Talbott and Huffman)

[Adopted March 5, 1994]

Amending Rule No. 91a of the Rules of the House relating to time limit on introduction of bills.

Resolved by the House of Delegates:

That effective the eleventh day of January, 1995, Rule No. 91a of the House of Delegates be amended to read as follows:

Time Limit on Introducing

91a. No House joint resolution and no House bill, other than a House supplementary appropriation bill or a House bill originating in a House standing or select committee, shall be introduced in the House after the forty-first day of a regular session unless permission to introduce the joint resolution or bill be given by a House resolution, setting out the title to the joint resolution or bill and adopted by a two-thirds vote of the House members present. The forty-first day of the regular session held in the year one thousand nine hundred ninety-seven and every fourth year thereafter shall be computed from and include the second Wednesday of February of such years. When permission is requested to introduce a joint resolution or bill under provisions of this rule, quadruplicate copies of the joint resolution or bill shall accompany the resolution when introduced.

SENATE RESOLUTION 11

(By Senators Manchin, Boley, Bailey, Jones,
Helmick, Tomblin, Wooton, Sharpe, Anderson,
Chernenko, Burdette, Mr. President, Craig,
Lucht, Minard, Whitlow, Ross, Claypole, Dittmar,
Wagner, Plymale, Miller, Walker and Wehrle)

[Adopted February 3, 1994]

Urging the Congress and the president of the United States to oppose any regulation, policy proposal or legislative bill mandating programs or responsibilities to state and local governments without full federal funding.

WHEREAS, Unfunded federal mandates impose substantial financial burdens on state and local taxpayers which are, in effect, hidden federal taxes; and

WHEREAS, The extraordinary costs imposed by unfunded mandates are estimated to be in the tens of billions of dollars annually; and

WHEREAS, A government that establishes public requirements without providing the corresponding funding has, by definition, failed to adequately consider the financial implications of its actions; and

WHEREAS, Studies of the federal government have consistently demonstrated that the government closest to the people is the most competent to design effective and efficient solutions to public needs; therefore, be it

Resolved by the Senate:

That the Senate urges the Congress and the president of the United States to oppose any regulation, policy proposal or legislative bill mandating programs or responsibilities to state and local governments without full federal funding; and, be it

Further Resolved, That the Senate is in hopes that the Congress and the president of the United States realize that unfunded mandates constitute inappropriate public policy and that no government should legitimately prioritize public needs without providing the funding for the programs that it enacts; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to members of the West Virginia delegation to the United States Congress and to the president of the United States.

SENATE RESOLUTION 29

(By Senators Humphreys, Anderson, Bailey,
Blatnik, Boley, Burdette, Mr. President,
Chafin, Chernenko, Claypole, Craigo, Dalton,
Dittmar, Grubb, Helmick, Holliday, Jones,
Lucht, Macnaughtan, Manchin, Miller, Minard,
Plymale, Ross, Schoonover, Sharpe, Tomblin,
Wagner, Walker, Wehrle, Whitlow, Wiedebusch,
Withers, Wooton and Yoder)

[Adopted March 5, 1994]

Requesting that AT&T reconsider its decision to close its consumer sales and service center in Charleston, West Virginia.

WHEREAS, In February, 1994, AT&T announced its decision to close its sales and service center in Charleston, West Virginia, by October 1, 1994, an act which will eliminate four hundred jobs; and

WHEREAS, When the center was brought to West Virginia, incentives and concessions were made by the State of West Virginia to encourage AT&T to locate in Charleston; and

WHEREAS, The center in Charleston has been a top performer for AT&T with no negative aspects; and

WHEREAS, The loss of the four hundred jobs at the Charleston sales and service center will have a definite impact on the economy of the city of Charleston, the county of Kanawha and the State of West Virginia; and

WHEREAS, The four hundred employees of the AT&T sales and service center in Charleston have performed their jobs with exceptional dedication and reliability to AT&T and are undeserving of such unfair treatment; therefore, be it

Resolved by the Senate:

That the Senate hereby requests AT&T to reconsider its decision to close the AT&T sales and service center in Charleston, West Virginia, costing four hundred of their dedicated and loyal employees to lose their jobs; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the chairman of AT&T, Robert E. Allen; the governor of West Virginia, the Honorable Gaston Caperton; and the members of the West Virginia delegation to the United States Congress.

HOUSE JOINT RESOLUTION 13

(By Delegates Huffman and Moore)

[Adopted March 11, 1994]

Proposing an amendment to the Constitution of the State of West Virginia, amending section one, article four thereof, relating to elections and officers; and repealing section eight, article twelve of said Constitution relating to prohibiting mixed schools; numbering and designating

such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred ninety-four, which proposed amendment is that section eight, article twelve be repealed; and that section one, article four of said Constitution be amended to read as follows:

ARTICLE IV. ELECTION AND OFFICERS.

§1. Election and officers.

The citizens of the state shall be entitled to vote at all elections held within the counties in which they respectively reside; but no person who is a minor, or who has been declared mentally incompetent by a court of competent jurisdiction, or who is under conviction of treason, felony or bribery in an election, or who has not been a resident of the state and of the county in which he offers to vote, for thirty days next preceding such offer, shall be permitted to vote while such disability continues; but no person in the military, naval or marine service of the United States shall be deemed a resident of this state by reason of being stationed therein.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered "Amendment Number 1" and designated as the "Constitutional Amendment to Repeal Archaic Language," and the purpose of the proposed amendment is summarized as follows: "To amend the State Constitution to repeal and delete the section prohibiting mixed schools, removing language referring to paupers and male voters and reducing the residency requirements for voting to thirty days."

SENATE JOINT RESOLUTION 3

(By Senators Wagner, Bailey, Sharpe,
Chafin, Yoder, Dalton, Humphreys, Withers,
Schoonover, Helmick and Ross)

[Adopted March 12, 1994]

Proposing an amendment to the Constitution of the State of West Virginia, repealing section three, article nine thereof, relating to removing the term limit for sheriffs; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election in the year one thousand nine hundred ninety-four, which proposed amendment is that section three, article nine be repealed.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered "Amendment No. 2" and designated as the "Removing Sheriff's Term Limit Amendment" and the purpose of the proposed amendment is as follows: "To repeal section three, article nine of the State Constitution which provided that a person who has been elected or who has served as sheriff during all or any part of two consecutive terms shall be ineligible for the office of sheriff during any part of the term immediately following the second of the two consecutive terms."

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 1994

CHAPTER 1

(Com. Sub. for S. B. 1009—By Senators Burdette, Mr. President, and Boley)
[By Request of the Executive]

[Passed May 20, 1994; 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 bill
- 2 is to appropriate money necessary for the economical
- 3 and efficient discharge of the duties and responsibilities
- 4 of the state and its agencies during the fiscal year one
- 5 thousand nine hundred ninety-five.

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

13 “General revenue fund” shall mean the general
14 operating fund of the state and includes all moneys
15 received or collected by the state except as provided in
16 section two, article two, chapter twelve of the code or
17 as otherwise provided.

18 “Special revenue funds” shall mean specific revenue
19 sources which by legislative enactments are not re-
20 quired to be accounted for as general revenue, including
21 federal funds.

22 “From collections” shall mean that part of the total
23 appropriation which must be collected by the spending
24 unit to be available for expenditure. If the authorized
25 amount of collections is not collected, the total appropri-
26 ation for the spending unit shall be reduced automat-
27 ically by the amount of the deficiency in the collections.
28 If the amount collected exceeds the amount designated
29 “from collections,” the excess shall be set aside in a
30 special surplus fund and may be expended for the
31 purpose of the spending unit as provided by article two,
32 chapter five-a of the code.

1 **Sec. 3. Classification of appropriations.**—An appro-
2 priation for:

3 “Personal services” shall mean salaries, wages and
4 other compensation paid to full-time, part-time and
5 temporary employees of the spending unit but shall not
6 include fees or contractual payments paid to consultants

7 or to independent contractors engaged by the spending
8 unit.

9 Unless otherwise specified, appropriations for "per-
10 sonal services" shall include salaries of heads of
11 spending units.

12 "Annual increment" shall mean funds appropriated
13 for "eligible employees" and shall be disbursed only in
14 accordance with article five, chapter five of the code.

15 Funds appropriated for "annual increment" shall be
16 transferred to "personal services" or other designated
17 items only as required.

18 "Employee benefits" shall mean social security
19 matching, workers' compensation, unemployment com-
20 pensation, pension and retirement contributions, public
21 employees insurance matching, personnel fees or any
22 other benefit normally paid by the employer as a direct
23 cost of employment. Should the appropriation be
24 insufficient to cover such costs, the remainder of such
25 cost shall be transferred by each spending unit from its
26 "personal services" line item or its "unclassified" line
27 item to its "employee benefits" line item. If there is no
28 appropriation for "employee benefits," such costs shall
29 be transferred by each spending unit from its "personal
30 services" line item or its "unclassified" line item. Each
31 spending unit is hereby authorized and required to
32 make such payments in accordance with the provisions
33 of article two, chapter five-a of the code.

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

39 "Current expenses" shall mean operating costs other
40 than personal services and shall not include equipment,
41 repairs and alterations, buildings or lands.

42 Each spending unit shall be responsible for and
43 charged monthly for all postage meter service and shall
44 reimburse the appropriate revolving fund monthly for
45 all such amounts. Such expenditures shall be considered

46 a current expense.

47 "Equipment" shall mean equipment items which have
48 an appreciable and calculable period of usefulness in
49 excess of one year.

50 "Repairs and alterations" shall mean routine mainte-
51 nance and repairs to structures and minor improve-
52 ments to property which do not increase the capital
53 assets.

54 "Buildings" shall include new construction and major
55 alteration of existing structures and the improvement of
56 lands and shall include shelter, support, storage,
57 protection or the improvement of a natural condition.

58 "Lands" shall mean the purchase of real property or
59 interest in real property.

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

64 From appropriations made to the spending units of
65 state government, upon approval of the governor there
66 may be transferred to a special account an amount
67 sufficient to match federal funds under any federal act.

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 or
80 any other agency head not governed by a departmental
81 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
84 lines within the same account and no funds from other

85 lines shall be transferred to the "personal services" line:
 86 *And provided further*, That if the Legislature by
 87 subsequent enactment consolidates agencies, boards or
 88 functions, the secretary may transfer the funds formerly
 89 appropriated to such agency, board or function in order
 90 to implement such consolidation. No funds may be
 91 transferred from a special revenue account, dedicated
 92 account, capital expenditure account or any other
 93 account or fund 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 appropria-
 4 tions 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 2261

Commission on Uniform State Laws—Acct. No. 2450	2262
Committee for the Purchase of Commodities and Services from the Handicapped—Acct. No. 2140	2261
Department of Administration—Office of the Secretary—Acct. No. 2105	2260
Division of Finance—Acct. No. 2110	2260
Division of General Services—Acct. No. 2130	2261
Division of Purchasing—Acct. No. 2120	2260
Education and State Employees Grievance Board— Acct. No. 6015	2263
Ethics Commission—Acct. No. 6180	2264
Public Defender Services—Acct. No. 5900	2262
Public Employees Insurance Agency—Acct. No. 6150	2264
Public Employees Retirement System—Acct. No. 6140	2263
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Air Pollution Control Commission—Acct. No. 4760	2268
Board of Coal Mine Health and Safety—Acct. No. 4720	2267
Coal Mine Safety and Technical Review Committee— Acct. No. 4750	2268
Department of Commerce, Labor and Environmental Resources—Office of the Secretary— Acct. No. 5321	2269
Division of Environmental Protection—Acct. No. 4775	2268
Division of Forestry—Acct. No. 4650	2266
Division of Labor—Acct. No. 4500	2266
Division of Miners' Health, Safety and Training— Acct. No. 4780	2268
Division of Natural Resources—Acct. No. 5650	2270
Division of Tourism and Parks—Acct. No. 4625	2266
Geological and Economic Survey—Acct. No. 5200	2269
Interstate Commission on Potomac River Basin— Acct. No. 4730	2267
Ohio River Valley Water Sanitation Commission— Acct. No. 4740	2267
Water Resources Board—Acct. No. 5640	2270
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State Board of Rehabilitation—Division of Rehabilitation Services—Acct. No. 4405	2274
State Department of Education—Acct. No. 2860	2270
State Department of Education—Aid for Exceptional Children—Acct. No. 2960	2273
State Department of Education—School Lunch Program—Acct. No. 2870	2271
State Department of Education—State Aid to Schools—Acct. No. 2950	2272
State FFA-FHA Camp and Conference Center— Acct. No. 3360	2274
West Virginia Schools for the Deaf and the Blind— Acct. No. 3330	2273
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Board of Directors of the State College System Control Account—Acct. No. 2785	2274
Board of Trustees of the University System of West Virginia and Board of Directors of the State College System—Acct. No. 2800	2275
Board of Trustees of the University System of West Virginia Control Account—Acct. No. 2795	2275

Board of Trustees of the University System of West Virginia—University of West Virginia Health Sciences Account Control Account—Acct. No. 2855	2276
Department of Education and the Arts—Office of the Secretary—Acct. No. 5332	2279
Division of Culture and History—Acct. No. 3510	2278
Educational Broadcasting Authority—Acct. No. 2910	2277
Library Commission—Acct. No. 3500	2277
DEPARTMENT OF HEALTH AND HUMAN RESOURCES	
Commission on Aging—Acct. No. 4060	2282
Consolidated Medical Service Fund—Acct. No. 4190	2282
Department of Health and Human Resources—Office of the Secretary—Acct. No. 5343	2284
Division of Health—Central Office—Acct. No. 4000	2280
Division of Human Services—Acct. No. 4050	2281
Human Rights Commission—Acct. No. 5980	2285
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Board of Probation and Parole—Acct. No. 3650	2285
Department of Military Affairs and Public Safety—Office of the Secretary—Acct. No. 5354	2288
Division of Corrections—Central Office—Acct. No. 3680	2286
Division of Corrections—Correctional Units—Acct. No. 3770	2286
Division of Criminal Justice and Highway Safety—Acct. No. 5750	2289
Division of Public Safety—Acct. No. 5700	2288
Division of Veterans' Affairs—Acct. No. 4040	2288
Division of Veterans' Affairs—Veterans' Bonus—Acct. No. 4041	2288
Division of Veterans' Affairs—Veterans' Home—Acct. No. 4010	2287
Fire Commission—Acct. No. 6170	2290
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Division of Professional and Occupational Licenses—State Athletic Commission—Acct. No. 4790	2291
Tax Division—Acct. No. 1800	2290
DEPARTMENT OF TRANSPORTATION	
Department of Transportation—Office of the Secretary—Acct. No. 5376	2292
Division of Public Transit—Acct. No. 5380	2292
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Department of Agriculture—Agricultural Awards—Acct. No. 5150	2259

Department of Agriculture—Marketing and Development Division (Matching Fund)—Acct. No. 5130	2258
Department of Agriculture—Meat Inspection— Acct. No. 5140	2259
Department of Agriculture—Soil Conservation Committee—Acct. No. 5120	2258
Governor's Office—Acct. No. 1200	2252
Governor's Office—Acct. No. 1235	2253
Governor's Office—Civil Contingent Fund— Acct. No. 1240	2253
Governor's Office—Custodial Fund—Acct. No. 1230	2252
Governor's Office—Governor's Cabinet on Children and Families—Acct. No. 1255	2254
Governor's Office—Health Care Planning Commission— Acct. No. 1265	2254
Governor's Office—Infrastructure Improvements— Acct. No. 1250	2253
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Division of Environmental Protection—Fees and Operating Expenses—Acct. No. 8391	2307
Division of Environmental Protection—Groundwater Planning—Acct. No. 8312	2305
Division of Environmental Protection—Hazardous Waste Emergency and Response Fund—Acct. No. 8323	2306

Division of Environmental Protection—Leaking Underground Storage Tanks Administrative Fund— Acct. No. 8302	2303
Division of Environmental Protection—Mines and Minerals Operations Fund—Acct. No. 8540	2310
Division of Environmental Protection—Oil and Gas Operating Permits—Acct. No. 8539	2310
Division of Environmental Protection—Oil and Gas Reclamation Trust—Acct. No. 8538	2309
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Division of Forestry—Severance Tax Operations— Acct. No. 8477	2308
Division of Forestry—Timberland Enforcement Operations—Acct. No. 8475	2308
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Division of Labor—Elevator Safety Act— Acct. No. 8271	2302
Division of Natural Resources—Acct. No. 8300	2303
Division of Natural Resources—Game, Fish and Aquatic Life Fund—Acct. No. 8303	2304
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Division of Natural Resources—Whitewater Study and Improvement Fund—Acct. No. 8307	2305
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State College and University Systems—State Systems Tuition Fee—Revenue Bond Construction Fund— Acct. No. 8860	2316
State College System—State System Registration Fee—Special Capital Improvement Fund (Capital Improvement and Bond Retirement Fund) Control Account—Acct. No. 8835	2314
State College System—State System Tuition Fee— Special Capital Improvement Fund (Capital Improvement and Bond Retirement Fund) Control Account—Acct. No. 8855	2315
State University System—State System Registration Fee—Special Capital Improvement Fund (Capital Improvement and Bond Retirement Fund) Control Account—Acct. No. 8830	2313
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Division of Veterans' Affairs—Veterans' Home— Acct. No. 8261	2323
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TITLE II—APPROPRIATIONS.

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| SECTION 2. | Appropriations from state road fund. |
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| SECTION 11. | Special revenue appropriations. |
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| SECTION 17. | Total appropriations. |
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1 **Section 1. Appropriations from general revenue.—**
 2 From the state fund, general revenue, there are hereby
 3 appropriated conditionally upon the fulfillment of the
 4 provisions set forth in article two, chapter five-a of the code
 5 the following amounts, as itemized, for expenditure during
 6 the fiscal year one thousand nine hundred ninety-five.

LEGISLATIVE

1—Senate

“Former” Account No. 1010

“WVFIMS” Account No.

Fund 0165 FY 1995 Org 2100

	Acti- vity		General Revenue Fund
1 Compensation of Members (R)	003	\$	816,200
2 Compensation and Per Diem			
3 of Officers and Employees (R) ..	005		1,500,000
4 Employee Benefits (R).....	010		330,000
5 Current Expenses and			
6 Contingent Fund (R)	021		560,000
7 Repairs and Alterations (R).....	064		40,000
8 Computer Supplies (R)	101		15,000
9 Computer Systems	102		80,000
10 Printing Blue Book (R)	103		150,000
11 Expenses of Members (R)	399		445,000
12 Total		\$	3,936,200

13 The appropriations for the senate for the fiscal year
 14 1993-94 are to remain in full force and effect and are
 15 hereby reappropriated to June 30, 1995. Any balances
 16 so reappropriated may be transferred and credited to
 17 the 1994-95 accounts.

18 Upon the written request of the clerk of the senate,
 19 the auditor shall transfer amounts between items of the
 20 total appropriation in order to protect or increase the
 21 efficiency of the service.

22 The clerk of the senate, with the approval of the
 23 president, is authorized to draw his or her requisitions

24 upon the auditor, payable out of the Current Expenses
25 and Contingent Fund of the senate, for any bills for
26 supplies and services that may have been incurred by
27 the senate and not included in the appropriation bill, for
28 supplies and services incurred in preparation for the
29 opening, the conduct of the business and after adjourn-
30 ment of any regular or extraordinary session, and for
31 the necessary operation of the senate offices, the
32 requisitions for which are to be accompanied by bills to
33 be filed with the auditor.

34 The clerk of the senate, with the written approval of
35 the president, or the president of the senate shall have
36 authority to employ such staff personnel during any
37 session of the Legislature as shall be needed in addition
38 to staff personnel authorized by the senate resolution
39 adopted during any such session. The clerk of the senate,
40 with the written approval of the president, or the
41 president of the senate shall have authority to employ
42 such staff personnel between sessions of the Legislature
43 as shall be needed, the compensation of all staff
44 personnel during and between sessions of the Legisla-
45 ture, notwithstanding any such senate resolution, to be
46 fixed by the president of the senate. The clerk is hereby
47 authorized to draw his or her requisitions upon the
48 auditor for the payment of all such staff personnel for
49 such services, payable out of the appropriation for
50 Compensation and Per Diem of Officers and Employees
51 or Current Expenses and Contingent Fund of the senate.

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

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

2—House of Delegates

“Former” Account No. 1020

“WVFIMS” Account No.

Fund 0170 FY 1995 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		1,670,573
6	Expenses of Members (R)	399		614,810
7	Total		\$	3,678,069

8 The appropriations for the house of delegates for the
 9 fiscal year 1993-94 are to remain in full force and effect
 10 and are hereby reappropriated to June 30, 1995. Any
 11 balances so reappropriated may be transferred and
 12 credited to the 1994-95 accounts.

13 Upon the written request of the clerk of the house of
 14 delegates, the auditor shall transfer amounts between
 15 items of the total appropriation in order to protect or
 16 increase the efficiency of the service.

17 The clerk of the house of delegates, with the approval
 18 of the speaker, is authorized to draw his or her
 19 requisitions upon the auditor, payable out of the Current
 20 Expenses and Contingent Fund of the house of dele-
 21 gates, for any bills for supplies and services that may
 22 have been incurred by the house of delegates and not
 23 included in the appropriation bill, for bills for services
 24 and supplies incurred in preparation for the opening of
 25 the session and after adjournment, and for the necessary
 26 operation of the house of delegates' offices, the requisi-
 27 tions for which are to be accompanied by bills to be filed
 28 with the auditor.

29 The speaker of the house of delegates, upon approval
 30 of the house committee on rules, shall have authority to
 31 employ such staff personnel during and between
 32 sessions of the Legislature as shall be needed, in addition
 33 to personnel designated in the house resolution, and the
 34 compensation of all personnel shall be as fixed in such

35 house resolution for the session, or fixed by the speaker,
 36 with the approval of the house committee on rules,
 37 during and between sessions of the Legislature, notwith-
 38 standing such house resolution. The clerk of the house
 39 is hereby authorized to draw requisitions upon the
 40 auditor for such services, payable out of the appropri-
 41 ation for the Compensation and Per Diem of Officers
 42 and Employees 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 1995 Org 2300

1	Joint Committee on			
2	Government and Finance (R) ...	104	\$	4,545,567
3	Legislative Printing (R)	105		910,000
4	Legislative Rule-Making			
5	Review Committee (R)	106		220,805
6	Work Force Development Council	104		100,000
7	Legislative Computer System (R)	107		810,100
8	Joint Standing Committee			
9	on Education (R)	108		57,125
10	Joint Commission on Vocational-			
11	Technical-Occupational			
12	Education (R).....	109		50,000
13	Total		\$	6,693,597
14	The appropriations for the joint expenses for the fiscal			

15 year 1993-94 are to remain in full force and effect and
 16 are hereby reappropriated to June 30, 1995. Any
 17 balances so reappropriated may be transferred and
 18 credited to the 1994-95 accounts.

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

JUDICIAL

4—Supreme Court—General Judicial

“Former” Account No. 1110

“WVFIMS” Account No.

Fund 0180 FY 1995 Org 2400

1	Personal Services (R)	001	\$	24,578,284
2	Annual Increment (R)	004		242,280
3	Social Security Matching (R)	011		1,898,774
4	Public Employees' Insurance			
5	Matching (R)	012		2,889,770
6	Public Employees'			
7	Retirement Matching (R)	016		2,359,260
8	Other Expenses (R)	029		3,100,000
9	Judges' Retirement System (R) ...	110		2,972,904
10	Other Court Costs (R).....	111		2,400,000
11	Judicial Training Program (R)....	112		250,000
12	Mental Hygiene Fund (R)	113		725,000
13	Guardianship Attorney Fees			300,000
14	Family Law Master Program	190		691,285
15	Total		\$	42,407,557

16 The appropriations to the supreme court of appeals
 17 for the fiscal years 1989-90, 1990-91, 1991-92, 1992-93
 18 and 1993-94 are to remain in full force and effect and
 19 are hereby reappropriated to June 30, 1995. Any
 20 balances so reappropriated may be transferred and
 21 credited to the 1994-95 accounts.

22 This appropriation shall be administered by the
 23 administrative director of the supreme court of appeals,
 24 who shall draw his requisitions for warrants in payment
 25 in the form of payrolls, making deductions therefrom as
 26 required by law for taxes and other items.

27 The appropriation for the Judges' Retirement System
 28 is to be transferred to the consolidated public retirement
 29 board, in accordance with the law relating thereto, upon
 30 requisition of the administrative director of the supreme
 31 court of appeals.

EXECUTIVE

5—Governor's Office

(WV Code Chapter 5)

"Former" Account No. 1200

"WVFIMS" Account No.

Fund 0101 FY 1995 Org 0100

1	Salary of Governor	002	\$	72,000
2	Personal Services	001		1,432,523
3	Annual Increment	004		9,000
4	Employee Benefits	010		316,156
5	National Governors' Association...	123		63,580
6	Southern States Energy Board....	124		28,732
7	Unclassified	099		<u>589,224</u>
8	Total		\$	2,511,215

6—Governor's Office—Custodial Fund

(WV Code Chapter 5)

"Former" Account No. 1230

"WVFIMS" Account No.

Fund 0102 FY 1995 Org 0100

1	Unclassified—Total	096	\$	357,830
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

(WV Code Chapter 5)

"Former" Account No. 1235**"WVFIMS" Account No.**Fund 0543 FY 1995 Org 0100

1 Unclassified—Total 096 \$ -0-

8—Governor's Office—**Civil Contingent Fund**

(WV Code Chapter 5)

"Former" Account No. 1240**"WVFIMS" Account No.**Fund 0105 FY 1995 Org 0100

1 Civil Contingent Fund—Total (R) 114 \$ 1,250,000

2 Any unexpended balance remaining in the appropri-
 3 ation (fund 0105, activity 114) at the close of the fiscal
 4 year 1993-94 is hereby reappropriated for expenditure
 5 during the fiscal year 1994-95.

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.

9—Governor's Office—**Infrastructure Improvements**

(WV Code Chapter 5)

"Former" Account No. 1250**"WVFIMS" Account No.**Fund 0106 FY 1995 Org 0100

1 Any unexpended balance remaining in the appropri-
 2 ation for Unclassified—Total (fund 0106, activity 096) at
 3 the close of the fiscal year 1993-94 are hereby reappropri-
 4 ated for expenditure during the fiscal year 1994-95
 5 and is to be expended to fund grants and loans for
 6 water, sewage and soil 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 1995 Org 0100

1	Governor’s Cabinet on Children		
2	and Families—Total (R)	116 \$	350,000

3 Any unexpended balance remaining in the appropri-
 4 ation (fund 0104, activity 116) at the close of the fiscal
 5 year 1993-94 is hereby reappropriated for expenditure
 6 during the fiscal year 1994-95.

11—Governor’s Office—

Health Care Planning Commission

(WV Code Chapter 5)

“Former” Account No. 1265

“WVFIMS” Account No.

Fund 0545 FY 1995 Org 0100

Unclassified—Total	096 \$	-0-
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12—Auditor’s Office—

General Administration

(WV Code Chapter 12)

“Former” Account No. 1500

“WVFIMS” Account No.

Fund 0116 FY 1995 Org 1200

1	Salary of Auditor	002 \$	46,800
2	Personal Services	001	1,646,038

3	Annual Increment	004	32,824
4	Employee Benefits	010	547,276
5	Unclassified (R)	099	615,933
6	Computer Disk	519	90,000
7	Office Automation (R)	117	750,000
8	Total		\$ 3,728,871
9	Any unexpended balances remaining in the appropri-		
10	ations for Unclassified (fund 0116, activity 099) and		
11	Office Automation (fund 0116, activity 117) at the close		
12	of the fiscal year 1993-94 are hereby reappropriated for		
13	expenditure during the fiscal year 1994-95.		

13—Auditor's Office—**Family Law Master****Administration Fund**

(WV Code Chapter 48A)

"Former" Account No. 1510**"WVFIMS" Account No.****Fund 0117 FY 1995 Org 1200**

1	Unclassified—Total	096	\$ 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.

14—Treasurer's Office

(WV Code Chapter 12)

"Former" Account No. 1600**"WVFIMS" Account No.****Fund 0126 FY 1995 Org 1300**

1	Salary of Treasurer	002	\$ 50,400
2	Personal Services	001	478,110
3	Annual Increment	004	7,416
4	Employee Benefits	010	162,496
5	Unclassified	099	272,824
6	Abandoned Property Program ...	118	320,576

7	Hardware/Software Upgrade	518		54,000
8	Check Encoder			125,000
9	Total		\$	1,470,822

10 Any unexpended balance remaining in the appropri-
 11 ation for Check Encoder (fund 0126, activity 441) at the
 12 close of the fiscal year 1993-94 is hereby reappropriated
 13 for expenditure during the fiscal year 1994-95.

15—Attorney General

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

“Former” Account No. 2400

“WVFIMS” Account No.

Fund 0150 FY 1995 Org 1500

1	Salary of Attorney General	002	\$	50,400
2	Personal Services	001		2,047,690
3	Annual Increment	004		16,452
4	Employee Benefits	010		585,056
5	Unclassified	099		599,248
6	Total		\$	3,298,846

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.

16—Secretary of State

(WV Code Chapters 3, 5 and 59)

“Former” Account No. 2500

“WVFIMS” Account No.

Fund 0155 FY 1995 Org 1600

1	Salary of Secretary of State	002	\$	43,200
2	Personal Services	001		479,891
3	Annual Increment	004		5,724
4	Employee Benefits	010		164,194
5	National Voter Registration Act ..	520		90,000
6	Publication of Election Laws	521		38,000
7	Unclassified (R)	099		262,376
8	Total		\$	1,083,385
9	Any unexpended balance remaining in the appropri-			
10	ation for Unclassified (fund 0155, activity 099) at the			
11	close of the fiscal year 1993-94 is hereby reappropriated			
12	for expenditure during the fiscal year 1994-95.			

17—State Elections Commission

(WV Code Chapter 3)

"Former" Account No. 2600

"WVFIMS" Account No.

Fund 0160 FY 1995 Org 1601

1	Unclassified—Total	096	\$	10,616
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18—Department of Agriculture

(WV Code Chapter 19)

"Former" Account No. 5100

"WVFIMS" Account No.

Fund 0131 FY 1995 Org 1400

1	Salary of Commissioner	002	\$	46,800
2	Personal Services	001		2,589,859
3	Annual Increment	004		41,148
4	Employee Benefits	010		956,082
5	Unclassified	099		922,396
6	Gypsy Moth Program	119		773,420
7	Farmers Markets			20,000
8	Small Business Loan Program			200,000
9	Charleston Capital Market Place ..			200,000
10	Total		\$	5,749,705

11 A portion of this appropriation may be transferred to
 12 a special revenue fund for the purpose of matching
 13 federal funds for marketing and development activities.

14 The above appropriation for Small Business Loan
 15 Program may be transferred to a special revenue fund
 16 to establish a revolving fund for such loan purposes.

19—Department of Agriculture—

Soil Conservation Committee

(WV Code Chapter 19)

“Former” Account No. 5120

“WVFIMS” Account No.

Fund 0132 FY 1995 Org 1400

1	Personal Services	001	\$	375,700
2	Annual Increment	004		6,408
3	Employee Benefits	010		110,886
4	Unclassified (R)	099		284,758
5	Maintenance of Flood Control			
6	Projects	522		1,750,000
7	Soil Conservation Projects			<u>3,000,000</u>
8	Total		\$	5,527,752

9 Any unexpended balances remaining in the appropri-
 10 ations for Unclassified (fund 0132, activity 099) and
 11 Infrastructure Projects—Total (fund 0538, activity 516)
 12 at the close of the fiscal year 1993-94 are hereby
 13 reappropriated for expenditure during the fiscal year
 14 1994-95.

20—Department of Agriculture—

Marketing and Development Division

(Matching Fund)

(WV Code Chapter 19)

“Former” Account No. 5130

“WVFIMS” Account No.

Fund 0134 FY 1995 Org 1400

1	Personal Services	001	\$	-0-
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Ch. 1]	APPROPRIATIONS		2259
2	Annual Increment	004	-0-
3	Employee Benefits	010	-0-
4	Unclassified	099	-0-
5	Total	\$	-0-

21—Department of Agriculture—

Meat Inspection

(WV Code Chapter 19)

“Former” Account No. 5140

“WVFIMS” Account No.

Fund 0135 FY 1995 Org 1400

1	Personal Services	001	\$	320,579
2	Annual Increment	004		5,796
3	Employee Benefits	010		119,025
4	Unclassified	099		63,370
5	Total		\$	508,770

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.

22—Department of Agriculture—

Agricultural Awards

(WV Code Chapter 19)

“Former” Account No. 5150

“WVFIMS” Account No.

Fund 0136 FY 1995 Org 1400

1	Agricultural Awards	121	\$	66,066
2	Fairs and Festivals	122		241,598
3	Total		\$	307,664

DEPARTMENT OF ADMINISTRATION

23—Department of Administration—

Office of the Secretary

(WV Code Chapter 5F)

"Former" Account No. 2105

"WVFIMS" Account No.

Fund 0186 FY 1995 Org 0201

1	Unclassified—Total	096	\$	237,072
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24—Division of Finance

(WV Code Chapter 5A)

"Former" Account No. 2110

"WVFIMS" Account No.

Fund 0203 FY 1995 Org 0209

1	Personal Services	001	\$	507,454
2	Annual Increment	004		6,960
3	Employee Benefits	010		144,453
4	Unclassified	099		547,651
5	GAAP Project (R)	125		1,314,300
6	Total		\$	2,520,818

7 Any unexpended balance remaining in the appropri-
 8 ation for GAAP Project (fund 0203, activity 125) at the
 9 close of fiscal year 1993-94 is hereby reappropriated for
 10 expenditure during the fiscal year 1994-95.

25—Division of Purchasing

(WV Code Chapter 5A)

"Former" Account No. 2120

"WVFIMS" Account No.

Fund 0210 FY 1995 Org 0213

1	Personal Services	001	\$	582,292
2	Annual Increment	004		8,461
3	Employee Benefits	010		159,069
4	Unclassified	099		72,409
5	Total		\$	822,231

6 The division of highways shall reimburse the Unclas-
 7 sified appropriation (fund 2031, activity 099) within the
 8 division of purchasing for all actual expenses incurred
 9 pursuant to the provisions of section thirteen, article

10 two-a, chapter seventeen of the code.

26—Division of General Services

(WV Code Chapter 5A)

“Former” Account No. 2130

“WVFIMS” Account No.

Fund 0230 FY 1995 Org 0223

1	Personal Services	001	\$	444,840
2	Annual Increment	004		13,068
3	Employee Benefits	010		203,830
4	Unclassified	099		698,459
5	Fire Service Fee	126		13,440
6	Capitol Building Preservation (R)	503		500,000
7	Total		\$	1,873,637
8	Any unexpended balance remaining in the appropri-			
9	ation for Capitol Building Preservation (fund 0230,			
10	activity 503) at the close of the fiscal year 1993-94 is			
11	hereby reappropriated for expenditure during the fiscal			
12	year 1994-95.			

27—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 1995 Org 0224

1	Unclassified—Total	096	\$	4,656
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28—Board of Risk and

Insurance Management

(WV Code Chapter 29)

“Former” Account No. 2250

“WVFIMS” Account No.

Fund 0217 FY 1995 Org 0218

1	Unclassified	099	\$	10,454,116
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2	Retro Payments	523	<u>3,600,000</u>
3	Total		\$ 14,054,116

4 The above appropriation includes funding for the
 5 purpose of paying premiums, self-insurance losses, loss
 6 adjustment expenses and loss prevention engineering
 7 fees for property, casualty and fidelity insurance for the
 8 various state agencies, except those operating from
 9 special revenue funds, with such special revenue fund
 10 agencies to be billed by the board of risk and insurance
 11 management and with such costs to be a proper charge
 12 against such spending units.

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

29—Commission on Uniform State Laws

(WV Code Chapter 29)

“Former” Account No. 2450

“WVFIMS” Account No.

Fund 0214 FY 1995 Org 0217

1	Unclassified—Total	096	\$	20,000
2	To pay expenses of members of the commission on			
3	uniform state laws.			

30—Public Defender Services

(WV Code Chapter 29)

“Former” Account No. 5900

“WVFIMS” Account No.

Fund 0226 FY 1995 Org 0221

1	Personal Services	001	\$	244,047
2	Annual Increment	004		2,844
3	Employee Benefits	010		75,298
4	Unclassified (R)	099		98,435

5	Appointed Counsel Fees and		
6	Public Defender		
7	Corporations (R)	127	<u>14,210,905</u>
8	Total		\$ 14,631,529

9 Any unexpended balances remaining in the appropri-
 10 ations for Unclassified (fund 0226, activity 099), except
 11 for fiscal years 1988-89, 1989-90, 1990-91, 1991-92 and
 12 1992-93, and Appointed Counsel Fees and Public
 13 Defender Corporations (fund 0226, activity 127), except
 14 for fiscal year 1991-92, at the close of the fiscal year
 15 1993-94 are hereby reappropriated for expenditure
 16 during the fiscal year 1994-95.

31—Education and State Employees

Grievance Board

(WV Code Chapter 18)

“Former” Account No. 6015

“WVFIMS” Account No.

Fund 0220 FY 1995 Org 0219

1	Personal Services	001	\$	455,454
2	Annual Increment	004		4,176
3	Employee Benefits	010		121,650
4	Unclassified	099		<u>108,158</u>
5	Total		\$	689,438

32—Public Employees Retirement System

(WV Code Chapter 5)

“Former” Account No. 6140

“WVFIMS” Account No.

Fund 0195 FY 1995 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.

33—Public Employees Insurance Agency

(WV Code Chapter 5)

“Former” Account No. 6150

“WVFIMS” Account No.

Fund 0200 FY 1995 Org 0225

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 public employees
 6 health insurance cost for their respective divisions.
 7 When specific appropriations are not made, such
 8 payments may be made from the balances in the various
 9 special revenue funds in excess of specific appropri-
 10 ations.

34—Ethics Commission

(WV Code Chapter 6B)

“Former” Account No. 6180

“WVFIMS” Account No.

Fund 0223 FY 1995 Org 0220

1	Personal Services	001	\$	163,215
2	Annual Increment	004		612
3	Employee Benefits	010		38,969
4	Unclassified	099		157,561
5	Total		\$	360,357

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

35—West Virginia Development Office

(WV Code Chapter 5B)

“Former” Account No. 1210

“WVFIMS” Account No.

Fund 0256 FY 1995 Org 0307

1	Personal Services	001	\$	1,882,036
2	Annual Increment	004		21,812
3	Employee Benefits	010		506,844
4	Unclassified	099		1,668,667
5	Partnership Grants (R)	131		3,000,000
6	National Youth Science Camp	132		200,000
7	Local Economic Development			
8	Partnerships (R)	133		1,000,000
9	Infrastructure	524		16,500,000
10	Leverage Technology Loan			
11	Program	525		-0-
12	Small Business Development			
13	Loan Program	526		-0-
14	ARC Assessment			109,445
15	Guaranteed Work Force Grant (R)	242		1,450,000
16	Leverage Technology and			
17	Small Business			
18	Development Program			800,000
19	WV Film Development Office			75,000
20	Total		\$	<u>27,213,804</u>

21 Any unexpended balances remaining in the appropri-
 22 ations for Partnership Grants (fund 0256, activity 131),
 23 Competitive Grants (fund 0256, activity 130), Guarant-
 24 eed Work Force Grant (fund 0256, activity 242) and
 25 Local Economic Development Partnerships (fund 0256,
 26 activity 133) at the close of the fiscal year 1993-94 are
 27 hereby reappropriated for expenditure during the fiscal
 28 year 1994-95.

29 The above appropriation to Local Economic Develop-
 30 ment Partnerships shall be used by the West Virginia
 31 development office for the award of funding assistance
 32 to county and regional economic development corpora-
 33 tions or authorities created under the plan developed by
 34 the council for community and economic development
 35 under the provisions of section three, article two,
 36 chapter five-b of the code. The West Virginia develop-
 37 ment office shall award the funding assistance through
 38 a matching grant program, based upon criteria devel-
 39 oped under the provisions of section three, article two,
 40 chapter five-b of the code and based upon a formula
 41 whereby funding assistance may not exceed twenty-five

42 thousand dollars per county served by a regional
43 economic development corporation or authority.

44 From the above appropriation for Infrastructure, it is
45 the intent of the Legislature that adequate funds be
46 transferred to the state revolving fund to match
47 available federal funds for water and sewer projects.

36—Division of Labor

(WV Code Chapters 21 and 47)

“Former” Account No. 4500

“WVFIMS” Account No.

Fund 0260 FY 1995 Org 0308

1	Personal Services	001	\$	874,063
2	Annual Increment	004		12,363
3	Employee Benefits	010		330,500
4	Unclassified	099		184,849
5	Total		\$	1,401,775

37—Division of Tourism and Parks

(WV Code Chapter 5B)

“Former” Account No. 4625

“WVFIMS” Account No.

Fund 0246 FY 1995 Org 0304

1 Unclassified—Total 096 \$ 10,278,684

2 Any revenue derived from mineral extraction at any
3 state park shall be deposited in a special revenue
4 account of the division of tourism and parks, first for
5 bond debt payment purposes and with any remainder
6 to be for park operation and improvement purposes.

38—Division of Forestry

(WV Code Chapter 19)

“Former” Account No. 4650

“WVFIMS” Account No.

Fund 0250 FY 1995 Org 0305

- 1 Unclassified—Total 096 \$ 2,100,000
 2 Out of the above appropriation a sum may be used to
 3 match federal funds for cooperative studies or other
 4 funds for similar purposes.

39—Board of Coal Mine**Health and Safety**

(WV Code Chapter 22)

“Former” Account No. 4720

“WVFIMS” Account No.

Fund 0280 FY 1995 Org 0319

1	Personal Services	001	\$	75,000
2	Annual Increment	004		504
3	Employee Benefits	010		25,000
4	Unclassified	099		29,400
5	Total		\$	129,904

40—Interstate Commission on**Potomac River Basin**

(WV Code Chapter 29)

“Former” Account No. 4730

“WVFIMS” Account No.

Fund 0263 FY 1995 Org 0313

1	West Virginia’s Contribution			
2	to the Interstate Commission			
3	on Potomac River Basin—			
4	Total	134	\$	37,325

41—Ohio River Valley Water**Sanitation Commission**

(WV Code Chapter 29)

“Former” Account No. 4740

“WVFIMS” Account No.

Fund 0264 FY 1995 Org 0313

1	West Virginia's Contribution		
2	to the Ohio River Valley Water		
3	Sanitation Commission—Total ..	135 \$	100,200

**42—Coal Mine Safety and
Technical Review Committee**
(WV Code Chapter 22)

“Former” Account No. 4750

“WVFIMS” Account No.

Fund 0285 FY 1995 Org 0320

1	Unclassified—Total	096 \$	71,303
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43—Air Pollution Control Commission
(WV Code Chapter 16)

“Former” Account No. 4760

“WVFIMS” Account No.

Fund ____ FY 1995 Org ____

1	Unclassified—Total	096	75,000
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44—Division of Environmental Protection
(WV Code Chapter 22)

“Former” Account No. 4775

“WVFIMS” Account No.

Fund 0273 FY 1995 Org 0313

1	Personal Services	001 \$	4,027,782
2	Annual Increment	004	49,700
3	Employee Benefits	010	1,321,034
4	Unclassified	099	621,245
5	Black Fly Control	137	216,000
6	Total	\$	6,235,761

**45—Division of Miners' Health,
Safety and Training**
(WV Code Chapter 22)

“Former” Account No. 4780

"WVFIMS" Account No.

Fund 0277 FY 1995 Org 0314

1	Personal Services	001	\$	3,075,183
2	Annual Increment	004		31,536
3	Employee Benefits	010		1,044,879
4	Unclassified	099		<u>270,986</u>
5	Total		\$	4,422,584

46—Geological and Economic Survey

(WV Code Chapter 29)

"Former" Account No. 5200

"WVFIMS" Account No.

Fund 0253 FY 1995 Org 0306

1	Personal Services	001	\$	1,140,476
2	Annual Increment	004		20,194
3	Employee Benefits	010		351,301
4	Unclassified	099		<u>100,000</u>
5	Total		\$	1,611,971

6 The above Unclassified appropriation includes fund-
7 ing to secure federal and other contracts and may be
8 transferred to a special revolving fund (fund 3105,
9 activity 099) for the purpose of providing advance
10 funding for such contracts.

47—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 1995 Org 0301

1	Unclassified	099	\$	-0-
2	ARC Assessment	136		<u>-0-</u>
3	Total		\$	-0-

48—Water Resources Board

(WV Code Chapter 20)

“Former” Account No. 5640

“WVFIMS” Account No.

Fund 0270 FY 1995 Org 0311

1	Personal Services	001	\$	61,932
2	Annual Increment	004		720
3	Employee Benefits	010		18,994
4	Unclassified	099		32,210
5	Total		\$	113,856

49—Division of Natural Resources

(WV Code Chapter 20)

“Former” Account No. 5650

“WVFIMS” Account No.

Fund 0265 FY 1995 Org 0310

1	Personal Services	001	\$	490,304
2	Annual Increment	004		6,840
3	Employee Benefits	010		161,452
4	Unclassified	099		7,858
5	Non-Game Wildlife	527		400,000
6	Total		\$	1,066,454

DEPARTMENT OF EDUCATION**50—State Department of Education**

(WV Code Chapters 18 and 18A)

“Former” Account No. 2860

“WVFIMS” Account No.

Fund 0313 FY 1995 Org 0402

1	Personal Services	001	\$	2,265,660
2	Annual Increment	004		32,695
3	Employee Benefits	010		646,647
4	Unclassified	099		5,213,903
5	Competitive Grants	130		-0-
6	WV Education Information			

7	System (WVEIS)	138	2,640,778
8	34/1000 Waiver	139	100,000
9	Increased Enrollment	140	2,000,000
10	Coordinator—Educational		
11	Medical Services	141	59,855
12	Computer Basic Skills (R)	145	-0-
13	Principals' Academy	455	-0-
14	Governor's Honors Academy	478	30,000
15	WVGC Writing Project	482	20,000
16	Micro Computer Network	506	150,000
17	WV Work Heritage Project	507	20,000
18	Inclusion		200,000
19	Total		<u>\$ 13,379,538</u>

20 The above appropriation includes the state board of
21 education and their executive office.

22 Any unexpended balance remaining in the appropria-
23 tion for Computer Basic Skills (fund 0313, activity 145)
24 at the close of the fiscal year 1993-94 is hereby reapprop-
25 riated for expenditure during the fiscal year 1994-95.

51—State Department of Education—

School Lunch Program

(WV Code Chapters 18 and 18A)

“Former” Account No. 2870

“WVFIMS” Account No.

Fund 0303 FY 1995 Org 0402

1	Personal Services	001	\$ 154,256
2	Annual Increment	004	1,800
3	Employee Benefits	010	44,697
4	Unclassified	099	<u>1,664,787</u>
5	Total		<u>\$ 1,865,540</u>

52—State Board of Education—

Vocational Division

(WV Code Chapters 18 and 18A)

“Former” Account No. 2890

“WVFIMS” Account No.

Fund 0390 FY 1995 Org 0402

1	Personal Services	001	\$	681,946
2	Annual Increment	004		10,031
3	Employee Benefits	010		182,891
4	Unclassified	099		544,066
5	Wood Products—			
6	Forestry Vocational			
7	Program (R).....	146		63,024
8	Albert Yanni Vocational Program	147		139,300
9	Vocational Aid	148		10,517,851
10	Adult Basic Education	149		2,052,666
11	Equipment Replacement	150		1,019,750
12	Total		\$	15,211,525

13 Any unexpended balance remaining in the appropri-
 14 ation for Wood Products—Forestry Vocational Program
 15 (fund 0390, activity 146) at the close of the fiscal year
 16 1993-94 is hereby reappropriated for expenditure
 17 during the fiscal year 1994-95.

18 From the Vocational Aid line item above, one
 19 hundred thousand dollars is to be expended to purchase
 20 hepatitis b vaccines to provide immunizations in
 21 vocational education programs.

53—State Department of Education—

State Aid to Schools

(WV Code Chapters 18 and 18A)

“Former” Account No. 2950

“WVFIMS” Account No.

Fund 0317 FY 1995 Org 0402

1	Other Current Expenses	022	\$	91,961,343
2	Professional Educators	151		650,542,766
3	Service Personnel	152		202,311,012
4	Fixed Charges	153		74,027,708
5	Transportation	154		28,251,254
6	Administration	155		6,871,990
7	Improve Instructional Programs	156		32,520,994
8	Basic Foundation Allowances			1,086,487,067
9	Less Local Share	332		<u>(216,537,100)</u>

10	Total Basic State Aid		869,949,967
11	Public Employees Insurance		
12	Match	012	116,027,065
13	Teachers' Retirement System	019	161,935,870
14	School Building Authority	453	23,350,809
15	School Building Authority—		
16	Renovation		<u>3,000,000</u>
17	Total		\$1,174,263,711

54—State Department of Education—

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

“Former” Account No. 2960

“WVFIMS” Account No.

Fund 0314 FY 1995 Org 0402

1	Special Education—Counties	159	\$	7,336,561
2	Special Education—Institutions ..	160		2,514,465
3	Education of Institutionalized			
4	Juveniles	161		<u>3,150,973</u>
5	Total		\$	13,001,999

55—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 1995 Org 0403

1	Personal Services	001	\$	5,335,825
2	Annual Increment	004		4,860
3	Employee Benefits	010		1,696,737
4	Unclassified	099		<u>1,009,048</u>
5	Total		\$	8,046,470

56—State FFA-FHA Camp and

Conference Center

(WV Code Chapters 18 and 18A)

"Former" Account No. 3360

"WVFIMS" Account No.

Fund 0306 FY 1995 Org 0402

1	Personal Services	001	\$	97,985
2	Annual Increment	004		3,262
3	Employee Benefits	010		47,009
4	Unclassified	099		157,127
5	Total		\$	305,383

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

(WV Code Chapter 18)

"Former" Account No. 4405

"WVFIMS" Account No.

Fund 0310 FY 1995 Org 0932

1	Personal Services	001	\$	3,657,127
2	Annual Increment	004		89,970
3	Employee Benefits	010		1,233,830
4	Unclassified	099		151,165
5	Case Services	162		2,757,289
6	Workshop Development	163		1,449,000
7	Total		\$	9,338,381

DEPARTMENT OF EDUCATION AND THE ARTS**58—Board of Directors of the****State College System****Control Account**

(WV Code Chapter 18B)

"Former" Account No. 2785

"WVFIMS" Account No.

Fund 0330 FY 1995 Org 0481

1	Unclassified	099	\$	77,058,231
2	Micro Computer Labs for			
3	Teacher Education (R)	171		-0-
4	Total		\$	77,058,231

5 Any unexpended balance remaining in the appropri-
 6 ation for Micro Computer Labs for Teacher Education
 7 (fund 0330, activity 171) at the close of the fiscal year
 8 1993-94 is hereby reappropriated for expenditure during
 9 the fiscal year 1994-95.

**59—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 1995 Org 0461

1	Unclassified	099	\$142,154,211
2	Marshall University—		
3	Southern WV Community		
4	College 2+2 Program (R)	170	160,000
5	Micro Computer Labs for		
6	Teacher Education (R)	171	-0-
7	Marshall University—		
8	Autism Training Center		400,000
9	Marshall University—		
10	Forensic Lab		100,000
11	Total		<u>\$ 142,814,211</u>

12 Any unexpended balances remaining in the appropri-
 13 ations for Marshall University-Southern WV Community
 14 College 2+2 Program (fund 0327, activity 170) and Micro
 15 Computer Labs for Teacher Education (fund 0327,
 16 activity 171) at the close of the fiscal year 1993-94 are
 17 hereby reappropriated for expenditure during the fiscal
 18 year 1994-95.

**60—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 1995 Org 0452

1	Unclassified.....	099	\$	868,084
2	Higher Education Grant			
3	Program (R)	164		4,507,050
4	Tuition Contract Program.....	165		599,940
5	Minority Doctoral Fellowship	166		90,000
6	Underwood-Smith Scholarship			
7	Program—Student Awards	167		410,000
8	WVNET	169		2,088,776
9	Micro Computer Labs for Teacher			
10	Education	171		-0-
11	Total.....		\$	8,563,850

12 Any unexpended balances remaining in the appropri-
 13 ations for Higher Education Grant Program (fund 0333,
 14 activity 164), Marshall University—Southern WV
 15 Community College 2+2 Program (fund 0333, activity
 16 170) and Micro Computer Labs for Teacher Education
 17 (fund 0333, activity 171) at the close of the fiscal year
 18 1993-94 are hereby reappropriated for expenditure
 19 during the fiscal year 1994-95.

**61—Board of Trustees of the
 University System of West Virginia**

University of West Virginia

Health Sciences Account

Control Account

(WV Code Chapter 18B)

"Former" Account No. 2855

"WVFIMS" Account No.

Fund 0323 FY 1995 Org 0478

1	School of Osteopathic Medicine....	172	\$	5,452,654
2	Marshall Medical School	173		9,755,954
3	WVU—School of Health Sciences...	174		34,762,257
4	WVU—School of Health			
5	Sciences—Charleston Division...	175		3,427,935
6	WVU Charleston Division—			

7	Poison Control Hot Line	510	250,000
8	Health Sciences Scholarship Fund	176	148,500
9	Primary Health Education		
10	Program Support (R)	177	3,960,000
11	Rural Health Initiative		
12	Site Support (R)	295	<u>1,980,000</u>
13	Total		\$ 59,737,300

14 Any unexpended balances remaining in the appropri-
 15 ations for Primary Health Education Program Support
 16 (fund 0323, activity 177) and Rural Health Initiative Site
 17 Support (fund 0323, activity 295) at the close of the fiscal
 18 year 1993-94 are hereby reappropriated for expenditure
 19 during the fiscal year 1994-95.

62—Educational Broadcasting Authority

(WV Code Chapter 10)

“Former” Account No. 2910

“WVFIMS” Account No.

Fund 0300 FY 1995 Org 0439

1	Personal Services	001	\$ 3,054,536
2	Annual Increment	004	48,240
3	Employee Benefits	010	901,743
4	Unclassified	099	1,231,334
5	WPBY Transmitter		<u>460,000</u>
6	Total		\$ 5,695,853

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

63—Library Commission

(WV Code Chapter 10)

“Former” Account No. 3500

“WVFIMS” Account No.

Fund 0296 FY 1995 Org 0433

1	Personal Services	001	\$ 1,014,982
2	Annual Increment	004	25,668
3	Employee Benefits	010	355,635

4	Unclassified	099	225,212
5	Books and Films	179	150,000
6	Services to State Institutions.....	180	156,310
7	Services to Blind and		
8	Handicapped.....	181	42,729
9	Grants to Public Libraries	182	6,288,884
10	Total.....		\$ 8,259,420

64—Division of Culture and History

(WV Code Chapter 29)

“Former” Account No. 3510

“WVFIMS” Account No.

Fund 0293 FY 1995 Org 0432

1	Personal Services	001	\$ 1,436,585
2	Annual Increment	004	23,220
3	Employee Benefits	010	474,160
4	Unclassified	099	2,302,096
5	Capital Outlay, Repairs and		
6	Equipment (R).....	542	749,210
7	Total.....		\$ 4,985,271

8 Any unexpended balance remaining in the appropri-
 9 ation for Capital Outlay, Repairs and Equipment (fund
 10 0293, activity 542) at the close of the fiscal year 1993-
 11 94 is hereby appropriated for expenditure during the
 12 fiscal year 1994-95.

13 The Unclassified appropriation includes funding for
 14 the arts funds, department programming funds, grants,
 15 fairs and festivals and camp Washington Carver and
 16 shall be expended only upon authorization of the division
 17 of culture and history and in accordance with the
 18 provisions of chapter five-a and article three, chapter
 19 twelve of the code.

20 All federal moneys received as reimbursement to the
 21 division of culture and history for moneys expended from
 22 the general revenue fund for the arts fund and historical
 23 preservation are hereby reappropriated for the purposes
 24 as originally made, including personal services, current
 25 expenses and equipment.

65—Department of Education and the Arts—

Office of the Secretary

(WV Code Chapter 5F)

“Former” Account No. 5332

“WVFIMS” Account No.

Fund 0294 FY 1995 Org 0431

1	Unclassified (R)	099	\$	462,881
2	Center for Professional			
3	Development (R)	115		1,800,000
4	Technical Preparation			
5	Program (R).....	440		832,397
6	Arts and Literacy Programs	456		-0-
7	Arts Programs			100,000
8	Governor’s Work Force			
9	Development Council.....	529		-0-
10	Community Schools	530		-0-
11	Mini Grants	531		-0-
12	WV Humanities Council.....	168		120,000
13	Community Schools/Mini Grants...			200,000
14	Faculty and Staff Salaries			
15	and Benefits.....			5,400,000
16	Mercer Study.....			1,000,000
17	Marshall and West Virginia			
18	University Faculty and			
19	Course Development			
20	International Study Projects....			35,000
21	Total.....		\$	9,950,278

22 Any unexpended balances remaining in the appropri-
 23 ations for Unclassified (fund 0294, activity 099), except
 24 fiscal year 1991-92, Center for Professional Development
 25 (fund 0294, activity 115), except fiscal year 1991-92,
 26 Technical Preparation Program (fund 0294, activity 440)
 27 and Rural Health Initiative Site Support (fund 0294,
 28 activity 295) at the close of the fiscal year 1993-94 are
 29 hereby reappropriated for expenditure during the fiscal
 30 year 1994-95.

31 From the Unclassified line item above, one hundred
 32 thousand dollars shall be utilized by the secretary of

33 education and the arts to hire a director of federal
 34 programs, for the board of trustees and board of
 35 directors systems, who shall not be an employee of any
 36 college or university.

37 The above appropriation for Faculty and Staff
 38 Salaries and Benefits shall be allocated by utilizing the
 39 resource allocation model, with faculty receiving an
 40 increase of one thousand dollars across the board and
 41 classified staff and non-classified staff receiving an
 42 increase of seven hundred fifty dollars across the board.

**DEPARTMENT OF HEALTH
 AND HUMAN RESOURCES**

66—Division of Health—

Central Office

(WV Code Chapter 16)

“Former” Account No. 4000

“WVFIMS” Account No.

Fund 0407 FY 1995 Org 0506

1	Personal Services	001	\$	5,740,043
2	Annual Increment	004		88,708
3	Employee Benefits	010		2,251,694
4	Unclassified	099		3,376,802
5	Paramedic Training	490		-0-
6	Corporate Nonprofit Community Health Centers—F.M.H.A.			
8	Mortgage Finance	184		167,968
9	Appalachian States Low Level			
10	Radioactive Waste Commission	185		58,300
11	Safe Drinking Water Program....	187		451,710
12	State Aid to Local Agencies.....	209		7,517,204
13	Women, Infants and Children....	210		75,000
14	Maternal and Child Health			
15	Clinics, Clinicians and			
16	Medical Contracts and Fees.....			4,423,043
17	Pediatric Dental Services	211		100,000
18	Vaccine for Children.....			431,480
19	Adult Influenza Vaccine.....			65,000
20	Tuberculosis Control.....			248,534

Ch. 1]	APPROPRIATIONS	2281
21	Wellness Institute.....	200,000
22	Primary Care Uncompensated	
23	Care Fund	213 3,900,000
24	Equipment and Capital Costs.....	350,000
25	Primary Care Support	
26	Program	215 1,980,156
27	Epidemiology Research	216 438,376
28	EMS Area Entity	756,320
29	Rural Non-Profit EMS Equipment	493 400,000
30	Regional EMS Entities	630,000
31	Early Intervention	223 2,018,357
32	Cancer Registry	225 192,487
33	Total.....	<u> </u> \$ 35,861,182

67—Division of Human Services

(WV Code Chapters 9, 48 and 49)

“Former” Account No. 4050

“WVFIMS” Account No.

Fund 0403 FY 1995 Org 0511

1	Personal Services	001 \$ 17,309,185
2	Annual Increment	004 353,333
3	Employee Benefits	010 5,962,476
4	Unclassified	099 11,939,583
5	OSCAR and RAPIDS	515 3,158,211
6	Medical Services	189 152,700,000
7	In-Home Services for	
8	Senior Citizens	224 700,000
9	Women’s Commission	191 80,000
10	Commission on	
11	Hearing Impaired	192 42,451
12	Public Assistance	193 30,231,418
13	Emergency Assistance	194 1,510,216
14	Social Services	195 23,550,348
15	Family Preservation Program.....	196 1,565,000
16	JOBS Program	197 3,730,069
17	Education Medical Services.....	198 724,887
18	Community JOBS Program	199 -0-
19	Total.....	<u> </u> \$ 253,557,177

20 Notwithstanding the provisions of title one, section two

21 of this bill, the secretary of the department of health and
 22 human resources shall have the authority to transfer
 23 funds within the above account: *Provided*, That no more
 24 than ten percent of the funds appropriated to one line
 25 may be transferred to other lines: *Provided, however*,
 26 That no funds from other lines shall be transferred to
 27 the personal services line item.

68—Commission on Aging

(WV Code Chapter 29)

“Former” Account No. 4060

“WVFIMS” Account No.

Fund 0420 FY 1995 Org 0508

1	Personal Services	001	\$	113,655
2	Annual Increment	004		2,373
3	Employee Benefits	010		51,551
4	Unclassified	099		175,442
5	Local Programs			
6	Service Delivery Costs	200		2,475,250
7	Senior Citizens Centers—Land			
8	Acquisition, Construction and			
9	Repairs and Alterations (R)	201		100,000
10	Silver Haired Legislature	202		14,400
11	Area Agencies Administration	203		87,429
12	Ombudsman	204		245,325
13	Total.....		\$	3,265,425

14 Any unexpended balance remaining in the appropri-
 15 ation for Senior Citizens Centers—Land Acquisition,
 16 Construction and Repairs and Alterations (fund 0420,
 17 activity 201) at the close of the fiscal year 1993-94 is
 18 hereby reappropriated for expenditure during the fiscal
 19 year 1994-95.

69—Consolidated Medical Service Fund

“Former” Account No. 4190

“WVFIMS” Account No.

Fund 0525 FY 1995 Org 0506

1	Personal Services	001	\$	1,189,539
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2	Annual Increment	004	14,241
3	Employee Benefits	010	14,587,978
4	Foster Grandparents		
5	Stipends/Travel	205	57,734
6	Special Olympics	208	26,074
7	State Aid to Local Agencies.....	209	-0-
8	Women, Infants and Children.....	210	-0-
9	Maternal and Child Health		
10	Clinics, Clinicians and		
11	Medical Contracts and Fees	211	-0-
12	Preventative Revaccination	212	-0-
13	Primary Care Uncompensated		
14	Care Fund	213	-0-
15	Primary Care Support		
16	Program	215	-0-
17	Epidemiology Research	216	-0-
18	Grants to Counties and		
19	EMS Entities	217	-0-
20	Rural Non-Profit EMS		
21	Equipment	493	-0-
22	Behavioral Health Program—		
23	Unclassified	219	474,475
24	Behavioral Health Program—		
25	Community Centers	220	11,000,000
26	Family Support Act	221	1,088,605
27	Early Intervention	223	-0-
28	In-Home Services For		
29	Senior Citizens	224	-0-
30	Behavioral Health Medicaid		
31	Match	492	9,345,670
32	Paramedic Training	490	-0-
33	Cancer Registry	225	-0-
34	Institutional Facilities		
35	Operations	335	31,901,076
36	Total.....		\$ 69,685,392

37 The secretary of the department of health and human
38 resources, prior to the beginning of the fiscal year, shall
39 file with the legislative auditor and the department of
40 administration an expenditure schedule for each for-
41 merly separate spending unit which has been consoli-
42 dated into the above account and which receives a
43 portion of the above appropriation for Institutional

44 Facilities Operations. The secretary shall also, within
 45 fifteen days after the close of the six-month period of said
 46 fiscal year, file with the legislative auditor and the
 47 department of administration an itemized report of
 48 expenditures made during the preceding six-month
 49 period.

50 Additional funds have been appropriated in fund 5156,
 51 fiscal year 1995, organization 0506, for the operation of
 52 the institutional facilities. The secretary of the depart-
 53 ment of health and human resources is authorized to
 54 utilize up to ten percent of the funds from the Institu-
 55 tional Facilities Operations line item to facilitate cost
 56 effective and cost saving services at the community level.

57 From the above appropriations to Institutional Facil-
 58 ities Operations, together with available funds from the
 59 division of health—hospital services revenue account
 60 (fund 5156, activity 355), on July 1, 1994, the sum of two
 61 hundred thousand dollars shall be transferred to the
 62 farm management commission as advance payment for
 63 the purchase of food products; actual payments for such
 64 purchases shall not be required until such credits have
 65 been completely expended.

66 Funds appropriated above for Behavioral Health
 67 Medicaid Match shall be transferred by the department
 68 to be used as the state’s share of medicaid payments for
 69 behavioral health services.

70—Department of Health and Human Resources—

Office of the Secretary

(WV Code Chapter 5F)

“Former” Account No. 5343

“WVFIMS” Account No.

Fund 0400 FY 1995 Org 0501

1 Unclassified—Total 096 \$ 177,890

71—Human Rights Commission

(WV Code Chapter 5)

"Former" Account No. 5980**"WVFIMS" Account No.****Fund 0416 FY 1995 Org 0510**

1	Personal Services	001	\$	515,453
2	Annual Increment	004		6,963
3	Employee Benefits	010		159,727
4	Unclassified	099		147,128
5	Total.....		\$	829,271

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

72—Office of Emergency Services**(WV Code Chapter 15)****"Former" Account No. 1300****"WVFIMS" Account No.****Fund 0443 FY 1995 Org 0606**

1	Personal Services	001	\$	152,797
2	Annual Increment	004		3,186
3	Employee Benefits	010		67,652
4	Unclassified	099		1,644
5	Total.....		\$	225,279

73—Board of Probation and Parole**(WV Code Chapter 62)****"Former" Account No. 3650****"WVFIMS" Account No.****Fund 0440 FY 1995 Org 0605**

1	Personal Services	001	\$	58,000
2	Annual Increment	004		864
3	Employee Benefits	010		49,522
4	Unclassified	099		38,823
5	Salaries of Members of Board			
6	of Probation and Parole	227		200,000
7	Total.....		\$	347,209

74—Division of Corrections—**Central Office**

(WV Code Chapters 25, 28, 49 and 62)

“Former” Account No. 3680**“WVFIMS” Account No.****Fund 0446 FY 1995 Org 0608**

1	Personal Services	001	\$	355,044
2	Annual Increment	004		6,552
3	Employee Benefits	010		109,302
4	Unclassified	099		98,928
5	Total.....		\$	569,826

75—Division of Corrections—**Correctional Units**

(WV Code Chapters 25, 28, 49 and 62)

“Former” Account No. 3770**“WVFIMS” Account No.****Fund 0450 FY 1995 Org 0608**

1	Personal Services	001	\$	9,539,883
2	Annual Increment	004		164,942
3	Employee Benefits	010		3,779,562
4	Unclassified	099		5,773,628
5	Payment to Counties and/or			
6	Regional Jails	229		384,000
7	Denmar Facility	448		2,000,000
8	WV Penitentiary Transition	532		2,337,090
9	Mt. Olive Correctional Complex...	533		17,602,138
10	Northern Correctional Facility....	534		3,013,440
11	Inmate Medical Expense	535		2,259,100
12	Total.....		\$	46,853,783

13 The commissioner of corrections, prior to the begin-
 14 ning of the fiscal year, shall file with the legislative
 15 auditor and the department of administration an
 16 expenditure schedule for each formerly separate spend-
 17 ing unit which has been consolidated into the above
 18 account and which receives a portion of the above

19 appropriation. He shall also, within fifteen days after the
 20 close of each six-month period of said fiscal year, file
 21 with the legislative auditor and the department of
 22 administration an itemized report of expenditures made
 23 during the preceding six-month period. Such report shall
 24 include the total of expenditures made for personal
 25 services, annual increment, current expenses (inmate
 26 medical expenses and other), repairs and alterations and
 27 equipment.

28 From the above appropriation to Unclassified, on July
 29 1, 1994, the sum of two hundred thousand dollars shall
 30 be transferred to the farm management commission as
 31 advance payment for the purchase of food products;
 32 actual payments for such purchases shall not be required
 33 until such credits have been completely expended.

34 From the above Unclassified appropriation, the
 35 commissioner of the division of corrections is hereby
 36 authorized to expend not more than two hundred
 37 thousand dollars for relocation expenses incurred by
 38 correctional staff transferring from the West Virginia
 39 penitentiary to the Mt. Olive correctional complex, with
 40 the maximum reimbursement not to exceed three
 41 hundred dollars per affected employee. Further, the
 42 commissioner shall formulate guidelines covering the
 43 method and those expenses eligible for reimbursement.

76—Division of Veterans' Affairs—

Veterans' Home

(WV Code Chapter 9A)

“Former” Account No. 4010

“WVFIMS” Account No.

Fund 0460 FY 1995 Org 0618

1	Personal Services	001	\$	536,849
2	Annual Increment	004		13,788
3	Employee Benefits	010		235,986
4	Total.....		\$	786,623

77—Division of Veterans' Affairs

(WV Code Chapter 9A)

"Former" Account No. 4040

"WVFIMS" Account No.

Fund 0456 FY 1995 Org 0613

1	Personal Services	001	\$	660,389
2	Annual Increment	004		13,716
3	Employee Benefits	010		295,026
4	Unclassified	099		15,919
5	Veterans' Field Offices	228		129,692
6	Total.....		\$	1,114,742

78—Division of Veterans' Affairs—**Veterans' Bonus**

(WV Code Chapter 9A)

"Former" Account No. 4041

"WVFIMS" Account No.

Fund 0457 FY 1995 Org 0613

1	Unclassified—Total	096	\$	-0-
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79—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 1995 Org 0601

1	Unclassified—Total	096	\$	150,098
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80—Division of Public Safety

(WV Code Chapter 15)

"Former" Account No. 5700

"WVFIMS" Account No.

Fund 0453 FY 1995 Org 0612

1	Personal Services	001	\$	15,808,330
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2	Annual Increment	004	95,076
3	Employee Benefits	010	4,962,065
4	Unclassified	099	4,146,593
5	Barracks Maintenance and		
6	Construction (R)	494	113,947
7	Communications and Other		
8	Equipment.....		3,000,000
9	Communications Equipment.....	502	-0-
10	Equipment	070	-0-
11	Court Judgment	230	-0-
12	Vehicle Purchase		1,000,000
13	Total.....		\$ 29,126,011

14 Any unexpended balance remaining in the appropri-
 15 ation for Barracks Maintenance and Construction (fund
 16 0453, activity 494) at the close of the fiscal year 1993-
 17 94 is hereby reappropriated for expenditures during the
 18 fiscal year 1994-95.

81—Division of Criminal Justice and Highway Safety

(WV Code Chapter 15)

“Former” Account No. 5750

“WVFIMS” Account No.

Fund 0546 FY 1995 Org 0620

1	Personal Services	001	\$	91,102
2	Annual Increment	004		1,529
3	Employee Benefits	010		27,782
4	Unclassified	099		41,004
5	Total.....		\$	161,417

82—Adjutant General—State Militia

(WV Code Chapter 15)

“Former” Account No. 5800

“WVFIMS” Account No.

Fund 0433 FY 1995 Org 0603

1	Personal Services	001	\$	271,477
2	Annual Increment	004		6,480
3	Employee Benefits	010		95,845

4	Unclassified	099	3,180,123
5	College Education Fund	232	698,400
6	Total.....		<u>\$ 4,252,325</u>

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 affairs
 10 and public safety shall devise a method to equitably
 11 reimburse all eligible participants on a pro-rata basis
 12 should the appropriation be insufficient to cover total
 13 annual eligible expenses.

83—Regional Jail and Correctional

Facility Authority

(WV Code Chapter 31)

“Former” Account No. 6010

“WVFIMS” Account No.

Fund 0536 FY 1995 Org 0615

1	Regional Jail—Capital		
2	Outlay—Total.....		\$ 10,000,000

84—Fire Commission

(WV Code Chapter 29)

“Former” Account No. 6170

“WVFIMS” Account No.

Fund 0436 FY 1995 Org 0619

1	Personal Services	001	\$ 447,536
2	Annual Increment	004	7,740
3	Employee Benefits	010	150,912
4	Unclassified	099	<u>115,394</u>
5	Total.....		\$ 721,582

DEPARTMENT OF TAX AND REVENUE

85—Tax Division

(WV Code Chapter 11)

“Former” Account No. 1800

"WVFIMS" Account No.

Fund 0470 FY 1995 Org 0702

1	Personal Services	001	\$	9,360,583
2	Annual Increment	004		163,000
3	Employee Benefits	010		3,143,734
4	Lincoln County School			
5	Board—Technical			
6	Correction Refund Account.....			250,000
7	Unclassified	099		5,881,190
8	Total.....		\$	18,798,507
9	Any unexpended balance remaining in the appropri-			
10	ation for Automation Project (fund 0470, activity 442) at			
11	the close of the fiscal year 1993-94 is hereby reapprop-			
12	riated for expenditure during the fiscal year 1994-95.			

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

(WV Code Chapter 29)

"Former" Account No. 4790

"WVFIMS" Account No.

Fund 0523 FY 1995 Org 0933

1	Unclassified—Total	096		\$ 4,719
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87—Department of Tax and Revenue—**Office of the Secretary**

(WV Code Chapter 5F)

"Former" Account No. 5365

"WVFIMS" Account No.

Fund 0465 FY 1995 Org 0701

1	Unclassified—Total	096	\$	161,908
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DEPARTMENT OF TRANSPORTATION**88—Department of Transportation—****Office of the Secretary**

(WV Code Chapter 5F)

"Former" Account No. 5376

"WVFIMS" Account No.

Fund 0500 FY 1995 Org 0801

1	Unclassified	099	\$	153,490
2	Civil Air Patrol	234		79,152
3	Port Authority (R)	443		268,200
4	Potomac Highlands			
5	Airport Authority	444		50,000
6	Total		\$	550,842

7 Any unexpended balance remaining in the appropri-
8 ation for Port Authority (fund 0500, activity 443) at the
9 close of the fiscal year 1993-94 is hereby reappropriated
10 for expenditures during the fiscal year 1994-95.

89—Division of Public Transit

(WV Code Chapter 17)

"Former" Account No. 5380

"WVFIMS" Account No.

Fund 0510 FY 1995 Org 0805

1	Unclassified—Total	096	\$	872,680
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90—State Rail Authority

(WV Code Chapter 29)

"Former" Account No. 5690

"WVFIMS" Account No.

Fund 0506 FY 1995 Org 0804

1	Duffield Station		\$	25,000
2	Unclassified	096		455,373
3	Total		\$	480,373

4 Any unexpended balance remaining in the appropri-
5 ation for Capital Outlay (fund 0506, activity 309) at the
6 close of the fiscal year 1993-94 is hereby reappropriated
7 for expenditure during the fiscal year 1994-95.

MISCELLANEOUS BOARDS AND COMMISSIONS

91—Board of Investments

(WV Code Chapter 12)

“Former” Account No. 1900

“WVFIMS” Account No.

Fund 0513 FY 1995 Org 0920

1	Personal Services	001	\$	1,176,013
2	Annual Increment	004		12,634
3	Employee Benefits	010		385,411
4	Unclassified	099		<u>2,188,086</u>
5	Total.....		\$	3,762,144

92—Board of Investments—

School Building Sinking Fund

(WV Code Chapter 12)

“Former” Account No. 1905

“WVFIMS” Account No.

Fund 0526 FY 1995 Org 0920

1	Debt Service—Total (R)	310	\$	11,118,500
2	Any unexpended balance remaining in the appropri-			
3	ation for Board of Investments—School Building Sinking			
4	Fund (fund 0526, activity 310) at the close of the fiscal			
5	year 1993-94 is hereby reappropriated for expenditure			
6	during the fiscal year 1994-95.			

93—Claims Against the General Revenue Fund

1	Claims Against the State.....	319	\$	<u>0-</u>
1	Total TITLE II, Section 1—			
2	General Revenue.....			<u><u>\$2,219,305,240</u></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-five.

DEPARTMENT OF TRANSPORTATION

94—Division of Highways

(WV Code Chapters 17 and 17C)

“Former” Account No. 6700

“WVFIMS” Account No.

Fund 9017 FY 1995 Org 0803

	Acti- vity	State Road Fund
1 Debt Service	040	\$ 50,000,000
2 ARC Assessment	136	700,000
3 Maintenance, Expressway, 4 Trunkline and Feeder	270	62,814,000
5 Maintenance, State 6 Local Services	271	116,603,000
7 Maintenance, Contract Paving 8 and Secondary Road 9 Maintenance	272	48,500,000
10 Bridge Repair and 11 Replacement	273	29,100,000
12 Inventory Revolving	275	1,250,000
13 Equipment Revolving	276	15,000,000
14 General Operations	277	34,400,000
15 Interstate Construction	278	32,793,000
16 Other Federal Aid Programs	279	34,000,000
17 Appalachian Programs	280	36,611,000
18 Nonfederal Aid Construction	281	25,000,000
19 Highway Litter Control	282	1,390,000
20 Total.....		\$ 488,161,000

21 The above appropriations are to be expended in
22 accordance with the provisions of chapters seventeen and
23 seventeen-c of the code.

24 The commissioner of highways shall have the author-
25 ity to operate revolving funds within the state road fund
26 for the operation and purchase of various types of
27 equipment used directly and indirectly in the construc-
28 tion and maintenance of roads and for the purchase of
29 inventories and materials and supplies.

30 There is hereby appropriated within the above items
 31 sufficient money for the payment of claims, accrued or
 32 arising during this budgetary period, to be paid in
 33 accordance with sections seventeen and eighteen, article
 34 two, chapter fourteen of the code.

35 It is the intent of the Legislature to capture and match
 36 all federal funds available for expenditure on the
 37 Appalachian highway system at the earliest possible
 38 time. Therefore, should amounts in excess of those
 39 appropriated be required for the purposes of Appal-
 40 achian programs, funds in excess of the amount approp-
 41 riated may be made available upon recommendation of
 42 the commissioner and approval of the governor. Further,
 43 for the purpose of Appalachian programs, funds approp-
 44 riated to line items may be transferred to other line
 45 items upon recommendation of the commissioner and
 46 approval of the governor.

95—Division of Highways—

Federal Aid Highway Matching Fund

(WV Code Chapters 17 and 17C)

“Former” Account No. 6705

“WVFIMS” Account No.

Fund 9018 FY 1995 Org 0803

1	Interstate Construction	278	\$	11,500,000
2	Appalachian Program	280		80,000,000
3	Other Federal Aid Programs	279		<u>171,000,000</u>
4	Total		\$	262,500,000

96—Division of Motor Vehicles

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

“Former” Account No. 6710

“WVFIMS” Account No.

Fund 9007 FY 1995 Org 0802

1	Personal Services	001	\$	3,506,056
2	Annual Increment	004		47,213
3	Employee Benefits	010		1,173,750

4	Unclassified	099	11,377,400
5	Optic Scan System (R)	283	500,000
6	Electronic Photo Operator		
7	and License System (R)	284	250,000
8	International Fuel Tax		
9	Agreement	536	620,000
10	License Plate—Reissue		734,160
11	Total.....		<u>\$ 18,208,579</u>

12 Any unexpended balances remaining in the appropri-
 13 ations for Optic Scan System (fund 9007, activity 283)
 14 and Electronic Photo Operator and License System (fund
 15 9007, activity 284) at the close of the fiscal year 1993-
 16 94 are hereby reappropriated for expenditure during the
 17 fiscal year 1994-95.

97—Claims Against the State Road Fund

1	Claims Against the State.....	319	<u>\$ -0-</u>
1	Total TITLE II, Section 2—		
2	State Road Fund		<u>\$ 768,869,579</u>

1 **Sec. 3. Appropriations from other funds.**—From the
 2 funds designated there are hereby appropriated condi-
 3 tionally upon the fulfillment of the provisions set forth
 4 in article two, chapter five-a of the code the following
 5 amounts, as itemized, for expenditure during the fiscal
 6 year one thousand nine hundred ninety-five.

LEGISLATIVE

98—Crime Victims Compensation Fund—

(WV Code Chapter 14)

“Former” Account No. 8412

“WVFIMS” Account No.

Fund 1731 FY 1995 Org 2300

		Acti- vity	Other Funds
1	Personal Services	001	\$ 128,299
2	Annual Increment	004	2,736
3	Employee Benefits	010	43,161
4	Unclassified	099	42,000

5	Economic Loss Claim		
6	Payment Fund	334	<u>2,520,000</u>
7	Total.....		\$ 2,736,196

EXECUTIVE**99—Auditor's Office—****Land Operating Fund**

(WV Code Chapters 11A, 12 and 36)

"Former" Account No. 8120**"WVFIMS" Account No.****Fund 1206 FY 1995 Org 1200**

1	Personal Services	001	\$ 25,000
2	Employee Benefits	010	10,836
3	Unclassified	099	<u>24,250</u>
4	Total.....		\$ 60,086

5 The total amount of this appropriation shall be paid
 6 from the special revenue fund out of fees and collections
 7 as provided by law.

100—Auditor's Office—**Securities Regulation Fund**

(WV Code Chapter 32)

"Former" Account No. 8127**"WVFIMS" Account No.****Fund 1225 FY 1995 Org 1200**

1	Personal Services	001	\$ 216,000
2	Annual Increment	004	2,200
3	Employee Benefits	010	49,049
4	Unclassified	099	<u>182,751</u>
5	Total.....		\$ 450,000

101—Department of Agriculture

(WV Code Chapter 19)

"Former" Account No. 8180**"WVFIMS" Account No.**

Fund 1401 FY 1995 Org 1400

1	Personal Services	001	\$	344,091
2	Annual Increment	004		2,304
3	Employee Benefits	010		109,869
4	Unclassified	099		844,510
5	Total		\$	1,300,774

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

(WV Code Chapter 19)

“Former” Account No. 8192

“WVFIMS” Account No.

Fund 1408 FY 1995 Org 1400

1	Student and Farm Loans—Total...	235	\$	445,547
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103—General John McCausland Memorial Farm

(WV Code Chapter 19)

“Former” Account No. 8194

“WVFIMS” Account No.

Fund 1409 FY 1995 Org 1400

1	Personal Services	001	\$	20,084
2	Annual Increment	004		864
3	Employee Benefits	010		11,113
4	Unclassified	099		51,493
5	Total		\$	83,554

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

104—Department of Agriculture—**Farm Operating Fund**

(WV Code Chapter 19)

“Former” Account No. 8202

“WVFIMS” Account No.

Fund 8615 FY 1995 Org 0925

1	Unclassified—Total	999	\$	850,000
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105—Attorney General—**Anti-Trust Enforcement**

(WV Code Chapter 47)

“Former” Account No. 8419

“WVFIMS” Account No.

Fund 1507 FY 1995 Org 1500

1	Personal Services	001	\$	210,400
2	Annual Increment	004		673
3	Employee Benefits	010		60,892
4	Unclassified	099		177,882
5	Total.....		\$	449,847

DEPARTMENT OF ADMINISTRATION**106—Division of Purchasing—****Revolving Fund**

(WV Code Chapter 5A)

“Former” Account No. 8140

“WVFIMS” Account No.

Fund 2320 FY 1995 Org 0216

1	Personal Services	001	\$	745,620
2	Annual Increment	004		22,091
3	Employee Benefits	010		299,045
4	Unclassified	099		706,730
5	Total.....		\$	1,773,486

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/coping, microfilming,
 17 records storage and the sale of general office supplies.

**107—Division of Information Services
 and Communications**

(WV Code Chapter 5A)

“Former” Account No. 8151

“WVFIMS” Account No.

Fund 2220 FY 1995 Org 0210

1	Personal Services	001	\$	3,816,416
2	Annual Increment	004		53,543
3	Employee Benefits	010		1,187,414
4	Unclassified	099		1,340,957
5	Total		\$	6,398,330

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 agencies.
 15 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.

108—Division of Personnel

(WV Code Chapter 29)

“Former” Account No. 8402

"WVFIMS" Account No.**Fund 2440 FY 1995 Org 0222**

1	Personal Services	001	\$	2,039,638
2	Annual Increment	004		40,032
3	Employee Benefits	010		640,567
4	Unclassified	099		1,083,744
5	Total.....		\$	3,803,981

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**

109—West Virginia Development Office

(WV Code Chapter 5B)

"Former" Account No. 8045**"WVFIMS" Account No.****Fund 3144 FY 1995 Org 0307**

1 Any unexpended balance remaining in the appropri-
2 ation for Energy Assistance (fund 3144, activity 099) at
3 the close of the fiscal year 1993-94 is hereby reapprop-
4 riated for expenditure during the fiscal year 1994-95.

110—Oil and Gas Conservation Commission

(WV Code Chapter 22)

"Former" Account No. 8097**"WVFIMS" Account No.****Fund 3371 FY 1995 Org 0315**

1	Personal Services	001	\$	168,435
2	Annual Increment	004		720
3	Employee Benefits	010		41,316
4	Unclassified	099		179,074
5	Total.....		\$	389,545

**111—Division of Labor—
Contractor Licensing Board Fund**

(WV Code Chapter 21)

“Former” Account No. 8128

“WVFIMS” Account No.

Fund 3187 FY 1995 Org 0308

1	Personal Services	001	\$	477,848
2	Annual Increment	004		4,635
3	Employee Benefits	010		186,576
4	Elevator Safety Program—			
5	Transfer			381,828
6	Gasoline Testing Program			100,000
7	Unclassified	099		785,706
8	Total		\$	1,936,593

9 The above appropriation for Elevator Safety—
10 Transfer is to be utilized to fund the start-up phase of
11 the program. Furthermore, once the division of labor has
12 collected in elevator safety inspection fees the amount
13 equivalent to the amount listed in the Elevator Safety—
14 Transfer line item above, the money collected shall be
15 transferred back to account number 8128, division of
16 labor—contractor licensing board fund.

112—Division of Labor—

Elevator Safety Act

“Former” Account No. 8271

“WVFIMS” Account No.

Fund 3188 FY 1995 Org 0308

1	Personal Services	001		\$ -0-
2	Employee Benefits	010		-0-
3	Unclassified	099		-0-
4	Total		\$	-0-

5 The Division of Labor—Elevator Safety Act, account
6 no. 8271 is hereby authorized to transfer to the Division
7 of Labor—Contractor Licensing Board Fund, account no.
8 8182 as a result of funds collected from elevator safety

9 inspection fees, an amount equivalent to the three
 10 hundred eighty-one thousand eight hundred twenty-eight
 11 dollars appropriated in account no. 8128 to Elevator
 12 Safety.

113—Division of Natural Resources

(WV Code Chapter 20)

“Former” Account No. 8300

“WVFIMS” Account No.

Fund 3200 FY 1995 Org 0310

1	Personal Services	001	\$	5,985,638
2	Annual Increment	004		99,756
3	Employee Benefits	010		2,262,899
4	Unclassified	099		4,275,093
5	Capital Improvements and			
6	Land Purchase (R)	248		<u>1,128,684</u>
7	Total		\$	13,752,070

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 Renovation of Dams (fund 3200, activity 414)
 13 and Capital Improvements and Land Purchase (fund
 14 3200, activity 248) at the close of the fiscal year 1993-
 15 94 are hereby reappropriated for expenditure during the
 16 fiscal year 1994-95.

114—Division of Environmental Protection—

Leaking Underground Storage Tanks

Administrative Fund

(WV Code Chapter 20)

“Former” Account No. 8302

“WVFIMS” Account No.

Fund 3325 FY 1995 Org 0313

1	Personal Services	001	\$	309,500
2	Annual Increment	004		2,736

3	Employee Benefits	010	121,060
4	Unclassified	099	<u>143,179</u>
5	Total		\$ 576,475

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

(WV Code Chapter 20)

“Former” Account No. 8303

“WVFIMS” Account No.

Fund 3202 FY 1995 Org 0310

1	Unclassified—Total	096	\$ 50,000
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116—Division of Natural Resources—**Nongame Fund**

(WV Code Chapter 20)

“Former” Account No. 8304

“WVFIMS” Account No.

Fund 3203 FY 1995 Org 0310

1	Personal Services	001	\$ 82,922
2	Annual Increment	004	576
3	Employee Benefits	010	26,569
4	Unclassified	099	<u>31,932</u>
5	Total		\$ 141,999

117—Division of Natural Resources—**Planning and Development Division**

(WV Code Chapter 20)

“Former” Account No. 8306

“WVFIMS” Account No.

Fund 3205 FY 1995 Org 0310

1	Personal Services	001	\$ 176,768
2	Annual Increment	004	3,420
3	Employee Benefits	010	65,032
4	Independence Hall Renovation (R)	249	-0-

5	Unclassified	099	<u>299,297</u>
6	Total	\$	544,517

7 Any unexpended balance remaining in the appropri-
 8 ation for Independence Hall Renovation (fund 3205,
 9 activity 249) at the close of the fiscal year 1993-94 is
 10 hereby reappropriated for expenditure during the fiscal
 11 year 1994-95.

118—Division of Natural Resources—

Whitewater Study and Improvement Fund

(WV Code Chapter 20)

“Former” Account No. 8307

“WVFIMS” Account No.

Fund 3253 FY 1995 Org 0310

1	Unclassified—Total	096	\$	95,000
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119—Division of Natural Resources—

Whitewater Advertising and Promotion Fund

(WV Code Chapter 20)

“Former” Account No. 8308

“WVFIMS” Account No.

Fund 3256 FY 1995 Org 0310

1	Unclassified—Total	096	\$	20,000
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120—Division of Environmental Protection—

Groundwater Planning

(WV Code Chapter 20)

“Former” Account No. 8312

“WVFIMS” Account No.

Fund 3330 FY 1995 Org 0313

1	Unclassified—Total	096	\$	35,468
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121—Division of Natural Resources—

Recycling Assistance Fund

(WV Code Chapter 20)

“Former” Account No. 8316

“WVFIMS” Account No.

Fund 3254 FY 1995 Org 0310

1	Personal Services	001	\$	99,912
2	Annual Increment	004		1,278
3	Employee Benefits	010		41,637
4	Unclassified (R)	099		<u>2,888,962</u>
5	Total		\$	3,031,789

6 Any unexpended balance remaining in the appropri-
 7 ation for Unclassified (fund 3254, activity 099) at the
 8 close of the fiscal year 1993-94 is hereby reappropriated
 9 for expenditure during the fiscal year 1994-95.

122—Division of Environmental Protection—

Hazardous Waste Emergency and Response Fund

(WV Code Chapter 20)

“Former” Account No. 8323

“WVFIMS” Account No.

Fund 3331 FY 1995 Org 0313

1	Personal Services	001	\$	291,778
2	Annual Increment	004		3,588
3	Employee Benefits	010		108,780
4	Unclassified	099		<u>634,992</u>
5	Total		\$	1,039,138

123—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 1995 Org 0313

1	Personal Services	001	\$	205,100
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“WVFIMS” Account No.

Fund 3288 FY 1995 Org 0312

1	Personal Services	001	\$	271,284
2	Annual Increment	004		1,656
3	Employee Benefits	010		88,625
4	Unclassified	099		<u>1,972,408</u>
5	Total		\$	2,333,973

127—Division of Forestry—

Timberland Enforcement Operations

(WV Code Chapter 19)

“Former” Account No. 8475

“WVFIMS” Account No.

Fund 3082 FY 1995 Org 0305

1	Unclassified—Total	096	\$	135,000
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128—Division of Forestry—

Woodlands and Timberlands

Stamp Fund

(WV Code Chapter 19)

“Former” Account No. 8476

“WVFIMS” Account No.

Fund 3083 FY 1995 Org 0305

1	Personal Services	001	\$	-0-
2	Annual Increment	004		-0-
3	Employee Benefits	010		-0-
4	Unclassified	099		<u>-0-</u>
5	Total		\$	-0-

129—Division of Forestry—

Severance Tax Operations

(WV Code Chapter 11)

“Former” Account No. 8477

“WVIFIMS” Account No.

Fund 3084 FY 1995 Org 0305

1	Unclassified—Total	099	\$	2,000,000
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130—Division of Forestry

(WV Code Chapter 19)

“Former” Account No. 8478

“WVIFIMS” Account No.

Fund 3081 FY 1995 Org 0305

1	Personal Services	001	\$	216,788
2	Annual Increment	004		2,412
3	Employee Benefits	010		55,482
4	Unclassified	099		487,868
5	Total		\$	762,550

131—Division of Environmental Protection—**Special Reclamation Fund**

(WV Code Chapter 22A)

“Former” Account No. 8537

“WVIFIMS” Account No.

Fund 3321 FY 1995 Org 0313

1	Personal Services	001	\$	287,000
2	Annual Increment	004		4,536
3	Employee Benefits	010		108,315
4	Unclassified	099		12,410,004
5	Total		\$	12,809,855

132—Division of Environmental Protection—**Oil and Gas Reclamation Trust**

(WV Code Chapter 22B)

“Former” Account No. 8538

“WVIFIMS” Account No.

Fund 3322 FY 1995 Org 0313

1	Unclassified—Total	096	\$	465,000
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133—Division of Environmental Protection—

Oil and Gas Operating Permits

(WV Code Chapter 22B)

"Former" Account No. 8539**"WVFIMS" Account No.****Fund 3323 FY 1995 Org 0313**

1	Personal Services	001	\$	205,000
2	Annual Increment	004		2,304
3	Employee Benefits	010		63,557
4	Unclassified	099		439,100
5	Total		\$	709,961

134—Division of Environmental Protection—**Mines and Minerals Operations Fund**

(WV Code Chapter 22)

"Former" Account No. 8540**"WVFIMS" Account No.****Fund 3324 FY 1995 Org 0313**

1	Personal Services	001	\$	1,792,290
2	Annual Increment	004		12,622
3	Employee Benefits	010		532,720
4	Unclassified	099		750,382
5	Total		\$	3,088,014

135—Geological and Economic Survey

(WV Code Chapter 29)

"Former" Account No. 8589**"WVFIMS" Account No.****Fund 3100 FY 1995 Org 0306**

1	Personal Services	001	\$	30,380
2	Annual Increment	004		360
3	Employee Benefits	010		5,622
4	Unclassified	099		174,083
5	Total		\$	210,445

6 The above appropriation shall be used in accordance

7 with section four, article two, chapter twenty-nine of the
8 code.

136—Bureau of Employment Programs—

Workers' Compensation Fund

(WV Code Chapter 23)

"Former" Account No. 9000

"WVFIMS" Account No.

Fund 3440 FY 1995 Org 0322

1	Personal Services	001	\$	11,531,042
2	Annual Increment	004		181,422
3	Employee Benefits	010		4,319,613
4	Unclassified	099		13,111,843
5	Program Performance Initiative	540		4,820,630
6	Capital Outlay	511		<u>2,500,000</u>
7	Total		\$	<u>36,464,550</u>

8 There is hereby authorized to be paid out of the above
9 appropriation the amount necessary for the premiums on
10 bonds given by the treasurer as bond custodian for the
11 protection of the workers' compensation fund. This sum
12 shall be transferred to the state board of insurance.

DEPARTMENT OF EDUCATION

137—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 1995 Org 0932

1	Personal Services	001	\$	350,000
2	Workshop Development	163		450,000
3	Workshop-Supported Employment	484		50,000
4	Medical Services Trust—Transfer			<u>2,000,000</u>

5 Total \$ 2,850,000

138—State Department of Education—

FFA-FHA Conference Center

(WV Code Chapter 18)

“Former” Account No. 8244

“WVFIMS” Account No.

Fund 3960 FY 1995 Org 0402

1	Personal Services	001	\$	624,946
2	Annual Increment	004		9,302
3	Employee Benefits	010		248,941
4	Unclassified	099		568,875
5	Total		\$	1,452,064

139—State Department of Education—

School Building Authority

(WV Code Chapter 18)

“Former” Account No. 8247

“WVFIMS” Account No.

Fund 3959 FY 1995 Org 0402

1	Personal Services	001	\$	381,422
2	Annual Increment	004		3,024
3	Employee Benefits	010		98,668
4	Unclassified	099		213,637
5	Total		\$	696,751

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

140—Department of Education and the Arts—

Office of the Secretary

Health Care Reform Studies

“Former” Account No. 8481

"WVFIMS" Account No.

Fund 4009 FY 1995 Org 0431

1	Personal Services	001	\$	116,100
2	Annual Increment	004		1,608
3	Employee Benefits	010		30,134
4	Unclassified	099		<u>102,158</u>
5	Total		\$	250,000

141—State University System—

State System Registration Fee—

Special Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

Control Account

(WV Code Chapters 18 and 18B)

"Former" Account No. 8830

"WVFIMS" Account No.

Fund 4007 FY 1995 Org 0461

1	Debt Service (R)	040	\$	5,879,337
2	Capital Repairs and			
3	Alterations (R)	251		2,698,105
4	Miscellaneous Projects (R)	252		400,000
5	Computer and			
6	Telecommunications			
7	Technology (R)	438		<u>914,873</u>
8	Total		\$	9,892,315
9	Any unexpended balances remaining in the prior			
10	years' and the 1993-94 appropriations are hereby			
11	reappropriated for expenditure during the fiscal year			
12	1994-95.			

13 The total amount of this appropriation shall be paid
 14 from the special capital improvement fund created in
 15 section eight, article ten, chapter eighteen-b of the code.
 16 Projects are to be paid on a cash basis and made
 17 available from the date of passage.

142—State College System—

**State System Registration Fee—
Special Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)**

Control Account

(WV Code Chapters 18 and 18B)

“Former” Account No. 8835

“WVFIMS” Account No.

Fund 4289 FY 1995 Org 0481

1	Debt Service (R)	040	\$	1,479,921
2	Capital Repairs and			
3	Alterations (R).....	251		1,500,000
4	Miscellaneous Projects (R)	252		700,000
5	Total		\$	3,679,921

6 Any unexpended balances remaining in the prior
7 years' and 1993-94 appropriations except activity 343,
8 fiscal year 1974-75; activity 341, fiscal year 1975-76;
9 activity 346, fiscal year 1975-76; activity 339, fiscal year
10 1978-79; activity 344, fiscal year 1978-79; and activity
11 352, fiscal year 1981-82 are hereby reappropriated for
12 expenditure during the fiscal year 1994-95.

13 The unexpended balance in the appropriation for the
14 Southern West Virginia Community College—McDowell
15 County Center in the amount of one hundred twenty-five
16 thousand dollars, as originally appropriated in this
17 account in fiscal year 1992-93 and as herein reappropri-
18 ated for expenditure during fiscal year 1994-95, is
19 hereby redesignated as to purpose and shall be expended
20 in fiscal year 1994-95 for Southern West Virginia
21 Community College Campus at Saulsville by the state
22 college system—state system registration fee—special
23 capital improvement fund.

24 The total amount of this appropriation shall be paid
25 from the special capital improvement fund created in
26 section eight, article ten, chapter eighteen-b of the code.
27 Projects are to be paid on a cash basis and made
28 available from the date of passage.

143—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 1995 Org 0453**

1 Any unexpended balances remaining in the prior
 2 years' and 1993-94 appropriations except activity 406,
 3 fiscal year 1988-89, are hereby reappropriated for
 4 expenditure during the fiscal year 1994-95.

5 The total amount of this appropriation shall be paid
 6 from the proceeds of revenue bonds issued pursuant to
 7 section eight, article ten, chapter eighteen-b of the code.

144—State College System—**State System Tuition Fee—****Special Capital Improvement Fund****(Capital Improvement and Bond Retirement Fund)****Control Account**

(WV Code Chapters 18 and 18B)

“Former” Account No. 8855**“WVFIMS” Account No.****Fund 4290 FY 1995 Org 0481**

1	Debt Service (R)	040	\$	3,247,224
2	Capital Improvements (New) (R) ..	259		2,364,090
3	Building and Campus			
4	Renewal and			
5	Facilities Planning			
6	and Administration	538		2,690,000
7	Capital Contingencies			
8	and Emergencies	537		<u>250,000</u>
9	Total		\$	8,551,314
10	Any unexpended balances remaining in the prior			

11 years' and 1993-94 appropriations except activity 343,
12 fiscal year 1980-81; activity 365, fiscal year 1982-83;
13 activity 368, fiscal year 1982-83; activity 369, fiscal year
14 1982-83; activity 378, fiscal year 1984-85; and activity
15 382, fiscal year 1986-87 are hereby reappropriated for
16 expenditure during the fiscal year 1994-95.

17 The total amount of this appropriation shall be paid
18 from the special capital improvement fund created in
19 article twelve-b, chapter eighteen of the code. Projects
20 are to be paid on a cash basis and made available from
21 the date of passage.

145—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 1995 Org 0453

1 Any unexpended balances remaining in the prior
2 years' and 1993-94 appropriations except activity 395,
3 fiscal year 1985-86, are hereby reappropriated for
4 expenditure during the fiscal year 1994-95.

5 The total amount of this appropriation shall be paid
6 from the proceeds of revenue bonds issued pursuant to
7 article twelve-b, chapter eighteen of the code.

146—State University System—

State System Tuition Fee—

Special Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

Control Account

(WV Code Chapters 18 and 18B)

“Former” Account No. 8865

“WVFIMS” Account No.

Fund 4008 FY 1995 Org 0461

1	Debt Service (R)	040	\$	3,079,871
2	Building and Campus			
3	Renewal (R)	258		10,210,000
4	Facilities Planning and			
5	Administration (R)	386		765,000
6	Computer and Telecommunica-			
7	tions Technology (R)	438		<u>726,676</u>
8	Total		\$	14,781,547

9 Any unexpended balances remaining in the prior
 10 years' and the 1993-94 appropriations except activity
 11 259, fiscal year 1990-91, are hereby reappropriated for
 12 expenditure during the fiscal year 1994-95.

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.

147—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 1995 Org 0463

1	Unclassified—Total	096	\$	14,974,000
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2 Any unexpended balance remaining in the fiscal year
 3 1993-94 appropriation for the West Virginia university
 4 health sciences center is hereby reappropriated for
 5 expenditure during the fiscal year 1994-95.

**DEPARTMENT OF HEALTH
AND HUMAN RESOURCES**

148—Division of Health—

Hepatitis B Vaccine

(WV Code Chapter 16)

"Former" Account No. 8214**"WVFIMS" Account No.****Fund 5183 FY 1995 Org 0506**

1	Personal Services	001	\$	31,000
2	Annual Increment	004		576
3	Employee Benefits	010		11,267
4	Unclassified	099		630,000
5	Vaccine for Volunteer Squads			50,000
6	Total		\$	722,843

149—Board of Barbers and Cosmetologists

(WV Code Chapters 16 and 30)

"Former" Account No. 8220**"WVFIMS" Account No.****Fund 5425 FY 1995 Org 0505**

1	Personal Services	001	\$	164,120
2	Annual Increment	004		3,068
3	Employee Benefits	010		56,149
4	Unclassified	099		103,550
5	Total		\$	326,887

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.

150—Division of Health—**Vital Statistics**

(WV Code Chapter 16)

"Former" Account No. 8236**"WVFIMS" Account No.****Fund 5144 FY 1995 Org 0506**

1	Personal Services	001	\$	202,000
2	Annual Increment	004		5,508
3	Employee Benefits	010		94,152

4	Unclassified	099		82,504
5	Total		\$	384,164

151—Hospital Finance Authority

(WV Code Chapter 16)

“Former” Account No. 8330**“WVFIMS” Account No.****Fund 5475 FY 1995 Org 0509**

1	Personal Services	001	\$	49,619
2	Annual Increment	004		144
3	Employee Benefits	010		15,126
4	Unclassified	099		67,116
5	Total		\$	132,005

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.

152—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 1995 Org 0506**

1	Debt Service (R)	040	\$	2,740,000
2	Broad Based Provider Tax.....			2,750,000
3	Institutional Facilities			
4	Operations (R)	335		36,861,000
5	Medical Services Trust			
6	Fund—Transfer			23,300,000
7	Total		\$	65,651,000

8 Any unexpended balance remaining in the appropri-
9 ation for hospital services revenue account at the close

10 of the fiscal year 1993-94 is hereby reappropriated for
 11 expenditure during the fiscal year 1994-95, except for
 12 fund 5156, activity 335 (fiscal year 1991-92) and fund
 13 5156, activity 040 (fiscal year 1992-93) which shall expire
 14 on June 30, 1994.

15 The total amount of this appropriation shall be paid
 16 from the hospital services revenue account special fund
 17 created by section fifteen-a, article one, chapter sixteen
 18 of the code, and shall be used for operating expenses and
 19 for improvements in connection with existing facilities
 20 and bond payments, community based mental health
 21 services needed for patients at Colin Anderson center
 22 and Weston state hospital, and disproportionate share
 23 hospital transfers.

24 Necessary funds from the above appropriation may be
 25 used for medical facilities operations, either in connec-
 26 tion with this account or in connection with the item
 27 designated Institutional Facilities Operations in the
 28 consolidated medical service fund (fund 0525, fiscal year
 29 1995, organization 0506).

30 From the above appropriation to Institutional Facil-
 31 ities Operations, together with available funds from the
 32 consolidated medical services fund (fund 0525, activity
 33 335), on July 1, 1994, the sum of two hundred thousand
 34 dollars shall be transferred to the farm management
 35 commission as advance payment for the purchase of food
 36 products; actual payments for such purchases shall not
 37 be required until such credits have been completely
 38 expended.

153—Division of Health—

Laboratory Services

(WV Code Chapter 16)

“Former” Account No. 8509

“WVFIMS” Account No.

Fund 5163 FY 1995 Org 0506

1	Personal Services	001	\$	419,768
2	Annual Increment	004		5,904

3	Employee Benefits	010		137,556
4	Unclassified	099		449,900
5	Total		\$	1,013,128

154—Division of Health—**Health Facility Licensing**

(WV Code Chapter 16)

“Former” Account No. 8529**“WVFIMS” Account No.****Fund 5172 FY 1995 Org 0506**

1	Personal Services	001	\$	161,152
2	Annual Increment	004		900
3	Employee Benefits	010		56,599
4	Unclassified	099		85,200
5	Total		\$	303,851

155—Health Care Cost Review Authority

(WV Code Chapter 16)

“Former” Account No. 8564**“WVFIMS” Account No.****Fund 5375 FY 1995 Org 0507**

1	Personal Services	001	\$	968,477
2	Annual Increment	004		7,956
3	Employee Benefits	010		309,742
4	Unclassified	099		1,088,157
5	Vice Chancellor for Health			
6	Sciences Health Care			
7	Reform Studies—Transfer	513		250,000
8	Total		\$	2,624,332

9 The above appropriation is to be expended in accordance with and pursuant to the provisions of article
10 twenty-nine-b, chapter sixteen of the code and from the
11 special revolving fund designated health care cost review
12 fund.
13

14 The appropriation for health care reform studies shall
15 be transferred to the vice chancellor for health science—

16 health care reform studies ("former" account no. 9290)
 17 upon the written request of the vice chancellor for health
 18 sciences.

156—Division of Human Services—

Medical Services Trust Fund

(WV Code Chapter 9)

"Former" Account No. 8569

"WVFIMS" Account No.

Fund 5185 FY 1995 Org 0511

1	Eligibility Expansion	\$	8,475,258
2	State Institutions DPSH		
3	Payments		5,852,960
4	Hospice Services		390,902
5	Match Drop		<u>5,400,000</u>
6	Total	\$	20,119,120

7 The Match Drop line item above shall be used in
 8 conjunction with funds appropriated to the division of
 9 human services in the Medical Services line item (fund
 10 0403, activity 189).

157—Division of Human Services—

Health Care Provider Tax

(WV Code Chapter 11)

"Former" Account No. 9175

"WVFIMS" Account No.

Fund 5090 FY 1995 Org 0511

1	Unclassified—Total	096	\$115,000,000
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2 From the above appropriation, an amount not to
 3 exceed two hundred thousand dollars shall be trans-
 4 ferred to a special revenue account in the treasury for
 5 use by the department of health and human resources
 6 for administrative purposes. The remainder of all
 7 moneys deposited in the fund shall be transferred to the
 8 West Virginia medical services fund.

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

**158—Regional Jail and Correctional
Facility Authority**

(WV Code Chapter 31)

"Former" Account No. 8051

"WVFIMS" Account No.

Fund 6675 FY 1995 Org 0615

1	Personal Services	001	\$	429,113
2	Annual Increment	004		4,500
3	Employee Benefits	010		146,236
4	Debt Service	040		10,000,000
5	Unclassified	099		220,950
6	Total		\$	<u>10,800,799</u>

159—Division of Veterans' Affairs—

Veterans' Home

(WV Code Chapter 19A)

"Former" Account No. 8261

"WVFIMS" Account No.

Fund 6754 FY 1995 Org 0618

1	Unclassified—Total	096	\$	280,000
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160—Division of Public Safety—

Motor Vehicle Inspection Fund

(WV Code Chapter 17C)

"Former" Account No. 8350

"WVFIMS" Account No.

Fund 6501 FY 1995 Org 0612

1	Personal Services	001	\$	543,444
2	Annual Increment	004		1,656
3	Employee Benefits	010		148,464
4	Unclassified	099		<u>699,783</u>

5 Total \$ 1,393,347

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.

**161—Division of Public Safety—
Surplus Real Property Proceeds Fund**

(WV Code Chapter 15)

“Former” Account No. 8354

“WVFIMS” Account No.

Fund 6516 FY 1995 Org 0612

1 Unclassified—Total 096 \$ 300,000

**162—Division of Public Safety—
Drunk Driving Prevention Fund**

(WV Code Chapter 15)

“Former” Account No. 8355

“WVFIMS” Account No.

Fund 6513 FY 1995 Org 0612

1 Unclassified—Total 096 \$ 686,240

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.

163—State Armory Board—

General Armory Fund

(WV Code Chapter 15)

“Former” Account No. 8446

“WVFIMS” Account No.

Fund 6102 FY 1995 Org 0604

1 Unclassified—Total 096 \$ 310,000

164—Fire Commission—**Fire Marshal Fees**

(WV Code Chapter 29)

“Former” Account No. 8465**“WVFIMS” Account No.****Fund 6152 FY 1995 Org 0619**

1	Personal Services	001	\$	367,285
2	Annual Increment	004		3,132
3	Employee Benefits	010		121,544
4	Unclassified	099		285,766
5	Total		\$	777,727

6 Any unexpended cash balance remaining in fund 6152
 7 at the close of the fiscal year 1993-94 is hereby available
 8 for expenditure as part of the fiscal year 1994-95
 9 appropriation.

DEPARTMENT OF TAX AND REVENUE**165—Insurance Commissioner—****Examination Revolving Fund**

(WV Code Chapter 33)

“Former” Account No. 8014**“WVFIMS” Account No.****Fund 7150 FY 1995 Org 0704**

1	Personal Services	001	\$	254,000
2	Annual Increment	004		1,368
3	Employee Benefits	010		71,113
4	Unclassified	099		181,500
5	Total		\$	507,981

166—Insurance Commissioner—**Consumer Advocate**

(WV Code Chapter 33)

“Former” Account No. 8015**“WVFIMS” Account No.**

Fund 7151 FY 1995 Org 0704

1	Personal Services	001	\$	73,500
2	Annual Increment	004		252
3	Employee Benefits	010		29,226
4	Unclassified	099		127,593
5	Total		\$	230,571

167—Insurance Commissioner

(WV Code Chapter 33)

“Former” Account No. 8016

“WVFIMS” Account No.

Fund 7152 FY 1995 Org 0704

1	Personal Services	001	\$	1,333,088
2	Annual Increment	004		16,884
3	Employee Benefits	010		512,517
4	Unclassified	099		581,074
5	Total		\$	2,443,563

6 The total amount of this appropriation shall be paid
 7 from a special revenue fund out of collections of fees and
 8 charges as provided by law.

168—Racing Commission—**Relief Fund**

(WV Code Chapter 19)

“Former” Account No. 8080

“WVFIMS” Account No.

Fund 7300 FY 1995 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 license
 4 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.

169—Racing Commission—

Administration and Promotion

(WV Code Chapter 19)

"Former" Account No. 8082**"WVFIMS" Account No.****Fund 7304 FY 1995 Org 0707**

1	Personal Services	001	\$	53,700
2	Annual Increment	004		504
3	Employee Benefits	010		20,252
4	Unclassified	099		<u>47,408</u>
5	Total		\$	121,864

170—Racing Commission—**General Administration**

(WV Code Chapter 19)

"Former" Account No. 8083**"WVFIMS" Account No.****Fund 7305 FY 1995 Org 0707**

1	Personal Services	001	\$	1,007,000
2	Annual Increment	004		9,680
3	Employee Benefits	010		273,298
4	Unclassified	099		<u>67,598</u>
5	Total		\$	1,357,576

171—Racing Commission—**Administration, Promotion and Education Fund**

(WV Code Chapter 19)

"Former" Account No. 8084**"WVFIMS" Account No.****Fund 7307 FY 1995 Org 0707**

1	Unclassified—Total	096	\$	35,000
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172—Tax Division—**Special Audit and Investigative Unit**

(WV Code Chapter 11)

"Former" Account No. 8088

"WVFIMS" Account No.

Fund 7073 FY 1995 Org 0702

1	Personal Services	001	\$	591,846
2	Employee Benefits	010		189,390
3	Unclassified	099		318,764
4	Total		\$	1,100,000

173—Tax Division—**Cemetery Company Account**

(WV Code Chapter 35)

"Former" Account No. 8090

"WVFIMS" Account No.

Fund 7071 FY 1995 Org 0702

1	Personal Services	001	\$	16,116
2	Employee Benefits	010		4,800
3	Unclassified	099		11,084
4	Total		\$	32,000

174—Tax Division—**Office of Chief Inspector**

(WV Code Chapter 6)

"Former" Account No. 8091

"WVFIMS" Account No.

Fund 7067 FY 1995 Org 0702

1	Personal Services	001	\$	1,449,000
2	Annual Increment	004		17,064
3	Employee Benefits	010		449,632
4	Unclassified	099		401,500
5	Total		\$	2,317,196

175—Municipal Bond Commission

(WV Code Chapter 13)

"Former" Account No. 8340

"WVFIMS" Account No.

Fund 7253 FY 1995 Org 0706

1	Personal Services	001	\$	106,270
2	Annual Increment	004		1,728
3	Employee Benefits	010		37,154
4	Unclassified	099		42,640
5	Total		\$	187,792

176—Division of Banking—**Lending and Credit Rate Board**

(WV Code Chapter 47A)

"Former" Account No. 8393

"WVFIMS" Account No.

Fund 3040 FY 1995 Org 0303

1	Personal Services	001	\$	10,586
2	Employee Benefits	010		4,411
3	Unclassified	099		10,648
4	Total		\$	25,645

177—Division of Banking

(WV Code Chapter 31A)

"Former" Account No. 8395

"WVFIMS" Account No.

Fund 3041 FY 1995 Org 0303

1	Personal Services	001	\$	1,112,653
2	Annual Increment	004		7,416
3	Employee Benefits	010		337,832
4	Unclassified	099		541,920
5	Total		\$	1,999,821

178—Alcohol Beverage Control Administration—**Wine License Special Fund**

(WV Code Chapter 60)

"Former" Account No. 8592

"WVFIMS" Account No.

Fund 7351 FY 1995 Org 0708

1	Personal Services	001	\$	198,908
2	Annual Increment	004		3,240
3	Employee Benefits	010		59,074
4	Unclassified	099		<u>170,000</u>
5	Total		\$	431,222

179—Alcohol Beverage Control Administration

(WV Code Chapter 60)

"Former" Account No. 9270

"WVFIMS" Account No.

Fund 7352 FY 1995 Org 0708

1	Personal Services	001	\$	2,427,656
2	Annual Increment	004		50,688
3	Employee Benefits	010		1,353,006
4	Unclassified	099		<u>2,172,970</u>
5	Total		\$	6,004,320

6 The total amount of this appropriation shall be paid
 7 from a special revenue fund out of liquor revenues. The
 8 above appropriation includes the salary of the commis-
 9 sioner and the salaries, expenses and equipment of
 10 administrative offices, warehouses and inspectors.

11 There is hereby appropriated from liquor revenues, in
 12 addition to the above appropriation, the necessary
 13 amount for the purchase of liquor as provided by law.

DEPARTMENT OF TRANSPORTATION**180—Division of Motor Vehicles—****Driver's License Reinstatement Fund**

(WV Code Chapter 17B)

"Former" Account No. 8422

"WVFIMS" Account No.

Fund 8213 FY 1995 Org 0802

1	Personal Services	001	\$	180,068
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2	Annual Increment	004		1,944
3	Employee Benefits	010		68,775
4	Unclassified	099		120,520
5	Total		\$	371,307

181—Division of Motor Vehicles—**Driver Rehabilitation**

(WV Code Chapter 17C)

“Former” Account No. 8423

“WVFIMS” Account No.

Fund 8214 FY 1995 Org 0802

1	Personal Services	001	\$	51,000
2	Annual Increment	004		1,008
3	Employee Benefits	010		23,476
4	Unclassified	099		698,506
5	Total		\$	773,990

182—Division of Motor Vehicles—**Insurance Certificate Fees**

(WV Code Chapter 20)

“Former” Account No. 8424

“WVFIMS” Account No.

Fund 8215 FY 1995 Org 0802

1	Personal Services	001	\$	542,152
2	Annual Increment	004		8,028
3	Employee Benefits	010		239,485
4	Unclassified	099		146,872
5	Total		\$	936,537

183—Division of Motor Vehicles—**Motorboat Licenses**

(WV Code Chapter 20)

“Former” Account No. 8425

“WVFIMS” Account No.

Fund 8216 FY 1995 Org 0802

1	Personal Services	001	\$	71,500
2	Annual Increment	004		2,019
3	Employee Benefits	010		27,548
4	Unclassified	099		43,915
5	Total		\$	144,982

184—Division of Motor Vehicles—**Returned Check Fees**

(WV Code Chapter 17)

“Former” Account No. 8426

“WVFIMS” Account No.

Fund 8217 FY 1995 Org 0802

1	Personal Services	001	\$	15,500
2	Annual Increment	004		216
3	Employee Benefits	010		5,394
4	Unclassified	099		6,500
5	Total		\$	27,610

MISCELLANEOUS BOARDS AND COMMISSIONS**185—Real Estate Commission**

(WV Code Chapter 47)

“Former” Account No. 8010

“WVFIMS” Account No.

Fund 8635 FY 1995 Org 0927

1	Personal Services	001	\$	267,332
2	Annual Increment	004		2,124
3	Employee Benefits	010		91,206
4	Unclassified	099		212,400
5	Total		\$	573,062

6 The total amount of this appropriation shall be paid
7 out of collections of license fees as provided by law.

**186—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 1995 Org 0930**

1	Unclassified—Total	096	\$	60,000
2	The total amount of this appropriation shall be paid			
3	out of collections of license fees and fines as provided by			
4	law.			

187—West Virginia Cable Television**Advisory Board**

(WV Code Chapter 5)

"Former" Account No. 8173**"WVFIMS" Account No.****Fund 8609 FY 1995 Org 0924**

1	Personal Services	001	\$	176,200
2	Annual Increment	004		3,600
3	Employee Benefits	010		46,691
4	Unclassified	099		60,268
5	Total		\$	286,759

188—Public Service Commission

(WV Code Chapter 24)

"Former" Account No. 8280**"WVFIMS" Account No.****Fund 8623 FY 1995 Org 0926**

1	Personal Services	001	\$	5,559,220
2	Annual Increment	004		52,000
3	Employee Benefits	010		1,813,434
4	Unclassified	099		1,924,000
5	Total		\$	9,348,654

6 The total amount of this appropriation shall be paid
7 from a special revenue fund out of collections for special
8 license fees from public service corporations as provided

9 by law.

189—Public Service Commission—

Gas Pipeline Division

(WV Code Chapter 24B)

“Former” Account No. 8285

“WVFIMS” Account No.

Fund 8624 FY 1995 Org 0926

1	Personal Services	001	\$	128,613
2	Annual Increment	004		3,000
3	Employee Benefits	010		37,391
4	Unclassified	099		87,500
5	Total		\$	256,504

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.

190—Public Service Commission—

Motor Carrier Division

(WV Code Chapter 24A)

“Former” Account No. 8290

“WVFIMS” Account No.

Fund 8625 FY 1995 Org 0926

1	Personal Services	001	\$	1,272,204
2	Annual Increment	004		20,000
3	Employee Benefits	010		394,273
4	Unclassified	099		670,500
5	Total		\$	2,356,977

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.

191—Public Service Commission—

Consumer Advocate

(WV Code Chapter 24)

“Former” Account No. 8295

“WVFIMS” Account No.

Fund 8627 FY 1995 Org 0926

1	Personal Services	001	\$	336,195
2	Annual Increment	004		2,412
3	Employee Benefits	010		106,332
4	Unclassified	099		292,991
5	Total		\$	<u>737,930</u>

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.

192—Claims Against Other Funds

1	Claims Against the State	319	\$	<u>-0-</u>
1	Total TITLE II, Section 3—			
2	Other Funds.....		\$	<u>417,672,463</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 fund nos. 6677, 5405, 3951, 3963, 3067, 4030 and
 8 5063 in the proportion the appropriation for each account
 9 bears to the total of the appropriations for the five
 10 accounts.

193—Regional Jail and Correctional

Facility Authority

(WV Code Chapter 31)

“Former” Account No. 8052

“WVFIMS” Account No.

Fund 6677 FY 1995 Org 0615

		Acti- vity	Lottery Funds
1	Debt Service—Total	310	\$ -0-

194—Commission on Aging

(WV Code Chapter 29)

“Former” Account No. 8209

“WVFIMS” Account No.

Fund 5405 FY 1995 Org 0508

1	In-Home Services for		
2	Senior Citizens—Total	286	\$ 600,000

195—State Department of Education

(WV Code Chapters 18 and 18A)

“Former” Account No. 8243

“WVFIMS” Account No.

Fund 3951 FY 1995 Org 0402

1	Computer Basic Skills—Total	\$	6,000,000
2	Any unexpended balance remaining in the appropri-		
3	ation for Elementary Computer Education (fund 3951,		
4	activity 285) at the close of the fiscal year 1993-94 is		
5	hereby reappropriated for expenditure during the fiscal		
6	year 1994-95.		

196—State Department of Education—**School Building Authority**

(WV Code Chapter 18)

“Former” Account No. 8248

“WVFIMS” Account No.

Fund 3963 FY 1995 Org 0402

1	Debt Service—Total	\$	18,000,000
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197—Division of Tourism and Parks

(WV Code Chapter 5B)

"Former" Account No. 8546**"WVFIMS" Account No.****Fund 3067 FY 1995 Org 0304**

1	Unclassified (R)	099	\$	4,380,000
2	Capital Outlay—Park	539		2,500,000
3	Coopers Rock Land Acquisition (R)	439		200,000
4	Total		\$	7,080,000
5	Any unexpended balances remaining in the appropri-			
6	ations for Unclassified (fund 3067, activity 099) except			
7	fiscal year 1991-92, Capital Outlay—Parks (fund 3067,			
8	activity 288) and Coopers Rock Land Acquisition (fund			
9	3067, activity 439) at the close of the fiscal year 1993-			
10	94 are hereby reappropriated for expenditure during the			
11	fiscal year 1994-95.			

**198—Board of Trustees of the
University System of West Virginia and
Board of Directors of the
State College System
Control Account**

(WV Code Chapter 18B)**"Former" Account No. 8825****"WVFIMS" Account No.****Fund 4030 FY 1995 Org 0453**

1	Unclassified—Total	096	\$	3,520,000
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199—Division of Human Services**(WV Code Chapters 9, 48 and 49)****"Former" Account No. 9132****"WVFIMS" Account No.****Fund 5063 FY 1995 Org 0511**

1	Health Care and Title			
2	XIX Waiver for			
3	Senior Citizens—Total	434	\$	8,500,000

4 The above appropriation shall be used to expand the
 5 title XIX waiver program statewide but not to increase
 6 the rates of reimbursement for services provided by title
 7 XIX providers.

1 Total TITLE II, Section 4—
 2 Lottery Funds \$ 43,700,000

1 **Sec. 5. Appropriations of federal funds.**—In accor-
 2 dance with article eleven, chapter four of the code, from
 3 federal funds there are hereby appropriated condition-
 4 ally upon the fulfillment of the provisions set forth in
 5 article two, chapter five-a of the code the following
 6 amounts, as itemized, for expenditure during the fiscal
 7 year one thousand nine hundred ninety-five.

LEGISLATIVE

200—Crime Victims Compensation Fund

(WV Code Chapter 14)

“Former” Account No. 7907

“WVFIMS” Account No.

Fund 8738 FY 1995 Org 2300

	Acti- vity	Federal Fund
1 Unclassified—Total	096 \$	730,000

EXECUTIVE

201—Governor’s Office—

Governor’s Cabinet on Children and Families

(WV Code Chapter 5)

“Former” Account No. 7753

“WVFIMS” Account No.

Fund 8792 FY 1995 Org 0100

1 Unclassified—Total	096 \$	387,350
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202—Governor’s Office—

Governor's Cabinet on Children and Families—**Office of Economic Opportunity**

(WV Code Chapter 5)

“Former” Account No. 7755

“WVFIMS” Account No.

Fund 8797 FY 1995 Org 0100

1 Unclassified—Total 096 \$ 4,228,397

203—Governor's Office—**Commission for National and Community Service**

(Executive Order 1-94)

“Former” Account No. 7754

“WVFIMS” Account No.

Fund 8800 FY 1995 Org 0100

1 Unclassified—Total 096 \$ 800,000

204—Department of Agriculture—**Marketing and Development Division**

(WV Code Chapter 19)

“Former” Account No. 7910

“WVFIMS” Account No.

Fund 8735 FY 1995 Org 1400

1 Unclassified—Total 096 \$ -0-

205—Department of Agriculture

(WV Code Chapter 19)

“Former” Account No. 7911

“WVFIMS” Account No.

Fund 8736 FY 1995 Org 1400

1 Unclassified—Total 096 \$ 2,093,025

206—Department of Agriculture—

Meat Inspection

(WV Code Chapter 19)

“Former” Account No. 7918

“WVFIMS” Account No.

Fund 8737 FY 1995 Org 1400

1 Unclassified—Total 096 \$ 574,442

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

207—West Virginia

Development Office

(WV Code Chapter 5B)

“Former” Account No. 7755

“WVFIMS” Account No.

Fund 8705 FY 1995 Org 0307

1 Unclassified—Total 096 \$ 5,502,012

208—Division of Miners’ Health,

Safety and Training

(WV Code Chapter 22)

“Former” Account No. 7868

“WVFIMS” Account No.

Fund 8709 FY 1995 Org 0314

1 Unclassified—Total 096 \$ 420,348

209—Division of Labor

(WV Code Chapters 21 and 47)

“Former” Account No. 7884

“WVFIMS” Account No.

Fund 8706 FY 1995 Org 0308

1 Unclassified—Total 096 \$ 317,883

210—Division of Environmental Protection

(WV Code Chapter 22)

“Former” Account No. 7897

“WVFIMS” Account No.

Fund 8708 FY 1995 Org 0313

1 Unclassified—Total 096 \$107,042,542

211—Division of Forestry

(WV Code Chapter 19)

“Former” Account No. 7924

“WVFIMS” Account No.

Fund 8703 FY 1995 Org 0305

1 Unclassified—Total 096 \$ 1,754,975

212—Geological and Economic Survey

(WV Code Chapter 29)

“Former” Account No. 7929

“WVFIMS” Account No.

Fund 8704 FY 1995 Org 0306

1 Unclassified—Total 096 \$ 618,970

213—Division of Natural Resources

(WV Code Chapter 20)

“Former” Account No. 7930

“WVFIMS” Account No.

Fund 8707 FY 1995 Org 0310

1 Unclassified—Total 096 \$ 5,591,566

DEPARTMENT OF EDUCATION

214—State Department of Education

(WV Code Chapters 18 and 18A)

“Former” Account No. 7772

“WVFIMS” Account No.

Fund 8712 FY 1995 Org 0402

1 Unclassified—Total 096 \$ 5,517,000

215—State Department of Education—

School Lunch Program

(WV Code Chapters 18 and 18A)

“Former” Account No. 7783

“WVFIMS” Account No.

Fund 8713 FY 1995 Org 0402

1 Unclassified—Total 096 \$ 54,310,000

216—State Board of Education—

Vocational Division

(WV Code Chapters 18 and 18A)

“Former” Account No. 7794

“WVFIMS” Account No.

Fund 8714 FY 1995 Org 0402

1 Unclassified—Total 096 \$ 14,619,450

217—State Department of Education—

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

“Former” Account No. 7805

“WVFIMS” Account No.

Fund 8715 FY 1995 Org 0402

1 Unclassified—Total 096 \$ 27,509,000

218—State Board of Rehabilitation—

Division of Rehabilitation Services

(WV Code Chapter 18)

“Former” Account No. 7873

“WVFIMS” Account No.

Fund 8734 FY 1995 Org 0932

1 Unclassified—Total 096 \$ 36,373,657

DEPARTMENT OF EDUCATION AND THE ARTS

219—Educational Broadcasting Authority

(WV Code Chapter 10)

“Former” Account No. 7803

“WVFIMS” Account No.

Fund 8721 FY 1995 Org 0439

1 Unclassified—Total 096 \$ 765,400

220—Library Commission

(WV Code Chapter 10)

“Former” Account No. 7817

“WVFIMS” Account No.

Fund 8720 FY 1995 Org 0433

1 Unclassified—Total 096 \$ 1,810,692

221—Division of Culture and History

(WV Code Chapter 29)

“Former” Account No. 7828

“WVFIMS” Account No.

Fund 8718 FY 1995 Org 0432

1 Unclassified—Total 096 \$ 1,091,900

**DEPARTMENT OF HEALTH
AND HUMAN RESOURCES**

222—Division of Health—

Central Office

(WV Code Chapter 16)

“Former” Account No. 7845

“WVFIMS” Account No.

Fund 8802 FY 1995 Org 0506

1	Unclassified—Total	096	\$	28,721,000
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223—Division of Human Services

(WV Code Chapters 9, 48 and 49)

“Former” Account No. 7851

“WVFIMS” Account No.

Fund 8722 FY 1995 Org 0511

1	Unclassified	099	\$	73,070,130
2	OSCAR and RAPIDS	515		15,061,621
3	Medical Services	189		950,000,000
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			\$1,152,651,751

224—Consolidated Medical Service Fund**“Former” Account No. 7839**

“WVFIMS” Account No.

Fund 8723 FY 1995 Org 0506

1	Unclassified—Total	096	\$	17,833,000
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225—Commission on Aging

(WV Code Chapter 29)

“Former” Account No. 7862

“WVFIMS” Account No.

Fund 8724 FY 1995 Org 0508

1	Unclassified—Total	096	\$	11,431,000
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226—Human Rights Commission

(WV Code Chapter 5)

“Former” Account No. 7968

“WVFIMS” Account No.

Fund 8725 FY 1995 Org 0510

1 Unclassified—Total 096 \$ 151,352

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

**227—Office of Emergency Services
(WV Code Chapter 15)**

“Former” Account No. 7761

“WVFIMS” Account No.

Fund 8727 FY 1995 Org 0606

1 Unclassified—Total 096 \$ 3,484,879

**228—Division of Veterans’ Affairs—
Veterans’ Home**

(WV Code Chapter 9A)

“Former” Account No. 7840

“WVFIMS” Account No.

Fund 8728 FY 1995 Org 0618

1 Unclassified—Total 096 \$ 454,400

**229—Division of Public Safety
(WV Code Chapter 15)**

“Former” Account No. 7946

“WVFIMS” Account No.

Fund 8741 FY 1995 Org 0612

1 Unclassified—Total 096 \$ 1,115,428

**230—Adjutant General—State Militia
(WV Code Chapter 15)**

“Former” Account No. 7957

“WVFIMS” Account No.

Fund 8726 FY 1995 Org 0603

1 Unclassified—Total 096 \$ 16,976,680

**231—Division of Criminal Justice
and Highway Safety**

“Former” Account No. 7958

“WVFIMS” Account No.

Fund 8798 FY 1995 Org 0620

1 Unclassified—Total 096 \$ 6,940,000

DEPARTMENT OF TAX AND REVENUE

232—Tax Division

(WV Code Chapter 11)

“Former” Account No. 7763

“WVFIMS” Account No.

Fund 7069 FY 1995 Org 0702

1 Unclassified—Total 096 \$ 50,000

DEPARTMENT OF TRANSPORTATION

233—State Rail Authority

(WV Code Chapter 29)

“Former” Account No. 7932

“WVFIMS” Account No.

Fund 8733 FY 1995 Org 0804

1 Unclassified—Total 096 \$ 600,000

234—Division of Motor Vehicles

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

“Former” Account No. 7970

“WVFIMS” Account No.

Fund 8787 FY 1995 Org 0802

1 Unclassified—Total 096 \$ 41,087

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

(WV Code Chapter 5F)

“Former” Account No. 7982

“WVFIMS” Account No.

Fund 8782 FY 1995 Org 0801

1 Unclassified—Total 096 \$ 1,300,000

236—Division of Public Transit

(WV Code Chapter 17)

“Former” Account No. 7983

“WVFIMS” Account No.

Fund 8745 FY 1995 Org 0805

1 Unclassified—Total 096 \$ 15,456,698

MISCELLANEOUS BOARDS AND COMMISSIONS

237—Public Service Commission—

Motor Carrier Division

(WV Code Chapter 24A)

“Former” Account No. 7993

“WVFIMS” Account No.

Fund 8743 FY 1995 Org 0926

1 Unclassified—Total 096 \$ 680,973

238—Public Service Commission—

Gas Pipeline Division

(WV Code Chapter 24B)

“Former” Account No. 7996

“WVFIMS” Account No.

Fund 8744 FY 1995 Org 0926

1 Unclassified—Total 096 \$ 254,615

1 Total TITLE II, Section 5—

2 Federal Funds \$1,526,346,744

- 1 **Sec. 6. Appropriations from federal block grants.—**
 2 The following items are hereby appropriated from
 3 federal block grants to be available for expenditure
 4 during the fiscal year 1994-95.

239—West Virginia Development Office—

Community Development

“Former” Account No. 8029

“WVFIMS” Account No.

Fund 8746 FY 1995 Org 0307

- 1 Unclassified—Total 096 \$ 20,400,000

240—State Department of Education—

Education Grant

“Former” Account No. 8242

“WVFIMS” Account No.

Fund 8748 FY 1995 Org 0402

- 1 Unclassified—Total 096 \$ 69,900,000

241—Bureau of Employment Programs—

Job Training Partnership Act

“Former” Account No. 8255

“WVFIMS” Account No.

Fund 8749 FY 1995 Org 0323

- 1 Unclassified—Total 096 \$ 45,343,521

242—Governor’s Office—

Governor’s Cabinet on Children and Families

“Former” Account No. 8432

“WVFIMS” Account No.

Fund 8799 FY 1995 Org 0100

- 1 Unclassified—Total 096 \$ 7,136,077

243—Division of Health—

Substance Abuse Prevention and Treatment**"Former" Account No. 8501**

"WVFIMS" Account No.

Fund 8793 FY 1995 Org 0506

1 Unclassified—Total 096 \$ 6,400,000

244—Division of Health—

Maternal and Child Health**"Former" Account No. 8502**

"WVFIMS" Account No.

Fund 8750 FY 1995 Org 0506

1 Unclassified—Total 096 \$ 7,200,000

245—Division of Health—

Community Mental Health Services**"Former" Account No. 8505**

"WVFIMS" Account No.

Fund 8794 FY 1995 Org 0506

1 Unclassified—Total 096 \$ 3,000,000

246—Division of Health—

Preventive Health**"Former" Account No. 8506**

"WVFIMS" Account No.

Fund 8753 FY 1995 Org 0506

1 Unclassified—Total 096 \$ 1,400,000

247—Division of Human Services—

Energy Assistance**"Former" Account No. 9147**

"WVFIMS" Account No.

Fund 8755 FY 1995 Org 0511

1	Unclassified—Total	096	\$	17,000,000
	248—Division of Human Services—			
	Child Care and Development			
	“Former” Account No. 9149			
	“WVFIMS” Account No.			
	Fund <u>8756</u> FY <u>1995</u> Org <u>0511</u>			
1	Unclassified—Total	096	\$	6,500,000
	249—Division of Human Services—			
	Social Services			
	“Former” Account No. 9161			
	“WVFIMS” Account No.			
	Fund <u>8757</u> FY <u>1995</u> Org <u>0511</u>			
1	Unclassified—Total		\$	24,000,000
	250—Division of Human Services—			
	Family Preservation/Family Support			
	“Former” Account No. 9165			
	“WVFIMS” Account No.			
	Fund <u>8801</u> FY <u>1995</u> Org <u>0511</u>			
1	Family Support—			
2	Service Delivery		\$	286,000
3	Unclassified			286,000
4	Total		\$	572,000
1	Total TITLE II, Section 6—			
2	Federal Block Grants		\$	<u>208,851,598</u>

1 **Sec. 7. Awards for claims against the state.**—There
2 are hereby appropriated, for the remainder of the fiscal
3 year 1993-1994 and to remain in effect until June 30,
4 1995, from the fund as designated, in the amounts as
5 specified and for the claimants named in enrolled house
6 bill no. 4565, regular session 1994—crime victims
7 compensation funds of \$207,000.00 for payment of claims

8 against the state.

9 There are hereby appropriated for the fiscal year
10 1994-1995 from the funds as designated, in the amounts
11 as specified and for the claimants as named in enrolled
12 committee substitute for senate bill no. 517, regular
13 session 1994, and enrolled house bill no. 4564, regular
14 session 1994—general revenue funds of \$3,697,721.09.

15 The total of general revenue funds above do not
16 include payment for claims in the amount of \$1,875.00
17 from the supreme court—general judicial, account no.
18 1110, specifically made payable from the appropriation
19 for the current fiscal year 1993-1994.

20 There are hereby appropriated for the fiscal year
21 1994-1995 from the funds as designated, in the amounts
22 as specified and for the claimants as named in enrolled
23 committee substitute for senate bill no. 517, regular
24 session 1994—special revenue funds of \$237,881.82, state
25 road funds of \$87,053.20 and workers' compensation
26 funds of \$7,122.65

1 **Sec. 8. Expirations.**—Notwithstanding the provisions
2 of section eight of the budget bill for the fiscal year 1993-
3 94, chapter one, acts of the Legislature, first extraordi-
4 nary session, one thousand nine hundred ninety-three,
5 the balance of funds deposited in fund 0100, cash reserve
6 account no. 0032, and the balance of funds deposited in
7 fund 0539, activity 0514, are hereby expired to the state
8 fund, general revenue, for the fiscal year ending the
9 thirtieth day of June, one thousand nine hundred ninety-
10 five, and shall not be available for expenditure until the
11 commencement of the fiscal year which ends the
12 thirtieth day of June, one thousand nine hundred ninety-
13 five.

1 **Sec. 9. 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 1994-95 out of surplus
5 funds only, subject to the terms and conditions set forth
6 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-four.

11 In the event that surplus revenues available on the
 12 thirty first day of July, one thousand nine hundred
 13 ninety-four, are not sufficient to meet all of the appro-
 14 priations 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 the
 19 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 are
 22 provided for the next subsequent appropriation.

251—Division of Veterans' Affairs—

Veterans' Bonus

(WV Code Chapter 9A)

"Former" Account No. 4041

"WVFIMS" Account No.

Fund 0457 FY 1995 Org 0613

1	Unclassified—Total	096	\$	3,000,000
2	From the above appropriation, an amount not to			
3	exceed ninety thousand dollars may be expended for			
4	administrative activities associated with the veterans'			
5	bonus.			

252—Division of Public Safety

(WV Code Chapter 15)

"Former" Account No. 5700

"WVFIMS" Account No.

Fund 0453 FY 1995 Org 0612

1	Equipment	070	\$	-0-
2	Overtime and Wage			
3	Court Awards			2,000,000
4	Total		\$	2,000,000

253—Tax Division

(WV Code Chapter 11)

“Former” Account No. 1800

“WVFIMS” Account No.

Fund 0470 FY 1995 Org 0702

1 Automation Project—Total 442 \$ 1,000,000

254—West Virginia Development Office

(WV Code Chapter 5B)

“Former” Account No. 1210

“WVFIMS” Account No.

Fund 0256 FY 1995 Org 0307

1 Infrastructure—Total 524 \$ -0-

1 Total TITLE II, Section 8—

2 Surplus Accrued \$ 6,000,000

1 **Sec. 10. Appropriations from surplus accrued—**
2 **lottery fund.**—The following items are hereby approp-
3 riated from the lottery fund and are to be available for
4 expenditure during the fiscal year 1994-95 out of surplus
5 funds only, subject to the terms and conditions set forth
6 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 thirtieth day of June, one
10 thousand nine hundred ninety-four.

11 In the event that surplus revenues available on the
12 thirtieth day of June, one thousand nine hundred ninety-
13 four, are not sufficient to meet all of the appropriations
14 made pursuant to this section, then the appropriations
15 shall be made to the extent that surplus funds are
16 available as of the date mandated and shall be allocated
17 first to provide the necessary funds to meet the first
18 appropriation of this section before any funds are
19 provided for the next subsequent appropriation.

255—State Department of Education

(WV Code Chapters 18 and 18A)

“Former” Account No. 8243

“WVFIMS” Account No.

Fund 3951 FY 1995 Org 0402

1 Computer Basic Skills—Total 145 \$ 4,000,000

256—Division of Tourism and Parks

(WV Code Chapter 5B)

“Former” Account No. 8546

“WVFIMS” Account No.

Fund 3067 FY 1995 Org 0304

1 Advertising—Total 541 \$2,800,000

1 Total TITLE II, Section 9—

2 Surplus Accrued—Lottery Fund \$ 6,800,000

1 **Sec. 11. Special revenue appropriations.**—There are
 2 hereby appropriated for expenditure during the fiscal
 3 year one thousand nine hundred ninety-five appropria-
 4 tions made by general law from special revenue which
 5 are not paid into the state fund as general revenue under
 6 the provisions of section two, article two, chapter twelve
 7 of the code: *Provided*, That none of the money so
 8 appropriated by this section shall be available for
 9 expenditure except in compliance with and in conformity
 10 to the provisions of articles two and three, chapter twelve
 11 and article two, chapter five-a of the code, with due
 12 consideration to the digest of legislative intent of the
 13 budget bill prepared pursuant to article one, chapter
 14 four, unless the spending unit has filed with the director
 15 of the budget, the auditor and the legislative auditor
 16 prior to the beginning of each fiscal year:

17 (a) An estimate of the amount and sources of all
 18 revenues accruing to such fund;

19 (b) A detailed expenditure schedule showing for what
 20 purposes the fund is to be expended.

1 **Sec. 12. State improvement fund appropriations.**—

2 Bequests or donations of nonpublic funds, received by the
3 governor on behalf of the state during the fiscal year one
4 thousand nine hundred ninety-five, for the purpose of
5 making studies and recommendations relative to im-
6 provements of the administration and management of
7 spending units in the executive branch of state govern-
8 ment, shall be deposited in the state treasury in a
9 separate account therein designated state improvement
10 fund.

11 There are hereby appropriated all moneys so deposited
12 during the fiscal year one thousand nine hundred ninety-
13 five to be expended as authorized by the governor, for
14 such studies and recommendations which may encom-
15 pass any problems of organization, procedures, systems,
16 functions, powers or duties of a state spending unit in
17 the executive branch, or the betterment of the economic,
18 social, educational, health and general welfare of the
19 state or its citizens.

1 **Sec. 13. Specific funds and collection accounts.**—A
2 fund or collection account which by law is dedicated to
3 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 the
6 provisions of article three, chapter twelve of the code.

1 **Sec. 14. Appropriations for refunding erroneous**
2 **payment.**—Money that has been erroneously paid into
3 the state treasury is hereby appropriated out of the fund
4 into which it was paid, for refund to the proper person.

5 When the officer authorized by law to collect money
6 for the state finds that a sum has been erroneously paid,
7 he shall issue his or her requisition upon the auditor for
8 the refunding of the proper amount. The auditor shall
9 issue his warrant to the treasurer and the treasurer shall
10 pay the warrant out of the fund into which the amount
11 was originally paid.

1 **Sec. 15. Sinking fund deficiencies.**—There is hereby
2 appropriated to the governor a sufficient amount to meet
3 any deficiencies that may arise in the mortgage finance
4 bond insurance fund of the West Virginia housing
5 development fund which is under the supervision and

6 control of the municipal bond commission as provided by
7 section twenty-b, article eighteen, chapter thirty-one of
8 the code, or in the funds of the municipal bond commis-
9 sion because of the failure of any state agency for either
10 general obligation or revenue bonds or any local taxing
11 district for general obligation bonds to remit funds
12 necessary for the payment of interest and sinking fund
13 requirements. The governor is authorized to transfer
14 from time to time such amounts to the municipal bond
15 commission as may be necessary for these purposes.

16 The municipal bond commission shall reimburse the
17 state of West Virginia through the governor from the
18 first remittance collected from the West Virginia
19 housing development fund or from any state agency or
20 local taxing district for which the governor advanced
21 funds, with interest at the rate carried by the bonds for
22 security or payment of which the advance was made.

1 **Sec. 16. 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. 17. 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 alter-
5 ations, equipment and capital outlay, where not other-
6 wise specifically provided and except as otherwise
7 provided in TITLE I—GENERAL PROVISIONS,
8 Sec. 3.

1 **Sec. 18. General school fund.—**The balance of the
2 proceeds of the general school fund remaining after the
3 payment of the appropriations made by this act is
4 appropriated for expenditure in accordance with section
5 sixteen, article nine-a, chapter eighteen of the code.

TITLE III—ADMINISTRATION.

- §1. Appropriations conditional.
§2. Constitutionality.

TITLE III—ADMINISTRATION.

1 **Section 1. Appropriations conditional.**—The expen-
2 diture 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

(S. B. 1013—Originating in the Committee on Finance.)

[Passed March 20, 1994; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the state fund, general revenue, from surplus accrued for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three, to the governor's office—civil contingent fund, "former" account no. 1240, "WVFIMS" account no. fund 0105, fiscal year 1994, organization 0100, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill, be supplemented and amended by adding to title two, section eight thereof, as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 8. Appropriations from surplus accrued.

3 241b—Governor’s Office—
4 Civil Contingent Fund

5 (WV Code Chapter 5)

6 “Former” Account No. 1240

7 “WVFIMS” Account No.

8 Fund 0105 FY 1994 Org 0100

9 1 Civil Contingent Fund—

10 2 Total (R) 144 \$ 1,000,000

11 The purpose of this supplementary appropriation bill
12 is to supplement the budget act for the fiscal year 1993-
13 1994 by providing for a new item of appropriation to be
14 established therein to appropriate surplus accrued in
15 the general revenue fund for the fiscal year ending the
16 thirtieth day of June, one thousand nine hundred ninety-
17 three, and to be available for expenditure in the fiscal
18 year 1993-1994. Such amount shall be available for
19 expenditure upon passage of this bill.

CHAPTER 3

(S. B. 1022—Originating in the Committee on Finance.)

[Passed March 18, 1994; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring between items of the existing appropriation to the crime victims compensation fund, “former” account no. 8412, “WVFIMS” account no. fund 1731, fiscal year 1994,

organization 2300, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation to "former" account no. 8412, "WVFIMS" account no. fund 1731, fiscal year 1994, organization 2300, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill, be supplemented, amended and transferred thereafter to read as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 3. Appropriations from other funds.		
3	LEGISLATIVE		
4	<i>93—Crime Victims Compensation Fund</i>		
5	(WV Code Chapter 14)		
6	"Former" Account No. 8412		
7	"WVFIMS" Account		
8	Fund <u>1731</u> FY <u>1994</u> Org <u>2300</u>		
9		Act-	
10		ivity	Other Funds
11	1	Personal Services	001 \$ 125,778
12	2	Annual Increment	004 1,116
13	3	Employee Benefits	010 37,742
14	4	Unclassified	099 27,000
15	5	Economic Loss Claim	
16	6	Payment Fund	334 1,450,000
17	7	Total	\$ 1,641,636

18 The purpose of this supplementary appropriation bill
 19 is to supplement, amend and transfer certain moneys
 20 between line items of the existing appropriation for the
 21 designated spending unit. The amounts as itemized for
 22 expenditure during the fiscal year 1994 shall be made
 23 available for expenditure upon passage of this bill.

CHAPTER 4

(S. B. 1017—Originating in the Committee on Finance.)

[Passed March 17, 1994; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring between items of the existing appropriation to the department of commerce, labor and environmental resources, division of natural resources, “former” account no. 8300, “WVFIMS” account no. fund 3200, fiscal year 1994, organization 0308, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation to “former” account no. 8300, “WVFIMS” account no. fund 3200, fiscal year 1994, organization 0308, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill, be supplemented, amended and transferred thereafter to read as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 DEPARTMENT OF COMMERCE, LABOR
4 AND ENVIRONMENTAL RESOURCES

5 107—Division of Natural Resources

6 (WV Code Chapter 20)

7 “Former” Account No. 8300

8 “WVFIMS” Account No.

9 Fund 3200 FY 1994 Org 0310

10			Act-	Other
11			ivity	Funds
12	1	Personal Services	001	\$ 5,582,828
13	2	Annual Increment	004	99,756

1 TITLE II—APPROPRIATIONS.
 2 Section 1. Appropriations from general revenue.
 3 DEPARTMENT OF EDUCATION
 4 AND THE ARTS
 5 62—*Division of Culture and History*
 6 (WV Code Chapter 29)
 7 “Former” Account No. 3510
 8 “WVFIMS” Account No.
 9 Fund 0293 FY 1994 Org 0432

		Acti-	General
		vity	Revenue
			Fund
13	5 Capital Outlay, Repairs		
14	5a and Equipment 542.....	\$	197,000

15 The purpose of this supplementary appropriation bill
 16 is to supplement, amend and insert additional language
 17 in a specific line item of the existing appropriation for
 18 fiscal year 1993-1994 for the designated spending unit
 19 to allow the purchase of equipment from the item of
 20 appropriation formerly entitled “capital outlay”, with
 21 such amended language to be effective upon passage of
 22 this bill.

CHAPTER 6

(S. B. 1012—Originating in the Committee on Finance.)

[Passed March 20, 1994; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the state fund, general revenue, from surplus accrued for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three, to the division of corrections—correctional units, “former” account no. 3770, “WVFIMS” account no. fund 0450, fiscal year 1994, organization 0608, supplementing and amending chapter one, acts of the

Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill, be supplemented and amended by adding to title two, section eight thereof, as follows:

1	TITLE II—APPROPRIATIONS.	
2	Sec. 8. Appropriations from surplus accrued.	
3	<i>241a—Division of Corrections—</i>	
4	<i>Correctional Units</i>	
5	(WV Code Chapters 25, 28, 29 and 62)	
6	“Former” Account No. 3770	
7	“WVFIMS” Account No.	
8	Fund <u>0450</u> FY <u>1994</u> Org <u>0608</u>	
9	1	Unclassified—Total \$ 2,000,000

10 The purpose of this supplementary appropriation bill
 11 is to supplement the budget act for the fiscal year 1993-
 12 1994 by providing for a new item of appropriation to be
 13 established therein to appropriate surplus accrued in
 14 the general revenue fund for the fiscal year ending the
 15 thirtieth day of June, one thousand nine hundred ninety-
 16 three, and to be available for expenditure in the fiscal
 17 year 1993-94. Such amount shall be available for
 18 expenditure upon passage of this bill.

CHAPTER 7

(S. B. 1010—Originating in the Committee on Finance.)

[Passed March 17, 1994; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring between items of the existing appropriations from the state fund, general revenue, to the department of health and human

resources, division of human services, “former” account no. 4050, “WVFIMS” account no. fund 0403, fiscal year 1994, organization 0511, and consolidated medical service fund, “former” account no. 4190, “WVFIMS” account no. fund 0525, fiscal year 1994, organization 0506, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That specific items of the total appropriations to “former” account no. 4050, “WVFIMS” account no. fund 0403, fiscal year 1994, organization 0511, and “former” account no. 4190, “WVFIMS” account no. fund 0525, fiscal year 1994, organization 0506, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill, be supplemented, amended and transferred with such items to thereafter read as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF HEALTH
4 AND HUMAN RESOURCES

5 65—*Division of Human Services*

6 (WV Code Chapters 9, 48 and 49)

7 “Former” Account No. 4050

8 “WVFIMS” Account No.

9 Fund 0403 FY 1994 Org 0511

10			General
11		Acti-	Revenue
12		vity	Fund
13	1 Personal Services	001	\$ 16,258,716
14	17 Total.....		<u>\$240,191,416</u>

15		<i>67—Consolidated Medical Service Fund</i>	
16		“Former” Account No. 4190	
17		“WVFIMS” Account No.	
18		Fund <u>0525</u> FY 1994 Org <u>0506</u>	
19	35	Institutional Facilities	
20	36	Operations	335 \$ 35,000,000
21	37	Total	\$ 94,428,979
22	The purpose of this supplementary appropriation bill		
23	is to supplement, amend and transfer two million dollars		
24	to the personal services line item in the division of		
25	human services from the institutional facilities opera-		
26	tions line item in the consolidated medical service fund,		
27	with no new moneys being appropriated. These		
28	amounts, as newly itemized, shall be available for		
29	expenditure in fiscal year 1993-1994 upon passage of		
30	this bill.		

CHAPTER 8

(S. B. 1014—Originating in the Committee on Finance.)

[Passed March 17, 1994; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the state fund, general revenue, from surplus accrued for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three, to the division of public safety, “former” account no. 5700, “WVFIMS” account no. fund 0453, fiscal year 1994, organization 0612, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill, be supplemented and amended by adding to title two, section eight thereof, as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 8. Appropriations from surplus accrued.

3 241c—*Division of Public Safety*

4 (WV Code Chapter 15)

5 “Former” Account No. 5700

6 “WVFIMS” Account No.

7 Fund 0453 FY 1994 Org 0612

8 1 Brady Act Implementation—

9 2 Total..... 543 \$ 77,000

10 The purpose of this supplementary appropriation bill
11 is to supplement the budget act for the fiscal year 1993-
12 1994 by providing for a new item of appropriation to be
13 established therein to appropriate surplus accrued in
14 the general revenue fund for the fiscal year ending the
15 thirtieth day of June, one thousand nine hundred ninety-
16 three, and to be available for expenditure in the fiscal
17 year 1993-1994. Such amount shall be available for
18 expenditure upon passage of this bill.

CHAPTER 9

(H. B. 5005—By Delegates Kiss, Doyle, Campbell, S. Cook,
Farris, Rutledge and Burk)

[Passed March 18, 1994; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the state fund, general revenue, from surplus accrued for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three, to the public defender services, “former” account no. 5900, “WVFIMS” account no. fund 0226, fiscal year 1994, organization 0221, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill, be supplemented and amended by adding to title two, section eight thereof, as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 8. Appropriation from surplus accrued.

3 EXECUTIVE

4 *241d—Public Defender Services*

5 (WV Code Chapter 29)

6 “Former” Account No. 5900

7 “WVFIMS” Account No.

8 Fund 0226 FY 1994 Org 0221

9 1 Appointed Council Fees
10 2 and Public Defender
11 3 Corporations (R) 127 \$ 4,138,488

12 The purpose of this supplementary appropriation bill
13 is to supplement the budget act for the fiscal year 1993-
14 1994 by providing for a new item of appropriation to be
15 established therein to appropriate surplus accrued in
16 the general revenue fund for the fiscal year ending the
17 thirtieth day of June, one thousand nine hundred ninety-
18 three, and to be available for expenditure in the fiscal
19 year 1993-1994. Such amount shall be available for
20 expenditure upon passage of this bill.

CHAPTER 10

(S. B. 1019—Originating in the Committee on Finance.)

[Passed March 17, 1994: in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year

ending the thirtieth day of June, one thousand nine hundred ninety-four, to the department of agriculture, "former" account no. 7911, "WVFIMS" account no. fund 8736, fiscal year 1994, organization 1400, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.

WHEREAS, The governor has established the availability of federal funds for a continuing program, now available for expenditure in fiscal year 1993-1994, a portion of which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation to "former" account no. 7911, "WVFIMS" account no. fund 8736, fiscal year 1994, organization 1400, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill, be supplemented and amended thereafter to read as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 5. Appropriations of federal funds.		
3	EXECUTIVE		
4	192—Department of Agriculture		
5	(WV Code Chapter 19)		
6	"Former" Account No. 7911		
7	"WVFIMS" Account No.		
8	Fund <u>8736</u> FY <u>1994</u> Org <u>1400</u>		
9		Act-	Federal
10		ivity	Funds
11	1	Unclassified—Total	096 \$ 1,994,318

12 The purpose of this supplementary appropriation bill
 13 is to supplement this account in the budget bill for fiscal
 14 year 1993-1994 by adding one hundred ninety thousand
 15 dollars to the existing appropriation. These moneys shall
 16 be available for expenditure upon passage of this bill.

CHAPTER 11

(S. B. 1025—Originating in the Committee on Finance.)

[Passed March 20, 1994; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire certain unexpended amounts from “former” account no. 8014-99, “WVFIMS” account no. fund 7150, fiscal year 1994, organization 0704, insurance commission—examination fund—cash control; “former” account no. 8016-99, “WVFIMS” account no. fund 7152, fiscal year 1994, organization 0704, insurance commission—cash control; and “former” account no. 8121-06, “WVFIMS” account no. fund 1207, fiscal year 1994, organization 1200, social security contributions, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill, and transferring such amounts to the state fund, general revenue.

Be it enacted by the Legislature of West Virginia:

1 That the sum of one hundred ten thousand eight
2 hundred sixty-six dollars be expired from “former”
3 account no. 8014-99, “WVFIMS” account no. fund 7150,
4 fiscal year 1994, organization 0704, insurance commis-
5 sion—examination fund—cash control; the sum of eight
6 hundred twenty-seven thousand six hundred twenty-two
7 dollars be expired from “former” account no. 8016-99,
8 “WVFIMS” account no. fund 7152, fiscal year 1994,
9 organization 0704, insurance commission—cash control;
10 and the sum of four hundred thousand dollars be
11 expired from “former” account no. 8121-06, “WVFIMS”
12 account no. fund 1207, fiscal year 1994, organization
13 1200, social security contributions, as appropriated by
14 chapter one, acts of the Legislature, first extraordinary
15 session, one thousand nine hundred ninety-three, known
16 as the budget bill be supplemented, amended, reduced
17 and caused to expire and that such sums be transferred
18 to the state fund, general revenue, and be available for
19 other and further appropriation.

20 The purpose of this supplementary appropriation bill
 21 is to supplement, amend, reduce and cause to expire out
 22 of the aforesaid accounts the total sum of one million
 23 three hundred thirty-eight thousand four hundred
 24 eighty-eight dollars into the general revenue fund for
 25 other and further appropriation and expenditure
 26 immediately upon passage of this bill.

CHAPTER 12

(S. B. 1015—Originating in the Committee on Finance.)

[Passed March 20, 1994; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of available moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, to the department of commerce, labor and environmental resources, division of natural resources—whitewater study and improvement fund, “former” account no. 8307, “WVFIMS” account no. fund 3253, fiscal year 1994, organization 0310, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.

WHEREAS, The governor has established the availability of public moneys, receivable for new programs and available for expenditure in fiscal year 1993-1994, a portion of which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill, be supplemented and amended by adding to title two, section three thereof, as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 Sec. 3. Appropriations from other funds.

3	DEPARTMENT OF COMMERCE, LABOR		
4	AND ENVIRONMENTAL RESOURCES		
5	<i>111a—Division of Natural Resources—</i>		
6	<i>Whitewater Study and Improvement Fund</i>		
7	(WV Code Chapter 20)		
8	“Former” Account No. 8307		
9	“WVFIMS” Account No.		
10	Fund <u>3253</u> FY <u>1994</u> Org <u>0310</u>		
11		Act-	Other
12		ivity	Funds
13	1	Unclassified—Total	096 \$ 50,000

14 The purpose of this supplementary appropriation bill
 15 is to supplement the budget act for the fiscal year 1993-
 16 1994 by providing for a new account to be established
 17 therein to appropriate other moneys received for
 18 expenditure in the fiscal year 1993-1994. These moneys
 19 shall be available for expenditure upon passage of this
 20 bill.

CHAPTER 13

(H. B. 5009—By Delegates P. White and Kiss)

[Passed March 17, 1994; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury to the department of health and human resources, division of health—hospital services revenue account (special fund) (capital improvement, renovation and operations), “former” account no. 8500, “WVFIMS” account no. fund 5156, fiscal year 1994, organization 0506, from the balance of moneys remaining unappropriated in the designated account for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred

ninety-three, known as the budget bill.

WHEREAS, It appears that there now remains unappropriated a balance in "former" account no. 8500, "WVFIMS" account no. fund 5156, fiscal year 1994, organization 0506, available for further appropriation during the fiscal year 1993-1994, a portion of which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation to "former" account no. 8500, "WVFIMS" account no. fund 5156, fiscal year 1994, organization 0506, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill, be supplemented and amended thereafter to read as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 3. Appropriations from other funds.		
3	DEPARTMENT OF HEALTH		
4	AND HUMAN RESOURCES		
5	145—Division of Health—		
6	Hospital Services Revenue Account		
7	(Special Fund)		
8	(Capital Improvement, Renovation and Operations)		
9	(WV Code Chapter 16)		
10	"Former" Account No. 8500		
11	"WVFIMS" Account No.		
12	Fund <u>5156</u> FY <u>1994</u> Org <u>0506</u>		
13		Acti-	Other
14		vity	Funds
15	1	Debt Service (R)	040 \$ 2,740,000
16	2	Institutional Facilities	
17	3	Operations (R)	335 35,953,198
18	3a	Broad Based Provider Tax ...	4,639,593
19	4	Medical Services Trust	
20	5	Fund—Transfer	512 <u>118,000,000</u>
21	6	Total	\$161,332,791

22 The purpose of this supplementary appropriation bill
23 is to supplement and amend this account in the budget
24 act for the fiscal year 1993-1994 from the unappropri-
25 ated balance by adding six million, eight hundred
26 thousand dollars to the institutional facilities operations
27 line item, by adding ninety-five million, nine hundred
28 eighty thousand dollars to the medical services trust
29 fund—transfer line item, and by creating a new item of
30 appropriation to facilitate payment of the broad based
31 provider tax, for a total increase in authorized spending
32 authority of one hundred seven million, four hundred
33 nineteen thousand, five hundred ninety-three dollars to
34 be available for expenditure upon passage of this bill.

35 From the above increase to the appropriation for
36 Institutional Facilities Operations, not less than two
37 million, four hundred thirty thousand, six hundred
38 eighty dollars shall be expended for the purpose of
39 repairs and alterations and three hundred thousand
40 dollars shall be transferred to the City of Weston to
41 upgrade the sewage system to accommodate the new
42 Weston State Hospital.

CHAPTER 14

(S. B. 1016—Originating in the Committee on Finance.)

[Passed March 17, 1994; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury to the public service commission, "former" account no. 8280, "WVFIMS" account no. fund 8623, fiscal year 1994, organization 0926, from the balance of moneys remaining unappropriated in the designated account for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.

WHEREAS, It appears that there now remains unappropriated a balance in "former" account no. 8280, "WVFIMS"

account no. fund 8623, fiscal year 1994, organization 0926, available for further appropriation during the fiscal year 1993-1994, a portion of which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation to "former" account no. 8280, "WVFIMS" account no. fund 8623, fiscal year 1994, organization 0926, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill, be supplemented and amended thereafter to read as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 MISCELLANEOUS BOARDS AND COMMISSIONS

4 181—Public Service Commission

5 (WV Code Chapter 24)

6 "Former" Account No. 8280

7 "WVFIMS" Account No.

8 Fund 8623 FY 1994 Org 0926

9			Act-	Other
10			ivity	Funds
11	1	Personal Services	001	\$ 5,400,000
12	2	Annual Increment	004	42,578
13	3	Employee Benefits	010	1,725,352
14	4	Unclassified	099	1,790,238
15	5	765 KV Transmission Line Study	485	150,000
16	6	Total		\$ 9,108,168

17 The purpose of this supplementary appropriation bill
 18 is to supplement and amend this account in the budget
 19 act for the fiscal year 1993-1994 from the unappropri-
 20 ated balance by adding three hundred thousand
 21 dollars to the personal services line item and by adding
 22 fifty-five thousand dollars to the employee benefits line
 23 item, for a total increase in authorized spending
 24 authority of three hundred fifty-five thousand dollars to
 25 be available for expenditure upon passage of this bill.

CHAPTER 15

(S. B. 1018—Originating in the Committee on Finance.)

[Passed March 17, 1994: in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal funds remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, to the department of agriculture—meat inspection, “former” account no. 7918, “WVFIMS” account no. fund 8737, fiscal year 1994, organization 1400, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.

WHEREAS, The governor has established the availability of federal funds for a continuing program, now available for expenditure in fiscal year 1993-1994, a portion of which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation to “former” account no. 7918, “WVFIMS” account no. fund 8737, fiscal year 1994, organization 1400, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill, be supplemented and amended thereafter to read as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 5. Appropriations of federal funds.		
3	EXECUTIVE		
4	<i>193—Department of Agriculture—</i>		
5	<i>Meat Inspection</i>		
6	(WV Code Chapter 19)		
7	“Former” Account No. 7918		
8	“WVFIMS” Account No.		
9	Fund <u>8737</u> FY <u>1994</u> Org <u>1400</u>		
10		Act-	Federal
11		ivity	Funds
12	1	Unclassified—Total	096 \$ 538,729

13 The purpose of this supplementary appropriation bill
14 is to supplement this account in the budget act for fiscal
15 year 1993-1994 by adding seventy thousand dollars to
16 the existing appropriation. These moneys shall be
17 available for expenditure upon passage of this bill.

CHAPTER 16

(S. B. 1001—By Senators Jones, Plymale, Burdette, Mr. President,
Craig, Wagner, Chernenko, Minard, Anderson, Dalton, Lucht,
Whitlow, Wooton, Humphreys, Boley, Manchin, Grubb, Schoonover,
Dittmar, Bailey, Ross, Withers, Helmick, Blatnik, Walker, Wehrle,
Tomblin, Miller, Holliday, Yoder and Sharpe)

[Passed March 15, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended by adding thereto two new sections, designated sections four and five; and to amend chapter forty-nine of said code by adding thereto a new article, designated article five-d, all relating to prosecuting advisory council; responsibilities of council; election of chairman; victim advocates; requiring cooperation from other state and local government units; participation in multidisciplinary planning process, multidisciplinary treatment teams; purposes of teams; additional cases and teams; establishment of investigative teams; procedures; coordination between agencies; multidisciplinary treatment planning process; and report of teams.

Be it enacted by the Legislature of West Virginia:

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

Chapter

7. County Commissions and Officers.
49. Child Welfare.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

§7-4-4. Prosecutor's advisory council; victim advocates; participation in multidisciplinary planning process.

§7-4-5. Multidisciplinary investigative teams.

§7-4-4. Prosecutor's advisory council; victim advocates; participation in multidisciplinary planning process.

1 There is hereby created the prosecutor's advisory
2 council composed of elected prosecuting attorneys of
3 each county of the state or a designated member of their
4 staff. The prosecutor's advisory council shall conduct an
5 initial meeting of all members not later than the first
6 day of September, one thousand nine hundred ninety-
7 four, and shall meet not less than one time each year.
8 At the initial meeting and annually thereafter, the
9 council shall elect from among its membership a
10 chairman of the council who shall set the agenda for the
11 council's meetings and shall appoint necessary commit-
12 tees and direct the work of the council in carrying out
13 its duties under the provisions of this section.

14 The council shall provide advice, assistance, training
15 and leadership to the offices of the various county
16 prosecuting attorneys of this state in criminal and civil
17 cases which involve child abuse or neglect or sexual
18 assault or sexual abuse of children. The council shall
19 also provide advice and assistance to the secretary of the
20 department of health and human resources in the
21 implementation of a multidisciplinary planning process
22 as set forth in article five-d, chapter forty-nine of this
23 code.

24 The council may seek funds and programs to provide
25 each prosecuting attorney's office with a staff person to
26 assist children who are crime victims to obtain services
27 and assistance from other agencies and programs in the
28 community. Prosecuting attorneys shall be reimbursed
29 by their respective county commissions for necessary
30 expenses actually incurred when attending meetings of

31 the council.

32 The council may apply for and receive funds from any
33 grant program of any agency or institution in the
34 United States, public or private, to be used for carrying
35 out the purposes of this section.

§7-4-5. Multidisciplinary investigative teams.

1 On or before the first day of January, one thousand
2 nine hundred ninety-five, the prosecuting attorney of
3 each county in the state shall establish a multidisciplinary
4 investigative team, in accordance with the provisions of section three, article five-d, chapter forty-nine
5 of this code.
6

CHAPTER 49. CHILD WELFARE.

ARTICLE 5D. MULTIDISCIPLINARY TEAMS.

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

§49-5D-2. Multidisciplinary investigative teams; establishment; procedures; coordination between agencies.

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

§49-5D-4. Report of teams.

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

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

18 (b) Nothing in this article precludes any multidisciplinary
19 team from considering any case upon the

20 consent of the members of the team.

§49-5D-2. Multidisciplinary investigative teams; establishment; procedures; coordination between agencies.

1 (a) The prosecuting attorney shall establish a multi-
2 disciplinary investigative team in each county. The
3 multidisciplinary team shall be headed and directed by
4 the prosecuting attorney and shall include as permanent
5 members the prosecuting attorney or his or her desig-
6 nee, a local child protective services caseworker from
7 the department of health and human resources and a
8 local law-enforcement officer employed by a law-
9 enforcement agency in the county. The department of
10 health and human resources and any local law-enforce-
11 ment agency or agencies selected by the prosecuting
12 attorney shall appoint their representatives to the team
13 by submitting a written designation of the team to the
14 prosecuting attorney of each county within thirty days
15 of the prosecutor's request that the appointment be
16 made. Within fifteen days of the appointment, the
17 prosecuting attorney shall notify the chief judge of each
18 circuit within which the county is situated of the names
19 of the representatives so appointed. Any other person or
20 any other appointee of an agency who may contribute
21 to the team's efforts to assist a minor child as may be
22 determined by the permanent members of the team may
23 also be appointed as a member of the team by the
24 prosecutor with notification to the chief judge.

25 (b) Any permanent member of the multidisciplinary
26 investigative team shall refer all cases of accidental
27 death of any child reported to their agency and all cases
28 when a child dies while in the custody of the state for
29 investigation and review by the team. The multidisciplinary
30 investigative team shall meet at regular intervals
31 at least once every calendar month.

32 (c) The investigative team shall be responsible for
33 coordinating or cooperating in the initial and ongoing
34 investigation of all civil and criminal allegations
35 pertinent to cases involving child sexual assault, child
36 sexual abuse, child abuse and neglect, and shall make

37 a recommendation to the county prosecuting attorney as
38 to the initiation or commencement of a civil petition
39 and/or criminal prosecution.

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

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

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

9 Treatment teams shall assess, plan and implement a
10 comprehensive, individualized service plan for children
11 who are victims of abuse, neglect, sexual assault or
12 sexual abuse, multineed children and their families and
13 for children and their families involved in delinquency
14 proceedings.

15 (b) Each treatment team shall be convened and
16 directed by the child's or family's case manager. The
17 treatment team shall consist of the child's custodial
18 parent(s) or guardian(s), other immediate family
19 members, the attorney(s) representing the parent(s) of
20 the child if assigned by a judge of the circuit court, the
21 child, if the child is over the age of twelve, and if the
22 child's participation is otherwise appropriate, the child,
23 if under the age of twelve when the team determines
24 that the child's participation is appropriate, the

25 guardian ad litem, the prosecuting attorney or his or her
26 designee, and any other agency, person or professional
27 who may contribute to the team's efforts to assist the
28 child and family.

29 (c) The treatment team shall coordinate their activ-
30 ities and membership with local family resource
31 networks, and coordinate with other local and regional
32 child and family service planning committees to assure
33 the efficient planning and delivery of child and family
34 services on a local and regional level.

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

§49-5D-4. Report of teams.

1 All persons directing any team created pursuant to
2 this article shall maintain records of each meeting
3 indicating the name and position of persons attending
4 each meeting and the number of cases discussed at the
5 meeting, including a designation of whether or not that
6 case was previously discussed by any multidisciplinary
7 team. Further, all investigative teams shall maintain a
8 log of all cases to indicate the number of referrals to that
9 team, whether or not a police report was filed with the
10 prosecuting attorney's office, whether or not a petition
11 was sought pursuant to section one, article six of this
12 chapter, or whether or not a criminal complaint was
13 issued and a case was criminally prosecuted. All
14 treatment teams shall maintain a log of all cases to
15 indicate the basis for failure to review a case for a
16 period in excess of six months.

CHAPTER 17

(S. B. 1004—By Senators Burdette, Mr. President,
Walker, Lucht and Bailey)

[Passed March 15, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section fourteen, article two of said chapter, all relating to children in foster care; defining "siblings"; creating guidelines by which siblings who have been separated may be united or reunited in foster homes or adoptive homes; removal of foster children; procedures; judicial review; and rights of foster parents, adoptive parents, foster children and adopted children.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 49. CHILD WELFARE.

Article

1. Purposes; Definitions.
2. State Responsibilities for the Protection and Care of Children.

ARTICLE 1. PURPOSES; DEFINITIONS.

*§49-1-3. Definitions relating to abuse and neglect.

1 (a) "Abused child" means a child whose health or
2 welfare is harmed or threatened by:

3 (1) A parent, guardian or custodian who knowingly or
4 intentionally inflicts, attempts to inflict or knowingly
5 allows another person to inflict, physical injury or
6 mental or emotional injury upon the child or another
7 child in the home; or

8 (2) Sexual abuse or sexual exploitation; or

9 (3) The sale or attempted sale of a child by a parent,
10 guardian or custodian in violation of section sixteen,
11 article four, chapter forty-eight of this code.

* Clerk's Note: This section was also amended by S. B. 1020 (Chapter 23), which passed subsequent to this act.

12 In addition to its broader meaning, physical injury
13 may include an injury to the child as a result of
14 excessive corporal punishment.

15 (b) "Abusing parent" means a parent, guardian or
16 other custodian, regardless of his or her age, whose
17 conduct, as alleged in the petition charging child abuse
18 or neglect, has been adjudged by the court to constitute
19 child abuse or neglect.

20 (c) "Child abuse and neglect" or "child abuse or
21 neglect" means physical injury, mental or emotional
22 injury, sexual abuse, sexual exploitation, sale or
23 attempted sale or negligent treatment or maltreatment
24 of a child by a parent, guardian or custodian who is
25 responsible for the child's welfare, under circumstances
26 which harm or threaten the health and welfare of the
27 child.

28 (d) "Child abuse and neglect services" means social
29 services which are directed toward:

30 (1) Protecting and promoting the welfare of children
31 who are abused or neglected;

32 (2) Identifying, preventing and remedying conditions
33 which cause child abuse and neglect;

34 (3) Preventing the unnecessary removal of children
35 from their families by identifying family problems and
36 assisting families in resolving problems which could
37 lead to a removal of children and a breakup of the
38 family;

39 (4) In cases where children have been removed from
40 their families, providing services to the children and the
41 families so as to restore such children to their families;

42 (5) Placing children in suitable adoptive homes when
43 restoring the children to their families is not possible or
44 appropriate; and

45 (6) Assuring the adequate care of children away from
46 their families when the children have been placed in the
47 custody of the department or third parties.

48 (e) "Imminent danger to the physical well-being of the

49 child” means an emergency situation in which the
50 welfare or the life of the child is threatened. Such
51 emergency situation exists when there is reasonable
52 cause to believe that any child in the home is or has been
53 sexually abused or sexually exploited, or reasonable
54 cause to believe that the following conditions threaten
55 the health or life of any child in the home:

56 (1) Nonaccidental trauma inflicted by a parent,
57 guardian, custodian, sibling or a babysitter or other
58 caretaker; or

59 (2) A combination of physical and other signs indicat-
60 ing a pattern of abuse which may be medically diag-
61 nosed as battered child syndrome; or

62 (3) Nutritional deprivation; or

63 (4) Abandonment by the parent, guardian or custo-
64 dian; or

65 (5) Inadequate treatment of serious illness or disease;
66 or

67 (6) Mental or emotional injury inflicted by a parent,
68 guardian or custodian; or

69 (7) Sale or attempted sale of the child by the parent,
70 guardian or custodian.

71 (f) “Multidisciplinary team” means a group of
72 professionals and paraprofessionals representing a
73 variety of disciplines who interact and coordinate their
74 efforts to identify, diagnose and treat specific cases of
75 child abuse and neglect. Multidisciplinary teams may
76 include, but are not limited to, medical, child care and
77 law-enforcement personnel, social workers, psycholo-
78 gists and psychiatrists. Their goal is to pool their
79 respective skills in order to formulate accurate diag-
80 noses and to provide comprehensive coordinated treat-
81 ment with continuity and follow-up for both parents and
82 children. “Community team” means a multidisciplinary
83 group which addresses the general problem of child
84 abuse and neglect in a given community and may consist
85 of several multidisciplinary teams with different
86 functions.

87 (g) (1) "Neglected child" means a child:

88 (A) Whose physical or mental health is harmed or
89 threatened by a present refusal, failure or inability of
90 the child's parent, guardian or custodian to supply the
91 child with necessary food, clothing, shelter, supervision,
92 medical care or education, when such refusal, failure or
93 inability is not due primarily to a lack of financial
94 means on the part of the parent, guardian or custodian;
95 or

96 (B) Who is presently without necessary food, clothing,
97 shelter, medical care, education or supervision because
98 of the disappearance or absence of the child's parent or
99 custodian;

100 (2) "Neglected child" does not mean a child whose
101 education is conducted within the provisions of section
102 one, article eight, chapter eighteen of this code.

103 (h) "Parenting skills" means a parent's competencies
104 in providing physical care, protection, supervision and
105 psychological support appropriate to a child's age and
106 state of development.

107 (i) "Sexual abuse" means:

108 (A) As to a child who is less than sixteen years of age,
109 any of the following acts which a parent, guardian or
110 custodian shall engage in, attempt to engage in, or
111 knowingly procure another person to engage in, with
112 such child, notwithstanding the fact that the child may
113 have willingly participated in such conduct or the fact
114 that the child may have suffered no apparent physical
115 injury or mental or emotional injury as a result of such
116 conduct:

117 (i) Sexual intercourse; or

118 (ii) Sexual intrusion; or

119 (iii) Sexual contact; or

120 (B) As to a child who is sixteen years of age or older,
121 any of the following acts which a parent, guardian or
122 custodian shall engage in, attempt to engage in, or
123 knowingly procure another person to engage in, with

124 such child, notwithstanding the fact that the child may
125 have consented to such conduct or the fact that the child
126 may have suffered no apparent physical injury or
127 mental or emotional injury as a result of such conduct:

128 (i) Sexual intercourse; or

129 (ii) Sexual intrusion; or

130 (iii) Sexual contact; or

131 (C) Any conduct whereby a parent, guardian or
132 custodian displays his or her sex organs to a child, or
133 procures another person to display his or her sex organs
134 to a child, for the purpose of gratifying the sexual desire
135 of the parent, guardian or custodian, of the person
136 making such display, or of the child, or for the purpose
137 of affronting or alarming the child.

138 (j) "Sexual contact" means sexual contact as that term
139 is defined in section one, article eight-b, chapter sixty-
140 one of this code.

141 (k) "Sexual exploitation" means an act whereby:

142 (1) A parent, custodian or guardian, whether for
143 financial gain or not, persuades, induces, entices or
144 coerces a child to engage in sexually explicit conduct as
145 that term is defined in section one, article eight-c,
146 chapter sixty-one of this code;

147 (2) A parent, guardian or custodian persuades,
148 induces, entices or coerces a child to display his or her
149 sex organs for the sexual gratification of the parent,
150 guardian, custodian or a third person, or to display his
151 or her sex organs under circumstances in which the
152 parent, guardian or custodian knows such display is
153 likely to be observed by others who would be affronted
154 or alarmed.

155 (l) "Sexual intercourse" means sexual intercourse as
156 that term is defined in section one, article eight-b,
157 chapter sixty-one of this code.

158 (m) "Sexual intrusion" means sexual intrusion as that
159 term is defined in section one, article eight-b, chapter
160 sixty-one of this code.

161 (n) "Parental rights" means any and all rights and
162 duties regarding a parent to a minor child, including,
163 but not limited to, custodial rights and visitational
164 rights and rights to participate in the decisions affecting
165 a minor child.

166 (o) "Placement" means any temporary or permanent
167 placement of a child who is in the custody of the state
168 in any foster home, group home or other facility or
169 residence.

170 (p) "Siblings" means children who have at least one
171 biological parent in common or who have been legally
172 adopted by the same parents or parent.

ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION
AND CARE OF CHILDREN.

§49-2-14. Criteria and procedure for removal of child
from foster home; notice of child's availabil-
ity for placement; limitations.

1 (a) The state department may temporarily remove a
2 child from a foster home based on an allegation of abuse
3 or neglect, including sexual abuse, that occurred while
4 the child resided in the home. If the department
5 determines that reasonable cause exists to support the
6 allegation, the department shall remove all foster
7 children from the arrangement and preclude contact
8 between the children and the foster parents. If, after
9 investigation, the allegation is determined to be true by
10 the department or after a judicial proceeding a court
11 finds the allegation to be true or if the foster parents
12 fail to contest the allegation in writing within twenty
13 calendar days of receiving written notice of said
14 allegations, the department shall permanently termi-
15 nate all foster care arrangements with said foster
16 parents: *Provided*, That if the state department deter-
17 mines that the abuse occurred due to no act or failure
18 to act on the part of the foster parents, and that
19 continuation of the foster care arrangement is in the
20 best interests of the child, the department may, in its
21 discretion, elect not to terminate the foster care
22 arrangement or arrangements.

23 (b) When a child has been placed in a foster care

24 arrangement for a period in excess of eighteen consec-
25 utive months and the state department determines that
26 the placement is a fit and proper place for the child to
27 reside, the foster care arrangement may not be termi-
28 nated unless such termination is in the best interest of
29 the child and:

30 (1) The foster care arrangement is terminated
31 pursuant to subsection (a) of this section;

32 (2) The foster care arrangement is terminated due to
33 the child being returned to his or her parent or parents;

34 (3) The foster care arrangement is terminated due to
35 the child being united or reunited with a sibling or
36 siblings;

37 (4) The foster parent or parents agree to the termi-
38 nation in writing;

39 (5) The foster care arrangement is terminated at the
40 written request of a foster child who has attained the
41 age of fourteen; or

42 (6) A circuit court orders the termination upon a
43 finding that the state department has developed a more
44 suitable long-term placement for the child upon hearing
45 evidence in a proceeding brought by the department
46 seeking removal and transfer.

47 (c) When a child has been residing in a foster home
48 for a period in excess of six consecutive months in total
49 and for a period in excess of thirty days after the
50 parental rights of the child's biological parents have
51 been terminated and the foster parents have not made
52 an application to the department to establish an intent
53 to adopt the child, the state department may terminate
54 the foster care arrangement if another, more beneficial,
55 long-term placement of the child is developed: *Provided*,
56 That if the child is twelve years of age or older, the child
57 shall be provided the option of remaining in the existing
58 foster care arrangement if the child so desires and if
59 continuation of the existing arrangement is in the best
60 interest of the child.

61 (d) When a child is placed into foster care or becomes

62 eligible for adoption and a sibling or siblings have
63 previously been placed in foster care or have been
64 adopted, the department shall notify the foster parents
65 or adoptive parents of the previously placed or adopted
66 sibling or siblings of the child's availability for foster
67 care placement or adoption to determine if the foster
68 parents or adoptive parents are desirous of seeking a
69 foster care arrangement or adoption of the child. Where
70 a sibling or siblings have previously been adopted, the
71 department shall also notify the adoptive parents of a
72 sibling of the child's availability for foster care place-
73 ment in that home and a foster care arrangement
74 entered into to place the child in the home if the
75 adoptive parents of the sibling are otherwise qualified
76 or can become qualified to enter into a foster care
77 arrangement with the department and if such arrange-
78 ment is in the best interests of the child.

79 (e) When a child is in a foster care arrangement and
80 is residing separately from a sibling or siblings who are
81 in another foster home or who have been adopted by
82 another family and the parents with whom the placed
83 or adopted sibling or siblings reside have made appli-
84 cation to the department to establish an intent to adopt
85 or to enter into a foster care arrangement regarding a
86 child so that said child may be united or reunited with
87 a sibling or siblings, the state department shall upon a
88 determination of the fitness of the persons and household
89 seeking to enter into a foster care arrangement or seek
90 an adoption which would unite or reunite siblings, and
91 if termination and new placement are in the best
92 interests of the children, terminate the foster care
93 arrangement and place the child in the household with
94 the sibling or siblings: *Provided*, That if the department
95 is of the opinion based upon available evidence that
96 residing in the same home would have a harmful
97 physical, mental or psychological effect on one or more
98 of the sibling children or if the child has a physical or
99 mental disability which the existing foster home can
100 better accommodate, or if the department can document
101 that the reunification of the siblings would not be in the
102 best interest of one or all of the children, the state
103 department may petition the circuit court for an order

104 allowing the separation of the siblings to continue:
105 *Provided, however,* That if the child is twelve years of
106 age or older, the state department shall provide the
107 child the option of remaining in the existing foster care
108 arrangement if remaining is in the best interests of the
109 child. In any proceeding brought by the department to
110 maintain separation of siblings, such separation may be
111 ordered only if the court determines that clear and
112 convincing evidence supports the department's determi-
113 nation. In any proceeding brought by the department
114 seeking to maintain separation of siblings, notice shall
115 be afforded, in addition to any other persons required
116 by any provision of this code to receive notice, to the
117 persons seeking to adopt a sibling or siblings of a
118 previously placed or adopted child and said persons may
119 be parties to any such action.

120 (f) Where two or more siblings have been placed in
121 separate foster care arrangements and the foster
122 parents of the siblings have made application to the
123 department to enter into a foster care arrangement
124 regarding the sibling or siblings not in their home or
125 where two or more adoptive parents seek to adopt a
126 sibling or siblings of a child they have previously
127 adopted, the department's determination as to placing
128 the child in a foster care arrangement or in an adoptive
129 home shall be based solely upon the best interests of the
130 siblings.

CHAPTER 18

(S. B. 1007—By Senators Jones, Plymale, Burdette, Mr. President,
Chernenko, Anderson, Bailey, Humphreys, Dittmar, Blatnik, Walker,
Tomblin, Wehrle, Miller, Minard, Dalton, Wagner, Whillow, Wooton, Manchin,
Grubb, Holliday, Yoder, Craigo, Boley, Lucht, Schoonover,
Ross, Withers, Helmick and Sharpe)

[Passed March 18, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated

section one-a; to amend and reenact section nine, article six-a of said chapter; to amend and reenact section twenty-four, article seven of said chapter; to amend and reenact section three, article eleven-a, chapter sixty-one of said code; and to amend and reenact sections seven and seven-a, article twelve, chapter sixty-two of said code, all relating to establishing a plan for achieving national caseload standards for child protective service workers by the year one thousand nine hundred ninety-five; prohibiting restrictions on investigations and available services; required face-to-face interviews of certain abused minors; referrals from circuit courts and family law masters; promulgation of rules and protocol for law enforcement in child abuse cases; promulgation of legislative rules; allowing statement of certain therapists in presentence reports; and providing for presentence diagnosis and treatment of certain offenders.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 49. Child Welfare.**
- 61. Crimes and Their Punishment.**
- 62. Criminal Procedure.**

CHAPTER 49. CHILD WELFARE.

Article

- 6. Procedure in Cases of Child Neglect or Abuse.**
- 6A. Reports of Children Suspected to be Abused or Neglected.**
- 7. General Provisions.**

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-1a. Minimum staffing complement for child protective services.

1 For the sole purpose of increasing the number of full
2 time front line child protective service case workers and
3 investigators, the secretary of the department of health
4 and human resources shall have the authority to
5 transfer funds between all general revenue accounts
6 under the secretary's authority and/or between person-
7 nel and nonpersonnel lines within each account under
8 the secretary's authority: *Provided*, That nothing in this
9 section shall be construed to require the department to
10 hire additional child protective service workers at any
11 time if the department determines that funds are not
12 available for such workers. Additionally, the secretary
13 shall prepare a plan to allow the department to
14 progressively reduce caseload standards in West Virgi-
15 nia for child protective services workers, which if
16 adopted by the Legislature during the regular session
17 of the year one thousand nine hundred ninety-five, shall
18 require implementation no later than the first day of
19 July, one thousand nine hundred ninety-six, with said
20 plan to be submitted to the joint committee on govern-
21 ment and finance by the thirtieth day of September, one
22 thousand nine hundred ninety-four, and a final report
23 to be submitted to the Legislature by the first day of
24 January, one thousand nine hundred ninety-five.

ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.

§49-6A-9. Establishment of child protective services; general duties and powers; cooperation of other state agencies.

1 (a) The state department shall establish or designate
2 in every county a local child protective services office
3 to perform the duties and functions set forth in this
4 article.

5 (b) The local child protective service shall investigate
6 all reports of child abuse or neglect: *Provided*, That
7 under no circumstances shall investigating personnel be
8 relatives of the accused, the child or the families
9 involved. In accordance with the local plan for child

10 protective services, it shall provide protective services to
11 prevent further abuse or neglect of children and provide
12 for or arrange for and coordinate and monitor the
13 provision of those services necessary to ensure the safety
14 of children. The local child protective service shall be
15 organized to maximize the continuity of responsibility,
16 care and service of individual workers for individual
17 children and families: *Provided, however,* That under no
18 circumstances may the secretary or his or her designee
19 promulgate rules or establish any policy which restricts
20 the scope or types of alleged abuse or neglect of minor
21 children which are to be investigated or the provision
22 of appropriate and available services.

23 Each local child protective service office shall:

24 (1) Receive or arrange for the receipt of all reports
25 of children known or suspected to be abused or neg-
26 lected on a twenty-four hour, seven-day-a-week basis
27 and cross-file all such reports under the names of the
28 children, the family, any person substantiated as being
29 an abuser or neglecter by investigation of the depart-
30 ment of human services, with use of such cross-filing of
31 such person's name limited to the internal use of the
32 department;

33 (2) Provide or arrange for emergency children's
34 services to be available at all times;

35 (3) Upon notification of suspected child abuse or
36 neglect, commence or cause to be commenced a tho-
37 rough investigation of the report and the child's
38 environment. As a part of this response, within fourteen
39 days, there shall be: A face-to-face interview with the
40 child or children, and the development of a protection
41 plan, if necessary for the safety or health of the child,
42 which may involve law-enforcement officers or the
43 court;

44 (4) Respond immediately to all allegations of immi-
45 nent danger to the physical well-being of the child or
46 of serious physical abuse. As a part of this response,
47 within seventy-two hours, there shall be: A face-to-face
48 interview with the child or children; and the develop-
49 ment of a protection plan which may involve law-

50 enforcement officers or the court; and

51 (5) In addition to any other requirements imposed by
52 this section, when any matter regarding child custody
53 is pending, the circuit court or family law master may
54 refer allegations of child abuse and neglect to the local
55 child protective service for investigation of the allega-
56 tions as defined by this chapter and require the local
57 child protective service to submit a written report of the
58 investigation to the referring circuit court or family law
59 master within the time frames set forth by the circuit
60 court or family law master.

61 (c) In those cases in which the local child protective
62 service determines that the best interests of the child
63 require court action, the local child protective service
64 shall initiate the appropriate legal proceeding.

65 (d) The local child protective service shall be respon-
66 sible for providing, directing or coordinating the
67 appropriate and timely delivery of services to any child
68 suspected or known to be abused or neglected, including
69 services to the child's family and those responsible for
70 the child's care.

71 (e) To carry out the purposes of this article, all
72 departments, boards, bureaus and other agencies of the
73 state or any of its political subdivisions and all agencies
74 providing services under the local child protective
75 service plan shall, upon request, provide to the local
76 child protective service such assistance and information
77 as will enable it to fulfill its responsibilities.

ARTICLE 7. GENERAL PROVISIONS.

§49-7-24. Rules and regulations under chapter.

1 The secretary of the department of health and human
2 resources shall propose for promulgation legislative
3 rules in accordance with the provisions of chapter
4 twenty-nine-a of this code to implement the provisions
5 of this chapter.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 11A. VICTIM PROTECTION ACT OF 1984.

§61-11A-3. Victim impact statement; when required; contents; use; right of defendant to review and present evidence.

1 (a) In every case in which a presentence report is
2 ordered by the court, such presentence report shall
3 contain a victim impact statement unless the court
4 orders otherwise, if the defendant, in committing a
5 felony or misdemeanor, caused physical, psychological
6 or economic injury or death of the victim.

7 (b) The victim impact statement shall be prepared by
8 the probation officer and shall include the identity of the
9 victim, an itemization of any economic loss suffered by
10 the victim as a result of the offense, a description of the
11 nature and extent of any physical or psychological
12 injury suffered by the victim as a result of the offense,
13 the details of any change in the victim's personal
14 welfare, lifestyle or family relationships as a result of
15 the offense, whether there has been any request for
16 psychological or medical services initiated by the victim
17 or the victim's family as a result of the offense and such
18 other information related to the impact of the offense
19 upon the victim as may be required by the court.

20 (c) If the court does not order a presentence investi-
21 gation and report, the prosecuting attorney may request
22 that the probation officer prepare a victim impact
23 statement. The victim impact statement shall be
24 considered by the court as a factor in determining the
25 appropriate sentence. Additionally, the statement may
26 be utilized for the determination of claims by victims
27 of crimes pursuant to the provisions of article two-a,
28 chapter fourteen of this code.

29 (d) In cases that involve child victims of offenses
30 defined in section twelve, article eight of this chapter
31 or article eight-b or eight-d of this chapter, any victim
32 impact statement in a presentence report may include
33 a statement from a therapist, psychologist or physician
34 who is providing treatment to the child as to the
35 recommendations regarding the effect that possible
36 disposition may have on the child.

37 (e) A victim impact statement prepared in accordance

38 with the provisions of this section, other than for claims
39 by victims of crimes pursuant to the provisions of article
40 two-a, chapter fourteen of this code, shall be made
41 available to the defendant, and his counsel if he is so
42 represented, at least ten days prior to the date set for
43 pronouncement of his sentence. The court shall, upon
44 motion by or on behalf of the defendant, grant the
45 defendant a hearing, whereby he may introduce testim-
46 ony or other information related to any alleged factual
47 inaccuracies in the statement.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-7. Preliminary investigation; report on prospective probationers.

§62-12-7a. Presentence diagnosis and classification; power of court; custody of convicted person; provision for presentence reports; penalty for escape.

§62-12-7. Preliminary investigation; report on prospective probationers.

1 When directed by the court, the probation officer shall
2 make a careful investigation of, and a written report
3 with recommendations concerning, any prospective
4 probationer. Insofar as practicable this report shall
5 include information concerning the offender's court and
6 criminal record, occupation, family background, educa-
7 tion, habits and associations, mental and physical
8 condition, the names, relationship, ages and condition of
9 those dependent upon him for support and such other
10 facts as may aid the court in determining the propriety
11 and conditions of his release on probation. No person
12 convicted of a felony or of any offense described in
13 article eight-b or eight-d, chapter sixty-one of this code
14 against a minor child may be released on probation until
15 this report shall have been presented to and considered
16 by the court. The court may in its discretion request
17 such a report concerning any person convicted of a
18 misdemeanor. The presentence report of any person
19 convicted of an offense, described in said articles or
20 section twelve, article eight of said chapter, may include
21 a statement from a therapist, psychologist or physician

22 who is providing treatment to the child. A copy of all
23 reports shall be filed with the board of probation and
24 parole.

**§62-12-7a. Presentence diagnosis and classification;
power of court; custody of convicted person;
provision for presentence reports;
penalty for escape.**

1 Notwithstanding any other provision of law, when any
2 person has been found guilty of, or pleads guilty to, a
3 felony, or any offense described in article eight-d or
4 eight-b, chapter sixty-one of this code, against a minor
5 child, the court may, prior to pronouncing of sentence,
6 direct that the person be delivered into the custody of
7 the commissioner of corrections, for the purpose of
8 diagnosis and classification for a period not to exceed
9 sixty days: *Provided*, That the court shall require that
10 a presentence report be completed by the probation
11 officer assigned to that person and be made available
12 to the commissioner of corrections prior to delivery of
13 the person to a statutorily approved diagnosis and
14 classification unit of the division of corrections. While
15 at the diagnosis and classification unit the person shall
16 undergo examination, diagnosis and classification and
17 shall then be remanded and delivered to the custody of
18 the sheriff of the county wherein he or she was found
19 guilty or entered such plea. Within ten days following
20 the termination of the examination, diagnosis and
21 classification, the commissioner of corrections shall
22 make or cause to be made a report to the court wherein
23 the person was found guilty, or entered a plea of guilty,
24 containing the results, findings, conclusions and recom-
25 mendations of the commissioner with respect to such
26 person.

27 Whenever a person is remanded into the custody of
28 the commissioner of corrections pursuant to this section,
29 the person shall be given credit on any sentence
30 subsequently imposed by the court equal to the time
31 spent in such custody.

CHAPTER 19

(H. B. 5013—By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[By Request of the Executive]

[Passed March 15, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six, relating to the establishment of a boot camp program by the commissioner of corrections; eligibility; parole supervision; reporting requirements; sunset provisions; and performance audit.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. BOOT CAMP.

- §25-6-1. Purpose of article.
- §25-6-2. Authorization to establish boot camp program.
- §25-6-3. Definitions.
- §25-6-4. Eligibility.
- §25-6-5. Internal policy development.
- §25-6-6. Reporting requirements; sunset provisions; performance audit.
- §25-6-7. Construction and applicability of other acts.

§25-6-1. Purpose of article.

1 The purpose of this article is to establish a program
2 of boot camps that will encourage boot camp inmates to
3 become responsible, productive citizens by providing
4 academic education, social skills, education, physical
5 wellness program, self-discipline programs, substance
6 abuse treatment and vocational education and counsel-
7 ing. It is the aim of the Legislature that such a program
8 will create a more positive environment for both inmates
9 and correctional employees who operate the boot camp;
10 and that will reduce the recidivism rate of persons so
11 incarcerated.

§25-6-2. Authorization to establish boot camp program.

1 The commissioner of the division of corrections is
2 hereby authorized to establish a program of boot camps
3 that may be used for eligible offenders who are
4 sentenced to serve a term of imprisonment under the
5 custody of the commissioner of corrections and whom
6 the commissioner or the circuit court may permit to
7 serve his or her sentence as a sentence to boot camp in
8 accordance with this article.

§25-6-3. Definitions.

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

3 (a) "Commissioner" means the commissioner of the
4 division of corrections;

5 (b) "Division" means division of corrections; and

6 (c) "Eligible offender" means eligible offender as
7 defined in section four of this article.

§25-6-4. Eligibility.

1 (a) Appropriate inmates may participate in the boot
2 camp program in accordance with the following
3 criteria:

4 (1) One who is not less than eighteen years of age nor
5 more than twenty-eight years of age;

6 (2) One who is medically, physically and psychologi-
7 cally fit to participate in the program;

8 (3) One who volunteers for the program;

9 (4) One who has been convicted of a felony and has
10 been sentenced to the custody of the commissioner of
11 corrections for a period of incarceration of not less than
12 one year;

13 (5) One who was not convicted of murder in the first
14 degree or murder in the second degree;

15 (6) One who was not convicted of kidnapping;

16 (7) One who was not convicted of first or second
17 degree sexual assault;

18 (8) One who was not convicted of any offense pursuant

19 to article eight-d, chapter sixty-one of this code;

20 (9) One who was not convicted of incest;

21 (10) One who has not been previously convicted of a
22 felony; and

23 (11) Such other criteria as the commissioner of the
24 division of corrections may promulgate pursuant to
25 chapter twenty-nine-a of this code.

26 (b) The circuit court of conviction may direct that a
27 person be admitted or excluded from participation in
28 the state boot camp program. The commissioner,
29 pursuant to operational policies and procedures, may in
30 his discretion, direct placement of an inmate in a boot
31 camp program.

32 (c) Any placement in the boot camp shall be subject
33 to the extent funding is available or appropriated and
34 subject to the availability of space in the boot camp:
35 *Provided*, That nothing in this section shall give any
36 court the power to hold the division of corrections or any
37 officer or employee of the division in contempt of court
38 for failure to adhere to a circuit court directive that a
39 person be placed in the state boot camp program if
40 space or funding is unavailable.

§25-6-5. Internal policy development.

1 (a) The division of corrections shall promulgate
2 operational procedures and policies for the program
3 which shall require that the pilot program be estab-
4 lished at one site, which site shall then be under the
5 control and authority of the division of corrections. The
6 program shall consist of all of the following for each
7 eligible offender whom the division permits to serve his
8 or her sentence as a sentence to boot camp:

9 (1) A period of imprisonment at the boot camp of not
10 more than twelve months which period of imprisonment
11 shall consist of a military style combination of discipline,
12 physical training and physical labor, substance abuse
13 education, employment skills training, social skills
14 training, and psychological evaluation and treatment.
15 Additionally, the commissioner shall establish an

16 education program for those eligible offenders who are
17 not recipients of a high school diploma or a certificate
18 of high school equivalence.

19 (2) Upon successful completion of the boot camp
20 program, and notwithstanding any other provisions for
21 determining parole eligibility, an inmate shall be
22 released on parole in accordance with this article.
23 Except as otherwise provided in this article, a release
24 on parole under this section shall require that the
25 eligible offender be under intensive supervision by the
26 adult parole authority and may provide for supervision
27 of the offender by the adult parole authority subsequent
28 to the expiration of his or her period of boot camp
29 incarceration under any terms and for any period of
30 time prescribed by the provisions of article twelve,
31 chapter sixty-two of this code.

32 (b) The policies and procedures for the boot camp
33 program also shall include, but are not limited to, all
34 of the following:

35 (1) Policies and procedures identifying the facilities
36 under the control and authority of the division of
37 corrections designated by the commissioner of correc-
38 tions that will be used for prisoners serving a sentence
39 to boot camp;

40 (2) Policies and procedures governing academic
41 education, or psychological testing and evaluation,
42 discipline, physical training and labor for eligible
43 offenders serving a sentence to boot camp based upon
44 the offender's physical conditions and needs;

45 (3) Policies and procedures establishing additional
46 criteria the commissioner deems necessary to determine
47 the eligibility of offenders to serve their sentence as a
48 sentence to boot camp;

49 (4) Policies and procedures establishing a method of
50 intensive supervision for an eligible offender who is
51 released on parole of the type described in this section
52 for the remainder of his or her parole sentence, and
53 rules governing the supervision of the offender subse-
54 quent to the expiration of his or her parole sentence;

55 (5) Policies and procedures to effectuate notification
56 to sentencing courts of the performance of eligible
57 offenders serving their sentence of imprisonment as a
58 sentence to boot camp;

59 (6) Any other policies and procedures that are
60 necessary for the proper operation of the program.

61 (c) An eligible offender who does not satisfactorily
62 complete the entire period of boot camp incarceration,
63 he or she shall be removed from the program of boot
64 camp and shall be required to serve the remainder of
65 the original sentence of imprisonment which would have
66 been available to the sentencing court had boot camp not
67 been directed by the circuit court or allowed by the
68 commissioner.

69 (d) If the circuit court directs or the division permits
70 an eligible offender to serve his or her sentence of
71 imprisonment as a sentence to boot camp, the eligible
72 offender shall commence a period of parole of the type
73 described in this article. If an eligible offender violates
74 the conditions of parole, he or she may be declared a
75 parole violator and his or her parole shall be subject to
76 revocation pursuant to the provision of article twelve,
77 chapter sixty-two of this code.

**§25-6-6. Reporting requirements; sunset provisions;
performance audit.**

1 (a) The commissioner shall keep sentencing courts
2 informed of the performance of eligible offenders
3 serving their sentences of imprisonment as a sentence
4 to boot camp, including, but not limited to, notice of
5 eligible offenders who fail to satisfactorily complete
6 their entire sentence to boot camp or who satisfactorily
7 complete their entire sentence to boot camp.

8 (b) The boot camp program shall be subject to
9 termination and sunset, after conduct of performance
10 audit thereon, pursuant to the provisions of article ten,
11 chapter four of this code, five years after the effective
12 date of the creation thereof, together with allowance for
13 subsequent periods applicable to the winding up of the
14 affairs of such boot camp program. The performance

15 audit shall be filed with the president of the Senate and
16 the speaker of the House of Delegates. The performance
17 audit required by this section shall contain all of the
18 following:

19 (1) A summary of the program as initially established,
20 a summary of all changes in the program made during
21 the period covered by the audit and the reasons for the
22 changes, and a summary of the program as it exists on
23 the date of the preparation of the audit;

24 (2) A summary of the effectiveness of the program;

25 (3) An analysis of the total cost of the program, of its
26 cost per inmate who was permitted to serve a sentence
27 to boot camp and who served the entire sentence to boot
28 camp, and of its cost per inmate who was permitted to
29 serve a sentence to boot camp;

30 (4) A summary of the standards and criteria used by
31 the division of corrections in determining which eligible
32 offenders were permitted to serve their sentence of
33 imprisonment as a sentence to boot camp;

34 (5) A summary of the characteristics of the eligible
35 offenders who were permitted to serve their sentence of
36 imprisonment as a sentence to boot camp, which
37 summary shall include, but not be limited to, a listing
38 of every offense of which any such eligible offender was
39 convicted or to which any such eligible offender pleaded
40 guilty and in relation to which he or she served a
41 sentence to boot camp, and the total number of such
42 eligible offenders who were convicted of or pleaded
43 guilty to each such offense;

44 (6) A listing of the number of eligible offenders who
45 were permitted to serve a sentence to boot camp and
46 who did not serve the entire sentence to boot camp, and,
47 to the extent possible, a summary of the length of the
48 terms of imprisonment served by such eligible offenders
49 after they were removed from the program;

50 (7) A summary of the effect of the program on
51 overcrowding at correctional facilities under the control
52 and authority of the division of corrections;

53 (8) To the extent possible, an analysis of the rate of
54 the recidivism of eligible offenders who were permitted
55 to serve a sentence to boot camp and who served the
56 entire sentence to boot camp;

57 (9) Recommendations as to legislative changes to the
58 program that would assist in its operation or that could
59 further alleviate overcrowding at correctional facilities,
60 and recommendations as to whether the program should
61 be expanded.

§25-6-7. Construction and applicability of other acts.

1 This article shall be liberally construed to accomplish
2 the intent and purposes of the Legislature in adopting
3 it and shall be the sole authority required for the
4 accomplishment of the purposes set forth in this article.

CHAPTER 20

(S. B. 1003—By Senator Withers)

[Passed March 15, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections ten, twelve and twelve-a, article five, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to crimes and their punishment; crimes against public justice; and criminal penalties for escape from jail or other confinement.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-10. Jail or private prison breaking by convicted or unconvicted prisoner; penalties.

§61-5-12. Escapes from, and other offenses relating to, state benevolent and correctional institution, or private prison or mental health facilities; penalties.

§61-5-12a. Escape from custody of the commissioner of corrections.

§61-5-10. Jail or private prison breaking by convicted or unconvicted prisoner; penalties.

1 (a) Any person confined in jail on conviction of a
2 felony, who escapes therefrom by force, violence or by
3 any subterfuge, device or deception, is guilty of a felony,
4 and, upon conviction thereof, shall be confined in the
5 penitentiary for up to five years; and if he be confined
6 in jail on conviction of a misdemeanor, he is guilty of
7 a misdemeanor, and, upon conviction thereof, shall be
8 confined in jail not more than one year.

9 (b) If any person be lawfully confined in jail or private
10 prison and not sentenced on conviction of a criminal
11 offense, escape therefrom by any means, such person
12 shall: (i) If he be confined upon a charge of a felony, be
13 guilty of an additional felony, and, upon conviction
14 thereof, shall be confined in the penitentiary not more
15 than five years; or (ii) if he be confined upon a charge
16 of a misdemeanor, be guilty of an additional misdemea-
17 nor, and, upon conviction thereof, shall be confined in
18 jail not more than one year.

19 (c) If any person is lawfully confined in a private
20 prison and escapes therefrom by force, violence or by
21 any subterfuge, device or deception, he or she shall be
22 guilty of a felony, and, upon conviction thereof, shall be
23 imprisoned for not more than five years.

§61-5-12. Escapes from, and other offenses relating to, state benevolent and correctional institution, or private prison or mental health facilities; penalties.

1 Except where otherwise provided, whoever abducts
2 any person who is an inmate or patient of any state
3 benevolent or correctional institution, private prison or
4 mental health facility is guilty of a felony, and, upon
5 conviction thereof, shall be imprisoned in the peniten-

6 tiary for not more than five years. Whoever persuades,
7 induces or entices, or attempts to persuade, induce or
8 entice, any person who is an inmate or patient of any
9 such institution, private prison or facility to escape
10 therefrom, or whoever conceals or harbors any such
11 person, knowing him or her to have run away from any
12 such institution, private prison or facility, is guilty of a
13 misdemeanor, and, upon conviction thereof, shall be
14 fined not less than one hundred dollars nor more than
15 one thousand dollars, and in addition thereto, in the
16 discretion of the court, may be imprisoned in the county
17 jail not more than six months.

18 Any fugitive from any state benevolent or correctional
19 institution, private prison or mental health facility, may,
20 on the order of the superintendent or other officer of
21 such institution or facility, be arrested and returned to
22 such institution or facility, or to any officer or agent
23 thereof, by any sheriff, police officer or other person,
24 and may also be arrested and returned by any officer
25 or agent of such institution, private prison or facility.

26 Whoever trespasses, idles, lounges or loiters upon the
27 grounds of any other state benevolent or correctional
28 institution, private prison or mental health facility or
29 communicates, or attempts to communicate, by signals,
30 signs, writings or otherwise with any inmate or patient
31 of such institution, private prison or facility, or conveys
32 or assists in any way in establishing communication
33 between an inmate or patient of such institution, private
34 prison or facility and any person or persons outside
35 thereof, except as authorized by the rules or regulations
36 in force by the authority governing the same, is guilty
37 of a misdemeanor, and, upon conviction thereof, shall be
38 fined not less than twenty nor more than five hundred
39 dollars, or imprisoned not more than thirty days in the
40 county jail, or both, in the discretion of the court or
41 magistrate. Whoever, with intent to defraud, purchases,
42 accepts as a gift, or secures by barter or trade, or in
43 any other manner, any article of clothing from an
44 inmate or patient of any state benevolent or correctional
45 institution, private prison or mental health facility

46 issued to him or her, by any officer of such institution
47 or facility, or by any private correctional officer of such
48 private prison for his or her use, or, with such intent,
49 secures any other article or articles belonging to any
50 inmate or patient of such institution, private prison or
51 facility or to such institution, private prison or facility
52 from an inmate or patient thereof, is guilty of a
53 misdemeanor, and, upon conviction thereof, shall be
54 fined a sum not less than double the value of such
55 articles, except that in no case shall the fine be less than
56 one hundred dollars. Magistrates shall have jurisdiction
57 of all misdemeanors included in this paragraph,
58 concurrently with the circuit court.

§61-5-12a. Escape from custody of the commissioner of corrections.

1 Any person who escapes from the custody of the
2 commissioner of corrections, regardless of where such
3 person is confined or where such escape occurs, is guilty
4 of a felony, and, upon conviction thereof, shall be
5 imprisoned in the penitentiary not more than five years.
6 A term of imprisonment imposed pursuant to the
7 provisions of this section shall be imposed as a consec-
8 utive sentence and shall not be served concurrently with
9 any imprisonment, confinement or detention imposed
10 under any prior sentence being served or otherwise
11 being discharged at the time such person commits an
12 offense under the provisions of this section. A person
13 charged with an offense under the provisions of this
14 section shall not be released from the custody of the
15 commissioner of corrections while the prosecution of the
16 alleged offense is pending: *Provided*, That time served
17 by such person after any other prior sentence has been
18 served or otherwise discharged shall be applied to any
19 sentence which may ultimately be imposed for an
20 offense under this section. Venue for the prosecution of
21 a violation of this section shall be in the county in which
22 the escape occurs.

CHAPTER 21

(H. B. 5002—By Delegates Faircloth, Huntwork, Kessel, Pino,
Trump, L. White and Whitman)

[Passed March 15, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eight-d, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a, relating to prohibiting conduct whereby a parent, guardian or custodian maliciously and intentionally inflicts, or knowingly allows another to so inflict, upon a child substantial physical pain, illness or any impairment of physical condition by other than accidental means, thereby causing the death of such child; providing that such conduct is a felony; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8D. CHILD ABUSE.

§61-8D-2a. Death of a child by a parent, guardian or custodian or other person by child abuse; criminal penalties.

1 (a) If any parent, guardian or custodian shall mali-
2 ciously and intentionally inflict upon a child under his
3 or her care, custody or control substantial physical pain,
4 illness or any impairment of physical condition by other
5 than accidental means, thereby causing the death of
6 such child, then such parent, guardian or custodian shall
7 be guilty of a felony.

8 (b) If any parent, guardian or custodian shall know-
9 ingly allow any other person to maliciously and inten-

10 tionally inflict upon a child under the care, custody or
11 control of such parent, guardian or custodian substantial
12 physical pain, illness or any impairment of physical
13 condition by other than accidental means, which thereby
14 causes the death of such child, then such other person
15 and such parent, guardian or custodian shall each be
16 guilty of a felony.

17 (c) Any person convicted of a felony described in
18 subsection (a) or (b) of this section shall be punished by
19 a definite term of imprisonment in the penitentiary
20 which is not less than ten nor more than forty years. A
21 person imprisoned pursuant to the provisions of this
22 section is not eligible for parole prior to having served
23 a minimum of ten years of his or her sentence or the
24 minimum period required by the provisions of section
25 thirteen, article twelve, chapter sixty-two of this code,
26 whichever is greater.

27 (d) The provisions of this section shall not apply to any
28 parent, guardian or custodian or other person who,
29 without malice, fails or refuses, or allows another person
30 to, without malice, fail or refuse, to supply a child under
31 the care, custody or control of such parent, guardian or
32 custodian with necessary medical care, when such
33 medical care conflicts with the tenets and practices of
34 a recognized religious denomination or order of which
35 such parent, guardian or custodian is an adherent or
36 member. The provisions of this section shall not apply
37 to any health care provider who fails or refuses, or
38 allows another person to fail or refuse, to supply a child
39 with necessary medical care when such medical care
40 conflicts with the tenets and practices of a recognized
41 religious denomination or order of which the parent,
42 guardian or custodian of the child is an adherent or
43 member, or where such failure or refusal is pursuant
44 to a properly executed do not resuscitate form.

CHAPTER 22

(H. B. 5012—By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[By Request of the Executive]

[Passed March 16, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for collection and disposition of fees from parolees and federal and foreign state probationers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. PROBATION AND PAROLE.

§62-12-17. Conditions of release on parole.

1 Release and supervision on parole of any person,
2 including the supervision by the division of corrections
3 of any person paroled by any other state or by the
4 federal government, shall be upon the following
5 conditions:

6 (1) That the parolee may not, during the period of his
7 or her parole, violate any criminal law of this or any
8 other state or of the United States.

9 (2) That he or she may not, during the period of his
10 or her parole, leave the state without the consent of the
11 division.

12 (3) That he or she shall comply with the rules and
13 regulations prescribed by the division for his or her
14 supervision by the parole officer.

15 (4) That in every case wherein the parolee for a
16 conviction is seeking parole from an offense against a
17 child, defined in section twelve, article eight, chapter
18 sixty-one of this code; or article eight-b or eight-d of said

19 chapter, or similar convictions from other jurisdictions
20 where the parolee is returning or attempting to return
21 to this state pursuant to the provisions of article six,
22 chapter twenty-eight of this code, the parolee shall not
23 live in the same residence as any minor child, nor
24 exercise visitation with any minor child nor shall he or
25 she have any contact with the victim of the offense.

26 (5) That the parolee, and all federal or foreign state
27 probationers and parolees whose supervision may have
28 been undertaken by this state, shall be required to pay
29 a fee, based on his or her ability to pay, not to exceed
30 twenty dollars per month to defray costs of supervision.
31 The commissioner shall keep a record of all actions
32 taken and account for moneys received. No provision of
33 this section shall be construed to prohibit the division
34 from collecting such fees and conducting such checks
35 upon the effective date of this section. All moneys shall
36 be deposited in a special account in the state treasury
37 to be known as the "Parolee's Supervision Fee Fund."
38 Expenditures from said fund shall be for the purposes
39 of providing parole supervision required by the provi-
40 sions of this code and are not authorized from collections
41 but are to be made only in accordance with appropri-
42 ation by the Legislature and in accordance with the
43 provisions of article three, chapter twelve of this code
44 and upon the fulfillment of the provisions set forth in
45 article two, chapter five-a of this code: *Provided*, That
46 for the fiscal year ending the thirtieth day of June, one
47 thousand nine hundred ninety-four, expenditures are
48 authorized from collections rather than pursuant to an
49 appropriation by the Legislature. Amounts collected
50 which are found from time to time to exceed the funds
51 needed for purposes set forth in this article may be
52 transferred to other accounts or funds and redesignated
53 for other purposes by appropriation of the Legislature.
54 The division shall consider the following factors in
55 determining whether a parolee or probationer is
56 financially able to pay the fee:

57 (A) Current income prospects for the parolee or
58 probationer, taking into account seasonal variations in
59 income;

60 (B) Liquid assets of the parolee or probationer, assets
61 of the parolee or probationer that may provide collateral
62 to obtain funds and assets of the parolee or probationer
63 that may be liquidated to provide funds to pay the fee;

64 (C) Fixed debts and obligations of the parolee or
65 probationer, including federal, state and local taxes and
66 medical expenses;

67 (D) Child care, transportation and other reasonably
68 necessary expenses of the parolee or probationer related
69 to employment;

70 (E) The reasonably foreseeable consequences for the
71 parolee or probationer if a waiver of, or reduction in,
72 the fee is denied.

73 In addition, the division may impose, subject to
74 modification at any time, any other conditions which the
75 division may deem advisable.

CHAPTER 23

(S. B. 1020—By Senators Wooton, Anderson, Macnaughtan, Plymale, Claypole,
Holliday, Miller, Minard, Ross, Wagner, Wiedebusch and Dittmar)

[Passed March 18, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section seven, article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three, five, six, nine and ten of said article; to further amend said article by adding thereto four new sections, designated sections ten-a, ten-b, ten-c and ten-d; to amend and reenact section fifteen, article two-c of said chapter; to amend and reenact section three, article one, chapter forty-nine of said code; to amend and reenact section eleven, article six of said chapter; to amend and reenact sections two and five, article six-a of said chapter; to amend and reenact sections twelve and thirteen, article eight, chapter sixty-one of said code; to amend and reenact section eleven-a, article eight-b of said chapter; to amend and reenact section

nine, article eight-d of said chapter; to amend and reenact section seventeen-a, article one-c, chapter sixty-two of said code; to amend and reenact section one, article eleven-a of said chapter; and to amend and reenact section nine, article twelve of said chapter, all relating to domestic relations generally; making certain technical corrections to correct clerical errors and incorrect references; redefining certain terms relating to family violence; service of all protective orders by publication; continuance of hearings on temporary orders; prior reports of domestic violence to law-enforcement agencies; purging and sealing of files containing protective orders; filing of protective orders with law enforcement; civil and criminal penalties for violation of protective orders; correcting references to domestic violence records deemed confidential; defining serious physical abuse of a child and clarifying references thereto; defining sibling; deleting requirement that documentation of certain instances of abuse and neglect be provided within three days; referencing child abuse and neglect provisions for parents guilty of incest; further making technical corrections to section references; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

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

Chapter

- 48. Domestic Relations.
- 49. Child Welfare.
- 61. Crimes and Their Punishment.
- 62. Criminal Procedure.

CHAPTER 48. DOMESTIC RELATIONS.

Article

- 2A. Prevention of Domestic Violence.
- 2C. Domestic Violence Act.

ARTICLE 2A. PREVENTION OF DOMESTIC VIOLENCE.

- §48-2A-2. Definitions.
- §48-2A-3. Jurisdiction; venue; effect of petitioner's leaving residence; priority of petitions filed under this article; who may file; full faith and credit; process.
- §48-2A-5. Temporary orders of court; hearings; persons present.
- §48-2A-6. Protective orders.
- §48-2A-9. Law-enforcement response to family violence.
- §48-2A-10. Filing of orders with law-enforcement agency.
- §48-2A-10a. Civil contempt; violation of protective orders; order to show cause.
- §48-2A-10b. Violations of protective orders; criminal complaints.
- §48-2A-10c. Arrest for violations of protective orders.
- §48-2A-10d. Misdemeanor offense of violation of protective order.

§48-2A-2. Definitions.

- 1 As used in this article, unless the context clearly
- 2 requires otherwise:
- 3 (a) "Family violence" or "abuse" means the occurrence
- 4 of one or more of the following acts between family or
- 5 household members:
- 6 (1) Attempting to cause or intentionally, knowingly or
- 7 recklessly causing physical harm to another with or
- 8 without dangerous or deadly weapons;
- 9 (2) Placing another in reasonable apprehension of
- 10 physical harm;
- 11 (3) Creating fear of physical harm by harassment,

12 psychological abuse or threatening acts;

13 (4) Committing either sexual assault or sexual abuse
14 as those terms are defined in articles eight-b and eight-
15 d, chapter sixty-one of this code; and

16 (5) Holding, confining, detaining or abducting another
17 person against that person's will.

18 (b) "Family or household member" means current or
19 former spouses, persons living as spouses, persons who
20 formerly resided as spouses, parents, children and
21 stepchildren, current or former sexual or intimate
22 partners, other persons related by blood or marriage,
23 persons who are presently or in the past have resided
24 or cohabited together or a person with whom the victim
25 has a child in common.

**§48-2A-3. Jurisdiction; venue; effect of petitioner's
leaving residence; priority of petitions filed
under this article; who may file; full faith
and credit; process.**

1 (a) *Jurisdiction.* — Circuit courts and magistrate
2 courts, as constituted under chapter fifty of this code,
3 shall have concurrent jurisdiction over proceedings
4 under this article.

5 (b) *Venue.* — The action may be heard in the county
6 in which the abuse occurred or in the county in which
7 the respondent is living. If the parties are married, the
8 action may also be brought in the county in which an
9 action for divorce between the parties may be brought
10 as provided by section eight, article two of this chapter.

11 (c) *Petitioner's rights.* — The petitioner's right to relief
12 under this article shall not be affected by his or her
13 leaving a residence or household to avoid further abuse.

14 (d) *Priority of petitions.* — Any petition filed under
15 the provisions of this article shall be given priority over
16 any other civil action before the court except actions in
17 which trial is in progress and shall be docketed
18 immediately upon filing. Any appeal to the circuit court
19 of a magistrate's judgment on a petition for the relief
20 under this article shall be heard within ten working

21 days of the filing of the appeal.

22 (e) *Full faith and credit.* — Any temporary or final
23 protective order issued pursuant to this article shall be
24 effective throughout the state in every county. Any
25 protective order issued by the court of another state
26 shall be accorded full faith and credit and enforced as
27 if it were an order of this state if its terms and
28 conditions are substantially similar to those which may
29 be imposed by a court of this state.

30 (f) *Service by publication.* — A protective order may
31 be served on the respondent by means of a Class I legal
32 advertisement published notice, with the publication
33 area being the county in which the respondent resides,
34 published in accordance with the provisions of section
35 two, article three, chapter fifty-nine of this code if: (i)
36 The petitioner files an affidavit with the court stating
37 that an attempt at personal service pursuant to rule four
38 of the West Virginia rules of civil procedure has been
39 unsuccessful or evidence is adduced at the hearing for
40 the protective order that the respondent has left the
41 state of West Virginia; and (ii) a copy of the order is
42 mailed by certified or registered mail to the respondent
43 at the respondent's last known residence and returned
44 undelivered.

§48-2A-5. Temporary orders of court; hearings; persons present.

1 (a) Upon filing of a verified petition under this article,
2 the court may enter such temporary orders as it may
3 deem necessary to protect the petitioner or minor
4 children from abuse and, upon good cause shown, may
5 do so ex parte without the necessity of bond being given
6 by the petitioner. Clear and convincing evidence of
7 immediate and present danger of abuse to the petitioner
8 or minor children shall constitute good cause for
9 purposes of this section. If the respondent is not present
10 at the proceeding, the petitioner or the petitioner's legal
11 representative shall certify to the court, in writing, the
12 efforts which have been made to give notice to the
13 respondent or just cause why notice should not be
14 required. Copies of medical reports or records may be

15 admitted into evidence to the same extent as though the
16 original thereof. The custodian of such records shall not
17 be required to be present to authenticate such records
18 for any proceeding held pursuant to this subsection.
19 Following such proceeding, the court shall order a copy
20 of the petition to be served immediately upon the
21 respondent, together with a copy of any temporary order
22 issued pursuant to the proceedings, notice setting forth
23 the time and place of the full hearing and a statement
24 of the right of the respondent to be present and to be
25 represented by counsel. Copies of any order made under
26 the provisions of this section shall also be issued to the
27 petitioner and any law-enforcement agency having
28 jurisdiction to enforce the order, including the city
29 police, the county sheriff's office and local office of the
30 state police within twenty-four hours of the entry of the
31 order. Such initial protective order shall remain
32 effective until such time as a hearing is held. The order
33 shall be in full force and effect in every county in this
34 state.

35 (b) Within five days following the issuance of the
36 court's temporary order, a full hearing shall be held at
37 which the petitioner must prove the allegation of abuse
38 by a preponderance of the evidence or such petition shall
39 be dismissed. If the respondent has not been served with
40 notice of the temporary order, the hearing may be
41 continued in order to permit service to be effected. The
42 failure to obtain service upon the respondent does not
43 constitute a basis upon whether the petition may be
44 dismissed. Copies of medical reports may be admitted
45 into evidence to the same extent as though the original
46 thereof, upon proper authentication, by the custodian of
47 such records.

48 (c) No person requested by a party to be present
49 during a hearing held under the provisions of this
50 article shall be precluded from being present unless
51 such person is to be a witness in the proceeding and a
52 motion for sequestration has been made and such motion
53 has been granted. A person found by the court to be
54 disruptive may be precluded from being present.

55 (d) If a hearing is continued, the court may make or

56 extend such temporary orders as it deems necessary.

§48-2A-6. Protective orders.

1 (a) At the conclusion of the hearing and if the
2 petitioner has proven the allegations of abuse by a
3 preponderance of the evidence, then the court shall issue
4 a protective order which shall direct the respondent to
5 refrain from abusing the petitioner and/or the minor
6 children. The terms of a protective order may include:

7 (1) Granting possession to the petitioner of the
8 residence or household jointly resided in at the time the
9 abuse occurred;

10 (2) Awarding temporary custody of or establishing
11 temporary visitation rights with regard to minor
12 children;

13 (3) Establishing terms of temporary visitation with
14 regard to the minor children including, but not limited
15 to, requiring third party supervision of visitations if
16 necessary to protect the petitioner and/or the minor
17 children;

18 (4) Ordering the noncustodial parent to pay to the
19 custodial parent a sum for temporary support and
20 maintenance of the petitioner and children, if any;

21 (5) Ordering the respondent to pay to the petitioner
22 a sum for temporary support and maintenance of the
23 petitioner, where appropriate;

24 (6) Ordering the respondent to refrain from entering
25 the school, business or place of employment of the
26 petitioner or household members or family members for
27 the purpose of violating the protective order;

28 (7) Directing the respondent to participate in counsel-
29 ing; or

30 (8) Ordering the respondent to refrain from contact-
31 ing, telephoning, communicating, harassing or verbally
32 abusing the petitioner in any public place.

33 (b) Any final protective order shall be for a fixed
34 period of time not to exceed ninety days except as
35 otherwise provided by subsection (d), section three-a of

36 this article. The court may amend its order at any time
37 upon subsequent petition filed by either party. If the
38 court enters an initial order for a period of less than
39 ninety days, it shall, after notice and hearing, extend its
40 initial order for the full ninety-day period if it finds the
41 petitioner or the minor child or children continue to
42 need protection from abuse. The order shall be in full
43 force and effect in every county in this state. The order
44 shall state that it is in full force and effect in every
45 county in this state.

46 (c) No order under this article shall in any manner
47 affect title to any real property.

48 (d) Certified copies of any order made under the
49 provisions of this section shall be issued to the petitioner,
50 the respondent and any law-enforcement agency having
51 jurisdiction to enforce the order, including the city
52 police, the county sheriff's office or local office of the
53 division of public safety within twenty-four hours of the
54 entry of the order.

55 (e) No mutual protective orders shall be granted
56 unless both parties have filed a petition under section
57 four of this article and have proven the allegations of
58 abuse by a preponderance of the evidence.

§48-2A-9. Law-enforcement response to family violence.

1 (a) Notwithstanding any other provision of this code
2 to the contrary, all law-enforcement officers are hereby
3 authorized to serve all pleadings and orders filed or
4 entered pursuant to this article on Sundays and legal
5 holidays. No law-enforcement officer shall refuse to
6 serve any pleadings or orders entered pursuant to this
7 article.

8 (b) Any law-enforcement officer responding to an
9 alleged incident of family violence shall inform the
10 parties thereto of the availability of the possible
11 remedies provided by this article and the possible
12 applicability of the criminal laws of this state. Any law-
13 enforcement officer investigating an alleged incident of
14 family violence shall advise the person subject to abuse
15 of the availability of the family protection shelter to

16 which such person may be admitted.

17 (c) Any law-enforcement officer responding to an
18 alleged incident of abuse shall, in addition to providing
19 the information required in subsection (a) of this section,
20 provide transportation for or facilitate transportation of
21 the victim or victims, upon the request of such victim
22 or victims, to a shelter or the appropriate court where
23 there is reasonable cause to believe that such victim or
24 victims have suffered or are likely to suffer physical
25 injury.

26 (d) Each law-enforcement agency shall maintain
27 records on all incidents of family or household abuse
28 reported to it and shall monthly make and deliver to the
29 department of public safety a report on a form pres-
30 cribed by the department, listing all such incidents of
31 family or household abuse. Such reports shall include:

32 (1) The age and sex of the abused and abusing parties;

33 (2) The relationship between the parties;

34 (3) The type and extent of abuse;

35 (4) The number and type of weapons involved;

36 (5) Whether the law-enforcement agency responded to
37 the complaint and if so, the time involved, the action
38 taken and the time lapse between the agency's action
39 and the abused's request for assistance;

40 (6) Whether any prior reports have been made,
41 received or filed regarding family or household abuse
42 on any prior occasion and if so, the number of such prior
43 reports; and

44 (7) The effective dates and terms of any protective
45 order issued prior to or following the incident to protect
46 the abused party: *Provided*, That no information which
47 will permit the identification of the parties involved in
48 any incident of abuse shall be included in such report.

49 (e) The department of public safety shall tabulate and
50 analyze any statistical data derived from the reports
51 made by law-enforcement agencies pursuant to this
52 section and publish a statistical compilation in the

53 department's annual uniform crime report, as provided
54 for in section twenty-four, article two, chapter fifteen of
55 this code. The statistical compilation shall include, but
56 is not limited to, the following:

57 (1) The number of family violence complaints
58 received;

59 (2) The number of complaints investigated;

60 (3) The number of complaints received from alleged
61 victims of each sex;

62 (4) The average time lapse in responding to such
63 complaints;

64 (5) The number of complaints received from alleged
65 victims who have filed such complaints on prior
66 occasions;

67 (6) The number of aggravated assaults and homicides
68 resulting from such repeat incidents;

69 (7) The type of police action taken in disposition of the
70 cases; and

71 (8) The number of alleged violations of protective
72 orders.

73 (f) As used in this section, the terms "abuse", "family
74 violence" and "family or household members" shall have
75 the meanings given them in section two of this article;
76 and the term "law-enforcement agency" shall include
77 the West Virginia department of health and human
78 resources in those instances of child abuse reported to
79 the department which are not otherwise reported to any
80 other law-enforcement agency.

81 (g) The governor's committee on crime, delinquency
82 and correction shall develop and promulgate rules for
83 state, county and municipal law-enforcement officers
84 and law-enforcement agencies with regard to domestic
85 violence. The notice of the public hearing on the rules
86 shall be published before the first day of July, one
87 thousand nine hundred ninety-one. Prior to the publica-
88 tion of the proposed rules, the governor's committee on
89 crime, delinquency and correction shall convene a

90 meeting or meetings of an advisory committee to assist
91 in the development of the rules. The advisory committee
92 shall be composed of persons invited by the committee
93 to represent state, county and local law-enforcement
94 agencies and officers, to represent magistrates and court
95 officials, to represent victims of domestic violence, to
96 represent shelters receiving funding pursuant to article
97 two-c of this chapter and to represent other persons or
98 organizations who, in the discretion of the committee,
99 have an interest in the rules. The rules and the revisions
100 thereof as provided in this section shall be promulgated
101 as legislative rules in accordance with chapter twenty-
102 nine-a of this code. Following the promulgation of said
103 rules, the committee shall meet at least annually to
104 review the rules and to propose revisions as a result of
105 changes in law or policy.

106 (h) Nothing in this section shall be construed to
107 authorize the inclusion of information contained in a
108 report of an incident of abuse in any local, state,
109 interstate, national or international systems of criminal
110 identification pursuant to section twenty-four, article
111 two, chapter fifteen of this code: *Provided*, That nothing
112 in this section shall prohibit the division of public safety
113 from processing information through its criminal
114 identification bureau with respect to any actual charge
115 or conviction of a crime.

116 (i) All law-enforcement officers shall receive training
117 relating to response to calls involving family violence by
118 the first day of October, one thousand nine hundred
119 ninety-three.

120 (j) Two years after the entry of a final protective
121 order, the circuit court, may, upon motion, order that
122 the protective order and references to the order be
123 purged from the file maintained by any law-enforce-
124 ment agency and may further order that the file
125 maintained by the court be sealed and not opened except
126 upon order of the court when such is in the interest of
127 justice.

**§48-2A-10. Filing of orders with law-enforcement
agency.**

1 Upon entry of an order pursuant to section five or six
2 of this article, or an order entered pursuant to section
3 thirteen, article two of this chapter granting relief
4 provided for by this article, a copy of such order shall,
5 no later than the close of the next business day, be
6 transmitted by the court or the clerk of the court to a
7 local office of the city police, the county sheriff and the
8 West Virginia division of public safety, where it shall
9 be placed in a confidential file, with access provided
10 only to the law-enforcement agency and the respondent
11 named on said order. A sworn affidavit may be executed
12 by the party awarded exclusive possession of the
13 residence or household, pursuant to an order entered
14 under subsection (b), section six of this article, and
15 delivered to such law-enforcement agency simultane-
16 ously with any such order, giving his or her consent for
17 a law-enforcement officer to enter such residence or
18 household, without a warrant, to enforce such protective
19 order or temporary order. Orders shall be promptly
20 served upon the respondent. Failure to serve shall not
21 stay the effect of a valid order if the respondent has
22 actual notice of the existence and contents of the order.

§48-2A-10a. Civil contempt; violation of protective orders; order to show cause.

1 (a) Any person authorized to file a petition under the
2 provisions of section four of this article or a legal
3 guardian or guardian ad litem may file a petition for
4 civil contempt alleging a violation of an order issued
5 pursuant to the provisions of this article. Such petition
6 shall be filed in a court in the county in which the
7 violation occurred or the county in which the order was
8 issued.

9 (b) When a petition for an order to show cause is filed,
10 a hearing on the petition shall be held within five days
11 from the filing of the petition. Any order to show cause
12 which is issued shall be served upon the respondent.

13 (c) Upon a finding of contempt, the court may order
14 the respondent to comply with specific provisions of the
15 protective order and post a bond as surety for faithful
16 compliance with such order.

§48-2A-10b. Violations of protective orders; criminal complaints.

1 (a) When a respondent abuses the petitioner and/or
2 minor children or is physically present at any location
3 in knowing and willful violation of the terms of a
4 temporary or final protective order issued under the
5 provisions of this article, any person authorized to file
6 a petition pursuant to the provisions of section four of
7 this article or the legal guardian or guardian ad litem
8 may file a petition for civil contempt as set forth in
9 section ten-a of this article.

10 (b) When any such violation of a valid order has
11 occurred, the petitioner may file a criminal complaint.
12 If the court finds probable cause upon the complaint, the
13 court shall issue a warrant for arrest of the person
14 charged.

§48-2A-10c. Arrest for violations of protective orders.

1 (a) When a law-enforcement officer observes any
2 respondent abuse the petitioner and/or minor children
3 or the respondent's physical presence at any location in
4 knowing and willful violation of the terms of a tempor-
5 ary or final protective order issued under the provisions
6 of this article, he or she shall immediately arrest the
7 respondent.

8 (b) Any person who observes a violation of a protective
9 order as described in this section, or the victim of such
10 abuse or unlawful presence, may call a local law-
11 enforcement agency, which shall verify the existence of
12 a current order, and shall direct a law-enforcement
13 officer to promptly investigate the alleged violation.

14 (c) Where there is an arrest, the officer shall take the
15 arrested person before a court or a magistrate and, upon
16 a finding of probable cause to believe a violation of an
17 order as set forth in this section has occurred, the court
18 or magistrate shall set a time and place for a hearing
19 in accordance with the West Virginia rules of criminal
20 procedure.

**§48-2A-10d. Misdemeanor offense of violation of protec-
tive order.**

1 A respondent who abuses the petitioner and/or minor
2 children or who is physically present at any location in
3 knowing and willful violation of the terms of a tempor-
4 ary or final protective order issued under the provisions
5 of this article shall be guilty of a misdemeanor, and,
6 upon conviction thereof, shall be confined in the county
7 or regional jail for a period of not less than one day nor
8 more than one year, which jail term shall include actual
9 confinement of not less than twenty-four hours, and shall
10 be fined not less than two hundred fifty dollars or more
11 than two thousand dollars.

ARTICLE 2C. DOMESTIC VIOLENCE ACT.

§48-2C-15. Confidentiality.

1 (a) No program or shelter receiving funds pursuant
2 to this article shall disclose or be compelled to disclose,
3 release or be compelled to release any written records
4 created or maintained in providing services pursuant to
5 this article except:

6 (1) Upon written consent of the person seeking or who
7 has sought services from the program or the shelter;

8 (2) In any proceeding brought under sections four and
9 five, article six, chapter nine of this code or article six,
10 chapter forty-nine of this code;

11 (3) As mandated by article six-a, chapter forty-nine
12 and article six, chapter nine of this code;

13 (4) Pursuant to an order of any court based upon a
14 finding that said information is sufficiently relevant to
15 a proceeding before the court to outweigh the impor-
16 tance of maintaining the confidentiality established by
17 this section;

18 (5) To protect against a clear and substantial danger
19 of imminent injury by a client to him or herself or
20 another;

21 (6) For treatment or internal review purposes to the
22 staff of any program or shelter if the client is also being
23 cared for by other health professionals in the program
24 or shelter.

25 (b) No consent or authorization for the transmission
26 or disclosure of confidential information shall be
27 effective unless it is in writing and signed by the client.
28 Every person signing an authorization shall be given a
29 copy.

CHAPTER 49. CHILD WELFARE.

Article

1. Purposes; Definitions.
6. Procedure in Cases of Child Neglect or Abuse.
- 6A. Reports of Children Suspected to be Abused or Neglected.

ARTICLE 1. PURPOSES; DEFINITIONS.

*§49-1-3. Definitions relating to abuse and neglect.

1 (a) "Abused child" means a child whose health or
2 welfare is harmed or threatened by:

3 (1) A parent, guardian or custodian who knowingly or
4 intentionally inflicts, attempts to inflict or knowingly
5 allows another person to inflict, physical injury or
6 mental or emotional injury, upon the child or another
7 child in the home; or

8 (2) Sexual abuse or sexual exploitation; or

9 (3) The sale or attempted sale of a child by a parent,
10 guardian or custodian in violation of section sixteen,
11 article four, chapter forty-eight of this code.

12 In addition to its broader meaning, physical injury
13 may include an injury to the child as a result of
14 excessive corporal punishment.

15 (b) "Abusing parent" means a parent, guardian or
16 other custodian, regardless of his or her age, whose
17 conduct, as alleged in the petition charging child abuse
18 or neglect, has been adjudged by the court to constitute
19 child abuse or neglect.

20 (c) "Child abuse and neglect" or "child abuse or
21 neglect" means physical injury, mental or emotional
22 injury, sexual abuse, sexual exploitation, sale or

*Clerk's Note: This section was also amended by S. B. 1004 (Chapter 17),
which passed prior to this act.

23 attempted sale or negligent treatment or maltreatment
24 of a child by a parent, guardian or custodian who is
25 responsible for the child's welfare, under circumstances
26 which harm or threaten the health and welfare of the
27 child.

28 (d) "Child abuse and neglect services" means social
29 services which are directed toward:

30 (1) Protecting and promoting the welfare of children
31 who are abused or neglected;

32 (2) Identifying, preventing and remedying conditions
33 which cause child abuse and neglect;

34 (3) Preventing the unnecessary removal of children
35 from their families by identifying family problems and
36 assisting families in resolving problems which could
37 lead to a removal of children and a breakup of the
38 family;

39 (4) In cases where children have been removed from
40 their families, providing services to the children and the
41 families so as to restore such children to their families;

42 (5) Placing children in suitable adoptive homes when
43 restoring the children to their families is not possible or
44 appropriate; and

45 (6) Assuring the adequate care of children away from
46 their families when the children have been placed in the
47 custody of the department or third parties.

48 (e) "Imminent danger to the physical well-being of the
49 child" means an emergency situation in which the
50 welfare or the life of the child is threatened. Such
51 emergency situation exists when there is reasonable
52 cause to believe that any child in the home is or has been
53 sexually abused or sexually exploited, or reasonable
54 cause to believe that the following conditions threaten
55 the health or life of any child in the home:

56 (1) Nonaccidental trauma inflicted by a parent,
57 guardian, custodian, sibling or a babysitter or other
58 caretaker; or

59 (2) A combination of physical and other signs indicat-

60 ing a pattern of abuse which may be medically diag-
61 nosed as battered child syndrome; or

62 (3) Nutritional deprivation; or

63 (4) Abandonment by the parent, guardian or custo-
64 dian; or

65 (5) Inadequate treatment of serious illness or disease;
66 or

67 (6) Substantial emotional injury inflicted by a parent,
68 guardian or custodian; or

69 (7) Sale or attempted sale of the child by the parent,
70 guardian or custodian.

71 (f) "Multidisciplinary team" means a group of
72 professionals and paraprofessionals representing a
73 variety of disciplines who interact and coordinate their
74 efforts to identify, diagnose and treat specific cases of
75 child abuse and neglect. Multidisciplinary teams may
76 include, but are not limited to, medical, child care and
77 law-enforcement personnel, social workers, psycholo-
78 gists and psychiatrists. Their goal is to pool their
79 respective skills in order to formulate accurate diag-
80 noses and to provide comprehensive coordinated treat-
81 ment with continuity and follow-up for both parents and
82 children. "Community team" means a multidisciplinary
83 group which addresses the general problem of child
84 abuse and neglect in a given community and may consist
85 of several multidisciplinary teams with different
86 functions.

87 (g) (1) "Neglected child" means a child:

88 (A) Whose physical or mental health is harmed or
89 threatened by a present refusal, failure or inability of
90 the child's parent, guardian or custodian to supply the
91 child with necessary food, clothing, shelter, supervision,
92 medical care or education, when such refusal, failure or
93 inability is not due primarily to a lack of financial
94 means on the part of the parent, guardian or custodian;
95 or

96 (B) Who is presently without necessary food, clothing,
97 shelter, medical care, education or supervision because

- 98 of the disappearance or absence of the child's parent or
99 custodian;
- 100 (2) "Neglected child" does not mean a child whose
101 education is conducted within the provisions of section
102 one, article eight, chapter eighteen of this code.
- 103 (h) "Parenting skills" means a parent's competencies
104 in providing physical care, protection, supervision and
105 psychological support appropriate to a child's age and
106 state of development.
- 107 (i) "Sexual abuse" means:
- 108 (A) As to a child who is less than sixteen years of age,
109 any of the following acts which a parent, guardian or
110 custodian shall engage in, attempt to engage in, or
111 knowingly procure another person to engage in, with
112 such child, notwithstanding the fact that the child may
113 have willingly participated in such conduct or the fact
114 that the child may have suffered no apparent physical
115 injury or mental or emotional injury as a result of such
116 conduct:
- 117 (i) Sexual intercourse; or
- 118 (ii) Sexual intrusion; or
- 119 (iii) Sexual contact; or
- 120 (B) As to a child who is sixteen years of age or older,
121 any of the following acts which a parent, guardian or
122 custodian shall engage in, attempt to engage in, or
123 knowingly procure another person to engage in, with
124 such child, notwithstanding the fact that the child may
125 have consented to such conduct or the fact that the child
126 may have suffered no apparent physical injury or
127 mental or emotional injury as a result of such conduct:
- 128 (i) Sexual intercourse; or
- 129 (ii) Sexual intrusion; or
- 130 (iii) Sexual contact; or
- 131 (C) Any conduct whereby a parent, guardian or
132 custodian displays his or her sex organs to a child, or
133 procures another person to display his or her sex organs

134 to a child, for the purpose of gratifying the sexual desire
135 of the parent, guardian or custodian, of the person
136 making such display, or of the child, or for the purpose
137 of affronting or alarming the child.

138 (j) "Sexual contact" means sexual contact as that term
139 is defined in section one, article eight-b, chapter sixty-
140 one of this code.

141 (k) "Sexual exploitation" means an act whereby:

142 (1) A parent, custodian or guardian, whether for
143 financial gain or not, persuades, induces, entices or
144 coerces a child to engage in sexually explicit conduct as
145 that term is defined in section one, article eight-c,
146 chapter sixty-one of this code;

147 (2) A parent, guardian or custodian persuades,
148 induces, entices or coerces a child to display his or her
149 sex organs for the sexual gratification of the parent,
150 guardian, custodian or a third person, or to display his
151 or her sex organs under circumstances in which the
152 parent, guardian or custodian knows such display is
153 likely to be observed by others who would be affronted
154 or alarmed.

155 (l) "Sexual intercourse" means sexual intercourse as
156 that term is defined in section one, article eight-b,
157 chapter sixty-one of this code.

158 (m) "Sexual intrusion" means sexual intrusion as that
159 term is defined in section one, article eight-b, chapter
160 sixty-one of this code.

161 (n) "Parental rights" means any and all rights and
162 duties regarding a parent to a minor child, including,
163 but not limited to, custodial rights and visitational
164 rights and rights to participate in the decisions affecting
165 a minor child.

166 (o) "Placement" means any temporary or permanent
167 placement of a child who is in the custody of the state
168 in any foster home, group home or other facility or
169 residence.

170 (p) "Serious physical abuse" means bodily injury
171 which creates a substantial risk of death, which causes

172 serious or prolonged disfigurement, prolonged impair-
173 ment of health or prolonged loss or impairment of the
174 function of any bodily organ.

175 (q) "Siblings" means children who have at least one
176 biological parent in common or who have been legally
177 adopted by the same parents or parent.

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-11. Conviction for offenses against children.

1 In any case where a person is convicted of an offense,
2 described in section twelve, article eight, chapter sixty-
3 one of this code; and articles eight-b and eight-d of said
4 chapter; against any child and further has custodial,
5 visitation or other parental rights to the child, at the
6 time of sentencing, the court shall make a finding that
7 the person is an abusing parent within the meaning of
8 this article and the court shall take such further steps
9 as are required by this article.

ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.

§49-6A-2. Persons mandated to report suspected abuse and neglect.

§49-6A-5. Reporting procedures.

§49-6A-2. Persons mandated to report suspected abuse and neglect.

1 When any medical, dental or mental health profes-
2 sional, Christian Science practitioner, religious healer,
3 school teacher or other school personnel, social service
4 worker, child care or foster care worker, emergency
5 medical services personnel, peace officer or law-
6 enforcement official, member of the clergy, circuit court
7 judge, family law master or magistrate has reasonable
8 cause to suspect that a child is neglected or abused or
9 observes the child being subjected to conditions that are
10 likely to result in abuse or neglect, such person shall
11 immediately, and not more than forty-eight hours after
12 suspecting this abuse, report the circumstances or cause
13 a report to be made to the state department of human
14 services: *Provided*, That in any case where the reporter
15 believes that the child suffered serious physical abuse

16 or sexual abuse or sexual assault, the reporter shall also
17 immediately report, or cause a report to be made to the
18 division of public safety and any law-enforcement
19 agency having jurisdiction to investigate the complaint:
20 *Provided, however,* That any person required to report
21 under this article who is a member of the staff of a
22 public or private institution, school, facility or agency
23 shall immediately notify the person in charge of such
24 institution, school, facility or agency or a designated
25 agent thereof, who shall report or cause a report to be
26 made. However, nothing in this article is intended to
27 prevent individuals from reporting on their own behalf.

28 In addition to those persons and officials specifically
29 required to report situations involving suspected abuse
30 or neglect of children, any other person may make a
31 report if such person has reasonable cause to suspect
32 that a child has been abused or neglected in a home or
33 institution or observes the child being subjected to
34 conditions or circumstances that would reasonably
35 result in abuse or neglect.

§49-6A-5. Reporting procedures.

1 Reports of child abuse and neglect pursuant to this
2 article shall be made immediately by telephone to the
3 local state department child protective service agency
4 and shall be followed by a written report within forty-
5 eight hours if so requested by the receiving agency. The
6 state department shall establish and maintain a twenty-
7 four hour, seven-day-a-week telephone number to
8 receive such calls reporting suspected or known child
9 abuse or neglect.

10 A copy of any report of serious physical abuse, sexual
11 abuse or assault shall be forwarded by the department
12 to the appropriate law-enforcement agency, the prose-
13 cuting attorney or the coroner or medical examiner's
14 office. All reports under this article shall be confidential
15 and unless there are pending proceedings with regard
16 thereto shall be destroyed six years following their
17 preparation. Reports of known or suspected institutional
18 child abuse or neglect shall be made and received as all
19 other reports made pursuant to this article.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**Article****8. Crimes Against Chastity, Morality and Decency.****8B. Sexual Offenses.****8D. Child Abuse.****ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.**

§61-8-12. Incest; penalty.

§61-8-13. Incest; limits on interviews of children eleven years old or less; evidence.

§61-8-12. Incest; penalty.

- 1 (a) For the purposes of this section:
- 2 (1) "Aunt" means the sister of a person's mother or
3 father;
- 4 (2) "Brother" means the son of a person's mother or
5 father;
- 6 (3) "Daughter" means a person's natural daughter,
7 adoptive daughter or the daughter of a person's husband
8 or wife;
- 9 (4) "Father" means a person's natural father, adoptive
10 father or the husband of a person's mother;
- 11 (5) "Granddaughter" means the daughter of a person's
12 son or daughter;
- 13 (6) "Grandfather" means the father of a person's
14 father or mother;
- 15 (7) "Grandmother" means the mother of a person's
16 father or mother;
- 17 (8) "Grandson" means the son of a person's son or
18 daughter;
- 19 (9) "Mother" means a person's natural mother,
20 adoptive mother or the wife of a person's father;
- 21 (10) "Niece" means the daughter of a person's brother
22 or sister;
- 23 (11) "Nephew" means the son of a person's brother or
24 sister;

25 (12) "Sexual intercourse" means any act between
26 persons involving penetration, however slight, of the
27 female sex organ by the male sex organ or involving
28 contact between the sex organs of one person and the
29 mouth or anus of another person;

30 (13) "Sexual intrusion" means any act between
31 persons involving penetration, however slight, of the
32 female sex organ or of the anus of any person by an
33 object for the purpose of degrading or humiliating the
34 person so penetrated or for gratifying the sexual desire
35 of either party;

36 (14) "Sister" means the daughter of a person's father
37 or mother;

38 (15) "Son" means a person's natural son, adoptive son
39 or the son of a person's husband or wife; and

40 (16) "Uncle" means the brother of a person's father or
41 mother.

42 (b) A person is guilty of incest when such person
43 engages in sexual intercourse or sexual intrusion with
44 his or her father, mother, brother, sister, daughter, son,
45 grandfather, grandmother, grandson, granddaughter,
46 nephew, niece, uncle or aunt.

47 (c) Any person who violates the provisions of this
48 section shall be guilty of a felony, and, upon conviction
49 thereof, shall be imprisoned in the penitentiary not less
50 than five years nor more than fifteen years, or fined not
51 less than five hundred dollars nor more than five
52 thousand dollars and imprisoned in the penitentiary not
53 less than five years nor more than fifteen years.

54 (d) In addition to any penalty provided under this
55 section and any restitution which may be ordered by the
56 court under article eleven-a of this chapter, the court
57 may order any person convicted under the provisions of
58 this section where the victim is a minor to pay all or
59 any portion of the cost of medical, psychological or
60 psychiatric treatment of the victim, the need for which
61 results from the act or acts for which the person is
62 convicted, whether or not the victim is considered to
63 have sustained bodily injury.

64 (e) In any case where a person is convicted of an
65 offense described herein against a child and further has
66 or may have custodial, visitation or other parental rights
67 to the child, the court shall find that the person is an
68 abusing parent within the meaning of article six,
69 chapter forty-nine of this code, and shall take such
70 further action in accord with the provisions of said
71 article.

§61-8-13. Incest; limits on interviews of children eleven years old or less; evidence.

1 (a) In any prosecution under the provisions of section
2 twelve of this article, the court may provide by rule for
3 reasonable limits on the number of interviews to which
4 a victim who is eleven years old or less must submit for
5 law-enforcement or discovery purposes. To the extent
6 possible the rule shall protect the mental and emotional
7 health of the child from the psychological damage of
8 repeated interrogation and at the same time preserve
9 the rights of the public and the defendant.

10 (b) At any stage of the proceedings, in any prosecution
11 under this article, the court may permit a child who is
12 eleven years old or less to use anatomically correct dolls,
13 mannequins or drawings to assist such child in
14 testifying.

15 (c) In any prosecution under this article in which the
16 victim's lack of consent is based solely on the incapacity
17 to consent because such victim was below a critical age,
18 evidence of specific instances of the victim's sexual
19 conduct, opinion evidence of the victim's sexual conduct
20 and reputation evidence of the victim's sexual conduct
21 shall not be admissible. In any other prosecution under
22 this article, evidence of specific instances of the victim's
23 prior sexual conduct with the defendant shall be
24 admissible on the issue of consent: *Provided*, That such
25 evidence heard first out of the presence of the jury is
26 found by the judge to be relevant.

27 (d) In any prosecution under this article evidence of
28 specific instances of the victim's sexual conduct with
29 persons other than the defendant, opinion evidence of
30 the victim's sexual conduct and reputation evidence of

31 the victim's sexual conduct shall not be admissible:
 32 *Provided*, That such evidence shall be admissible solely
 33 for the purpose of impeaching credibility, if the victim
 34 first makes his or her previous sexual conduct an issue
 35 in the trial by introducing evidence with respect thereto.

36 (e) In any prosecution under this article, neither age
 37 nor mental capacity of the victim shall preclude the
 38 victim from testifying.

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-11a. Convictions for offenses against children.

1 In any case where a person is convicted of an offense
 2 described in this article against a child and further has
 3 or may have custodial, visitation or other parental rights
 4 to the child, the court shall find that the person is an
 5 abusing parent within the meaning of article six,
 6 chapter forty-nine of this code, and shall take such
 7 further action in accord with the provisions of said
 8 article.

ARTICLE 8D. CHILD ABUSE.

§61-8D-9. Convictions for offenses against children.

1 In any case where a person is convicted of an offense
 2 described in this article against a child and further has
 3 or may have custodial, visitation or other parental rights
 4 to the child, the court shall find that such person is an
 5 abusing parent within the meaning of article six,
 6 chapter forty-nine of this code and shall take such
 7 further action in accord with the provisions of said
 8 article.

CHAPTER 62. CRIMINAL PROCEDURE.

Article

- 1C. Bail.
- 11A. Release for Work and Other Purposes.
- 12. Probation and Parole.

ARTICLE 1C. BAIL.

§62-1C-17a. Bail in situations of alleged child abuse.

1 (a) When the offense charged is an offense defined in
 2 article eight-d, chapter sixty-one of this code, it shall be

3 a condition of bond that the defendant shall not live in
4 the same residence as and shall have no contact with the
5 victim of the alleged offense and the court may make
6 such other conditions of bond with respect to contact
7 with the victim as it deems necessary under the
8 circumstances to protect the child: *Provided*, That the
9 requirement of no contact with the victim of the alleged
10 offense and all other conditions of bond may be reviewed
11 by summary petition from the magistrate court to the
12 circuit court or from the circuit court to the supreme
13 court of appeals or any justice thereof.

14 (b) In cases where the charge is a sexual offense, as
15 defined in chapter sixty-one of this code, against any
16 person, the court, upon a showing of cause, may make
17 such conditions of bond on the defendant or on any
18 witness bond issued under section fifteen of this article
19 as it deems necessary with respect to contact with the
20 victim.

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.

**§62-11A-1. Release for work and other purposes by
courts of record with criminal juris-
diction.**

1 (1) When a defendant is sentenced or committed for
2 a term of one year or less by a court of record having
3 criminal jurisdiction, such court may in its order grant
4 to such defendant the privilege of leaving the jail during
5 necessary and reasonable hours for any of the following
6 purposes:

7 (a) To work at his employment;

8 (b) To seek employment;

9 (c) To conduct his own business or to engage in other
10 self-employment, including, in the case of a woman,
11 housekeeping and attending to the needs of her family;

12 (d) To attend an educational institution;

13 (e) To obtain medical treatment;

14 (f) To devote time to any other purpose approved of
15 or ordered by the court, including participation in the

16 litter control program of the county unless the court
17 specifically finds that this alternative service would be
18 inappropriate.

19 (2) Whenever an inmate who has been granted the
20 privilege of leaving the jail under this section is not
21 engaged in the activity for which such leave is granted,
22 he shall be confined in jail.

23 (3) An inmate sentenced to ordinary confinement may
24 petition the court at any time after sentence for the
25 privilege of leaving jail under this section and may
26 renew his petition in the discretion of the court. The
27 court may withdraw the privilege at any time by order
28 entered with or without notice.

29 (4) If the inmate has been granted permission to leave
30 the jail to seek or take employment, the court's probation
31 officers, or if none, the state's division of corrections
32 shall assist him in obtaining suitable employment and
33 in making certain that employment already obtained is
34 suitable. Employment shall not be deemed suitable if
35 the wages or working conditions or other circumstances
36 present a danger of exploitation or of interference in a
37 labor dispute in the establishment in which the inmate
38 would be employed.

39 (5) If an inmate is employed for wages or salary, the
40 clerk of the court shall collect the same or shall require
41 the inmate to turn over his wages or salary in full when
42 received, and shall deposit the same in a trust account
43 and shall keep a ledger showing the status of the account
44 of each inmate. Earnings levied upon pursuant to writ
45 of attachment or execution or in other lawful manner
46 shall be collected from the employer and shall not be
47 collected hereunder, but when the clerk has requested
48 transmittal of earnings prior to levy, such request shall
49 have priority. When an employer transmits such
50 earnings to the clerk pursuant to this subsection he shall
51 have no liability to the inmate for such earnings. From
52 such earnings the clerk shall pay the inmate's board and
53 personal expenses both inside and outside the jail and
54 shall deduct installments on fines, if any, and, to the
55 extent directed by the court, shall pay the support of the

56 inmate's dependents: *Provided*, That at least twenty-five
57 percent of the earnings collected by the clerk on behalf
58 of an inmate shall be paid for the support of such
59 inmate's dependents, if any. If sufficient funds are
60 available after making the foregoing payments, the
61 clerk may, with the consent of the inmate, pay, in whole
62 or in part, any unpaid debts of the inmate. Any balance
63 shall be retained and shall be paid to the inmate at the
64 time of his discharge.

65 (6) An inmate who is serving his sentence pursuant
66 to this section shall be eligible for a reduction of his
67 term for good behavior and faithful performance of
68 duties in the same manner as if he had served his term
69 in ordinary confinement.

70 (7) The court shall not make an order granting the
71 privilege of leaving the institution under this section
72 unless it is satisfied that there are adequate facilities for
73 the administration of such privilege in the jail or other
74 institution in which the defendant will be confined.

75 (8) In every case wherein the defendant has been
76 convicted of an offense, defined in section twelve, article
77 eight, chapter sixty-one, or in article eight-b or eight-
78 d of said chapter against a child, the defendant shall not
79 live in the same residence as any minor child, nor
80 exercise visitation with any minor child and shall have
81 no contact with the victim of the offense: *Provided*, That
82 the defendant may petition the court of the circuit
83 wherein he was so convicted for a modification of this
84 term and condition of this probation and the burden
85 shall rest upon the defendant to demonstrate that a
86 modification is in the best interest of the child.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-9. Conditions of release on probation.

1 (a) Release on probation shall be upon the following
2 conditions:

3 (1) That the probationer shall not, during the term of
4 his probation, violate any criminal law of this or any
5 other state or of the United States.

6 (2) That he shall not, during the term of his probation,
7 leave the state without the consent of the court which
8 placed him on probation.

9 (3) That he shall comply with the rules and regula-
10 tions prescribed by the court or by the board of
11 probation and parole, as the case may be, for his
12 supervision by the probation officer.

13 (4) That in every case wherein the probationer has
14 been convicted of an offense defined in section twelve,
15 article eight, chapter sixty-one of this code or article
16 eight-b or eight-d of said chapter, against a child, the
17 probationer shall not live in the same residence as any
18 minor child, nor exercise visitation with any minor child
19 and shall have no contact with the victim of the offense:
20 *Provided*, That the probationer may petition the court
21 of the circuit wherein he was so convicted for a
22 modification of this term and condition of his probation
23 and the burden shall rest upon the probationer to
24 demonstrate that a modification is in the best interest
25 of the child.

26 (5) That the probationer be required to pay a fee,
27 based upon his or her ability to pay, not to exceed twenty
28 dollars per month to defray costs of supervision. All
29 moneys collected as fees from probationers shall be
30 deposited with the circuit clerk who shall, on a monthly
31 basis, remit said moneys collected to the state treasurer
32 for deposit in the state general revenue fund.

33 (b) In addition the court may impose, subject to
34 modification at any time, any other conditions which it
35 may deem advisable, including, but not limited to, any
36 of the following:

37 (1) That he shall make restitution or reparation, in
38 whole or in part, immediately or within the period of
39 probation, to any party injured by the crime for which
40 he has been convicted.

41 (2) That he shall pay any fine assessed and the costs
42 of the proceeding in such installments as the court may
43 direct.

44 (3) That he shall make contribution from his earnings,

45 in such sums as the court may direct, for the support
46 of his dependents.

47 (4) That he shall, in the discretion of the court, be
48 required to serve a period of confinement in the county
49 jail of the county in which he was convicted for a period
50 not to exceed one third of the minimum sentence
51 established by law or one third of the least possible
52 period of confinement in an indeterminate sentence, but
53 in no case shall such period of confinement exceed six
54 consecutive months. The court shall have authority to
55 sentence the defendant within such six-month period to
56 intermittent periods of confinement including, but not
57 limited to, weekends or holidays and may grant unto the
58 defendant intermittent periods of release in order that
59 he may work at his employment or for such other
60 reasons or purposes as the court may deem appropriate:
61 *Provided*, That the provisions of article eleven-a of this
62 chapter shall not apply to such intermittent periods of
63 confinement and release except to the extent that the
64 court may direct. If a period of confinement is required
65 as a condition of probation, the court shall make special
66 findings that other conditions of probation are inade-
67 quate and that a period of confinement is necessary.

CHAPTER 24

(S. B. 1000—By Senators Burdette, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 20, 1994: 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 article two-d, chapter five-b of said code by adding thereto a new section, designated section eight; to amend and reenact sections seven and twenty-six, article two, chapter eighteen of said code; to further amend said article by adding thereto three new sections, designated sections seven-b, eight-a and seventeen; to further amend said chapter by adding thereto a new

article, designated article two-h; to amend and reenact sections fifteen and eighteen, article five of said chapter; to further amend said article by adding thereto a new section, designated section twenty-two-a; to amend and reenact section five, article five-a of said chapter; to amend article seven-a of said chapter by adding thereto a new section, designated section twenty-six-m; to amend and reenact section ten, article seven-b of said chapter; to amend and reenact sections two, four and eleven, article eight of said chapter; to amend and reenact sections three-a, six, six-a, seven, eight-a, nine, ten and twenty-four, article nine-a of said chapter; to further amend said article by adding thereto a new section, designated section six-b; to amend and reenact sections three and five, article twenty of said chapter; to further amend said article by adding thereto a new section, designated section one-c; to amend chapter eighteen-a of said code by adding thereto a new article, designated article three-b; to amend and reenact section five, article four of said chapter; to further amend said article by adding thereto a new section, designated section nineteen; and to amend and reenact section one-a, article five of said chapter, all relating to education, school aid formula; changes in public employees insurance agency payments by county boards of education; governor's workforce development council created; makeup of council; reports to Legislature; termination date; accepting American sign language as a credited course of study in foreign language; requiring the state board of education to prescribe programs in drug prevention, violence reduction and firearm safety; requiring the state board of education to conduct a study of staff fluctuations in schools with a high percentage of at-risk students; allowing a county board of education a waiver in implementation of uniform integrated regional computer information system under certain terms and conditions; requiring public notice and hearings prior to state-mandated educational reform; extending the instructional term limit; changing requirement for criterion referenced test for the current school year; deleting certain language relating to excess levy inequities; deleting full-day kindergarten programs

for the school year one thousand nine hundred ninety-five; requiring county boards of education to develop a policy for administering medications; requiring certain employees to administer medications and exempting others; requiring faculty senates to develop a strategic plan to manage integration of special needs students; outlining basic elements of the strategic plan; providing supplemental retirement benefits for certain teachers; recalculating employer contributions for the teachers' defined contribution retirement system; compulsory school attendance for children under eighteen; establishing misdemeanor offense for person causing a minor to miss school without just cause; penalties; establishing misdemeanor offense for person eighteen years of age or older who fails to attend school without just cause; penalties; requiring attendance director to serve notice for school absences; allowing the attendance director to make home visits; requiring attendance director to notify the division of motor vehicles of a school withdrawal within five days; changing total state basic foundation program for the year one thousand nine hundred ninety-four—one thousand nine hundred ninety-five only; changing formula for deriving workers' compensation contribution for certain personnel by county boards; providing for unfunded liability allowance for the teachers' retirement fund allowance; allocation of growth of local share; transportation allowance for the use of alternative fuel; promulgation of rules; foundation allowance for regional education service agencies; change in distribution of foundation allowance share for faculty senates; changes in foundation allowance to improve instructional programs; providing foundation allowance for public employees insurance for state-funded employees; providing for insurance payments for other education employees; providing guidelines for the integration of special needs students into regular classroom; training for regular classroom teachers; individualized education program for special needs students; providing that special education aides cannot be reassigned without their consent; county reports on integrated classrooms; requiring state superintendent to submit a state plan on integrated classrooms; establish-

ing an educators' professional standards board; composition of the board; powers and duties of the board; salary equity funding calculations for nonfiscal agency counties in counties which jointly support a multicounty vocational school; alteration of contract for certain professional and school service personnel under certain circumstances not new positions requiring posting; and extending suspension time to ten school days.

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 article two-d, chapter five-b of said code be amended by adding thereto a new section, designated section eight; that sections seven and twenty-six, article two, chapter eighteen of said code be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections seven-b, eight-a and seventeen; that said chapter be further amended by adding thereto a new article, designated article two-h; that sections fifteen and eighteen, article five of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty-two-a; that section five, article five-a of said chapter be amended and reenacted; that article seven-a of said chapter be amended by adding thereto a new section, designated section twenty-six-m; that section ten, article seven-b of said chapter be amended and reenacted; that sections two, four and eleven, article eight of said chapter be amended and reenacted; that sections three-a, six, six-a, seven, eight-a, nine, ten and twenty-four, article nine-a of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section six-b; that sections three and five, article twenty of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section one-c; that chapter eighteen-a of said code be amended by adding thereto a new article, designated article three-b; that section five, article four of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section nineteen; and that section one-a, article five of said chapter be amended and reenacted, all to read as follows:

Chapter

- 5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.
- 5B. Economic Development Act of 1985.
- 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 "PEIA", 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, excluding county boards of education beginning
20 the first day of July, one thousand nine hundred ninety-
21 five, and thereafter, is insufficient to cover the cost of
22 insurance coverage for the employer's participating

23 employees, retired employees and surviving dependents,
24 the employer shall pay the remainder of the cost from
25 its "personal services" or "unclassified" line items.
26 Beginning the first day of July, one thousand nine
27 hundred ninety-five, and thereafter, the amount of such
28 payments for county boards of education shall be
29 determined by the method set forth in section twenty-
30 four, article nine-a, chapter eighteen of this code:
31 *Provided*, That local excess levy funds shall be used only
32 for the purposes for which they were raised: *Provided*,
33 *however*, That after approval of its annual financial plan,
34 but in no event later than the thirty-first day of
35 December of each year, the finance board shall notify
36 the Legislature and county boards of education of the
37 maximum amount of employer premiums that the
38 county boards of education will be required to pay for
39 covered employees during the following fiscal year:
40 *Provided further*, That the amount shall not exceed five
41 million five hundred thousand dollars during fiscal year
42 one thousand nine hundred ninety-four: And provided
43 further, That the amount shall not exceed four million
44 dollars during fiscal year one thousand nine hundred
45 ninety-five.

46 All other employers not operating from the state
47 general revenue fund shall pay to the director their
48 share of premium costs from their respective budgets.
49 The finance board shall establish the employers' share
50 of premium costs to reflect and pay the actual costs of
51 the coverage including incurred but not reported claims.

52 The contribution of the other employers (namely: A
53 county, city or town) in the state; any separate corpo-
54 ration or instrumentality established by one or more
55 counties, cities or towns, as permitted by law; any
56 corporation or instrumentality supported in most part
57 by counties, cities or towns; any public corporation
58 charged by law with the performance of a governmental
59 function and whose jurisdiction is coextensive with one
60 or more counties, cities or towns; any comprehensive
61 community mental health center or comprehensive
62 mental retardation facility established, operated or
63 licensed by the secretary of health and human resources

64 pursuant to section one, article two-a, chapter twenty-
65 seven of this code, and which is supported in part by
66 state, county or municipal funds; and a combined city-
67 county health department created pursuant to article
68 two, chapter sixteen of this code for their employees
69 shall be such percentage of the cost of the employees'
70 insurance package as the employers deem reasonable
71 and proper under their own particular circumstances.

72 The employee's proportionate share of the premium or
73 cost shall be withheld or deducted by the employer from
74 the employee's salary or wages as and when paid and
75 the sums shall be forwarded to the director with such
76 supporting data as the director may require.

77 All moneys received by the public employees insu-
78 rance agency shall be deposited in a special fund or
79 funds as are necessary in the state treasury and the
80 treasurer of the state shall be custodian of the fund or
81 funds and shall administer the fund or funds in
82 accordance with the provisions of this article or as the
83 director may from time to time direct. The treasurer
84 shall pay all warrants issued by the state auditor against
85 the fund or funds as the director may direct in
86 accordance with the provisions of this article.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2D. WEST VIRGINIA GUARANTEED WORK FORCE PROGRAM.

§5B-2D-8. Governor's work force development council created; quarterly reports; conclusion of work and termination date.

1 The governor's work force development council is
2 hereby created to develop and implement a plan of
3 action to coordinate existing and new jobs training
4 programs in various agencies of state government,
5 including the statewide school-to-work opportunity
6 system, consistent with the needs of local communities,
7 school systems and businesses.

8 The governor's work force development council shall
9 be composed of the governor, who shall be the chair of

10 the council, or the governor's chief of staff serving as
11 the governor's designee; the commissioner of the bureau
12 of employment programs; the director of the West
13 Virginia development office; the secretary of education
14 and the arts, or the assistant director for community
15 colleges in the higher education central office serving as
16 the secretary's designee; the secretary of health and
17 human resources, or the director of the office of work
18 and training serving as the secretary's designee; the
19 state superintendent of schools, or the assistant super-
20 intendent for technical and adult education serving as
21 the superintendent's designee; the chair of the council
22 for community and economic development, or another
23 private sector member of the council serving as the
24 chair's designee; a labor representative who shall be a
25 member of the joint apprenticeship and training council
26 appointed by the governor; a small business represen-
27 tative who shall be from a firm with twenty-five or less
28 employees appointed by the governor; a representative
29 of a private proprietary school; an industry representa-
30 tive appointed by the governor; and the chair of the joint
31 commission for vocational-technical-occupational educa-
32 tion, or the executive director of the joint commission
33 serving as the chair's designee. Staff of the joint
34 commission on vocational-technical-occupational educa-
35 tion shall serve as staff of the council: *Provided*, That
36 the joint commission on vocational-technical-occupa-
37 tional education may not hire additional staff unless the
38 Legislature expressly appropriates funds therefor:
39 *Provided, however*, That the joint commission on
40 vocational-technical-occupational education shall coordi-
41 nate staff activities performed for the council with the
42 office of the governor in order to draw upon resources
43 presently existing in the various state agencies and
44 programs represented on the council. Any vocational or
45 jobs training program receiving state or federal funds
46 for education shall provide data to the council upon
47 request.

48 Beginning in the first quarter of the fiscal year, one
49 thousand nine hundred ninety-five, the governor's work
50 force development council shall make written quarterly
51 reports to the legislative oversight commission on

52 education accountability at such time and in such form
53 as the commission shall direct. Such quarterly reports
54 shall include preliminary data, conclusions and recom-
55 mendations relating to the plan of action and may
56 include specific recommendations for administrative
57 and statutory change.

58 On or before the thirtieth day of November, one
59 thousand nine hundred ninety-five, the governor's work
60 force development council as created and composed
61 under the provisions of this article shall conclude its
62 work with the issuance of a final report summarizing
63 its plan of action and specific recommendations for
64 reallocation of resources, modification of programs,
65 geographic distribution of services, proposals for
66 administrative change, and any proposals for legislation,
67 in the form of specific bills recommended to the
68 Legislature.

69 The governor's work force development council shall
70 terminate on the first day of July, one thousand nine
71 hundred ninety-six.

CHAPTER 18. EDUCATION.

Article

- 2. State Board of Education.
- 2H. Public Notice and Participation in State-Mandated Educational Reform.
- 5. County Board of Education.
- 5A. Local School Involvement.
- 7A. State Teachers Retirement System.
- 7B. Teachers' Defined Contribution Retirement System.
- 8. Compulsory School Attendance.
- 9A. Public School Support.
- 20. Education of Exceptional Children.

ARTICLE 2. STATE BOARD OF EDUCATION.

- §18-2-7. Courses of study; language of instruction.
- §18-2-7b. Programs in drug prevention and violence reduction.
- §18-2-8a. Course of study in firearms and firearm safety.
- §18-2-17. Study on fluctuating staff in schools with a high percentage of at-risk students.
- §18-2-26. Establishment of multicounty regional educational service agencies; purposes; authority to implement regional services.

§18-2-7. Courses of study; language of instruction.

1 The state board of education shall prescribe minimum
2 standards in the courses of study to be offered in
3 elementary schools, high schools, vocational schools and
4 in all other kinds, grades and classes of schools or
5 departments thereof, which may now or hereafter be
6 maintained in the state, in whole or in part, from any
7 state fund or funds: *Provided*, That the courses of study
8 in the public schools in the state shall be prepared by
9 the faculties, teachers or other constituted authority
10 thereof, and shall, before going into effect, be submitted
11 to the state board of education for its approval. The
12 basic language of instruction in all schools, public,
13 private and parochial, shall be the English language
14 only. The state board shall not adopt any policies or
15 rules which set out time requirements within the
16 instructional day for instruction in kindergarten
17 through fourth grade.

18 The state board of education shall accept American
19 sign language as a credited course of study in a foreign
20 language in elementary schools, high schools, vocational
21 schools and in all other kinds, grades and classes of
22 schools or departments thereof: *Provided*, That nothing
23 in this section shall be construed to require the provision
24 of instruction in American sign language that is not
25 otherwise required by state or federal statute or
26 regulation: *Provided, however*, That on or before the
27 sixth day of January, one thousand nine hundred ninety-
28 five, the state board shall provide to the governor and
29 to the president of the Senate and the speaker of the
30 House of Delegates a plan for teaching American sign
31 language in public schools, which plan shall include the
32 form and manner proposed by the state board for
33 implementation of the teaching of American sign
34 language in the schools, the time frame for implemen-
35 tation and the projected cost of the implementation.

**§18-2-7b. Programs in drug prevention and violence
reduction.**

1 In order for the schools to become healthy learning
2 environments and to provide a strong defense against
3 drug use and violence, the state board of education shall
4 prescribe programs within the existing health and

5 physical education program which teach resistance and
6 life skills to counteract societal and peer pressure to use
7 drugs, alcohol and tobacco, and shall include counselors,
8 teachers and staff in full implementation of the pro-
9 gram. The board shall also prescribe programs to
10 coordinate violence reduction efforts in schools and
11 between schools and their communities and to train
12 students, teachers, counselors and staff in conflict
13 resolution skills. The program shall be comprehensive,
14 interdisciplinary and shall begin in elementary school.
15 The state board shall report to the legislative oversight
16 commission on education accountability on the status of
17 the programs no later than the first day of July, one
18 thousand nine hundred ninety-five.

§18-2-8a. Course of study in firearms and firearm safety.

1 The state board of education may, with the advice of
2 the state superintendent of schools and the director of
3 the division of natural resources, prescribe an orienta-
4 tion program for use in the public schools of this state
5 in the safety of firearms. The orientation program shall
6 deal with the protection of lives and property against
7 loss or damage as a result of improper use of firearms.
8 The orientation program shall also include instruction
9 about the proper use of firearms in hunting, sport
10 competition and care and safety of firearms in the home
11 and may utilize materials prepared by any national
12 nonprofit membership organization which has as one of
13 its purposes the training of people in marksmanship and
14 the safe handling and use of firearms. The county
15 superintendent may arrange for such orientation
16 program in the safety of firearms and its use in each
17 school in the county.

§18-2-17. Study on fluctuating staff in schools with a high percentage of at-risk students.

1 The West Virginia board of education shall conduct
2 a comprehensive study of staff fluctuations in schools
3 with a high percentage of at-risk students. At-risk
4 students are defined as students with the potential for
5 academic failure, including, but not limited to, the risk
6 of dropping out of school, involvement in delinquent

7 activities and those students with free and reduced
8 lunch status. The state superintendent shall prepare a
9 written report detailing the findings, conclusions and
10 recommendations generated by the study to be pres-
11 ented to the legislative oversight commission on educa-
12 tion accountability by the first day of January, one
13 thousand nine hundred ninety-five.

**§18-2-26. Establishment of multicounty regional educa-
tional 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 education
13 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 accounta-
17 bility no later than the tenth day of January, one
18 thousand nine hundred ninety-five.

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 by: (1) Acquiring necessary, compatible equip-
103 ment to participate in the regional computer informa-
104 tion system; or (2) following receipt of a waiver from the
105 state superintendent, operating a comparable manage-
106 ment information system at a lower cost which provides
107 at least all uniform integrated regional computer
108 information system software modules and allows on-line,
109 interactive access for schools and the county board of
110 education office onto the statewide communications
111 network. All data formats shall be the same as for the
112 uniform integrated regional information system and
113 will reside at the regional computer. Any county

114 granted a waiver shall receive periodic notification of
115 any incompatibility or deficiency in its system. Con-
116 tinued inability of any county to meet the above criteria
117 shall, upon notification to the county no later than the
118 first day of April, one thousand nine hundred ninety-
119 five, require the county to use the uniform integrated
120 regional computer information system no later than the
121 first day of July, one thousand nine hundred ninety-five.
122 No county shall expand any system either through the
123 purchase of additional software or hardware that does
124 not advance the goals and implementation of the
125 uniform integrated regional computer information
126 system as recommended by the state board: *Provided,*
127 That nothing contained herein shall prevent the state
128 superintendent from granting a one-year extension to
129 those counties projected to have budget deficits for the
130 school year beginning on the first day of July, one
131 thousand nine hundred ninety-four.

132 (g) Each regional educational service agency shall
133 submit a report and evaluation of the services provided
134 and utilized by the schools within each respective
135 region. Furthermore, each school shall submit an
136 evaluation of the services provided by the regional
137 educational service agency, which shall include an
138 evaluation of the regional educational service agency
139 program, suggestions as to how to improve utilization
140 and the individual school's plan as to development of
141 new programs and enhancement of existing programs.
142 The reports shall be due by the first day of January of
143 each year commencing with the year one thousand nine
144 hundred ninety-one and shall be made available to the
145 state board of education, standing committees on
146 education of the West Virginia Senate and House of
147 Delegates and to the secretary of education and the arts.

148 (h) A regional board shall be empowered to receive
149 and disburse funds from the state and federal govern-
150 ments, member counties, gifts and grants.

151 (i) Notwithstanding any other provision of the code to
152 the contrary, employees of regional educational service
153 agencies shall be reimbursed for travel, meals and
154 lodging at the same rate as state employees under the

155 travel management office of the department of
156 administration.

157 (j) Regional educational service agencies shall hold at
158 least one half of their regular meetings during hours
159 other than those of a regular school day.

**ARTICLE 2H. PUBLIC NOTICE AND PARTICIPATION IN STATE-
MANDATED EDUCATIONAL REFORM.**

§18-2H-1. Legislative findings.

§18-2H-2. Notice, written comments and public hearing.

§18-2H-3. Procedures for hearings and public participation.

§18-2H-4. Impact of public participation.

§18-2H-1. Legislative findings.

1 The Legislature hereby finds and declares that, while
2 an educated and informed citizenry is essential to a
3 democratic society, so also is the right, opportunity and
4 guarantee that the citizenry have the right to notice and
5 participation in any state-mandated educational reform
6 which changes, or is intended to change, statewide data
7 systems, statewide curriculum, or any state-mandated
8 education reform which constitutes a significant change
9 in the philosophy or goals of education in the public
10 schools of West Virginia as that is defined by state board
11 rule.

12 In order to ensure the right and opportunity of the
13 citizenry to notice and participation in any proposed
14 state-mandated educational reform, a procedure for
15 notice to the citizenry and public hearings shall be
16 developed.

§18-2H-2. Notice, written comments and public hearing.

1 Prior to the adoption or implementation of any state-
2 mandated education reform which constitutes a signif-
3 icant change in the philosophy or goals of education in
4 the public schools of West Virginia, the state board of
5 education shall give notice and hold public hearings on
6 the proposed education reform.

7 At least sixty days prior to the date set for hearings,
8 the state board shall provide notification of the proposed
9 education reform in the manner specified in section
10 three of this article: *Provided*, That the provisions of this

11 section do not apply to emergency rules promulgated by
12 the state board of education pursuant to section ten,
13 article three-b, chapter twenty-nine-a of this code.

14 From the date of the public notice through the date
15 of the last scheduled public hearing, the state board
16 shall receive written comments to the intended state-
17 mandated education reform constituting a significant
18 change in the philosophy or goals of education in the
19 public schools of West Virginia. After the minimum
20 period of sixty days following the public notice of
21 hearings, the state board, or the state department of
22 education if so delegated by the state board, shall hold
23 not less than four public hearings at various locations
24 in the state, during which hearings the general public
25 and affected citizenry shall have the opportunity to have
26 questions and objections to the proposed education
27 reform answered and to have their views made part of
28 the public record.

29 If, after receipt of written comments and the public
30 hearings, the state board makes any change in the
31 proposed education reform, it shall make a public
32 announcement of that change not less than thirty days
33 prior to its vote on the reform. The affected citizenry
34 may submit written comments on any such changes.

**§18-2H-3. Procedures for hearings and public partici-
pation.**

1 (a) Prior to the implementation of any state-mandated
2 educational reform which constitutes a significant
3 change in the philosophy or goals in the public schools
4 of this state and the hearings required thereon, the state
5 board shall provide notice by submitting a copy of the
6 proposed reform and a press release to public and
7 private television and radio stations, disseminating
8 press releases to newspapers of general circulation, and
9 notifying the parents of students in all schools which
10 might be affected by sending notices home with the
11 students, or by distribution to the parents in any other
12 reasonable manner. The notice and plans shall be in
13 such form and contain such information as the state
14 board may require to fully inform the citizenry of the

15 nature and scope of the educational reform, including
 16 the proposed educational reform and the date, time and
 17 place of the public hearings.

18 (b) The state board shall provide timely written notice
 19 to any person who has asked the state board to place the
 20 person's name on a mailing list maintained by the state
 21 board.

22 (c) The state board shall maintain a verbatim record
 23 of all hearings.

24 (d) The state board may not impose fees or other
 25 charges for such a public hearing.

§18-2H-4. Impact of public participation.

1 The extent of additional information received by the
 2 state board from the general public and the affected
 3 citizenry, with respect to the impact of the proposed
 4 educational reform, may be cause for the state board to
 5 change, alter, amend, implement or rescind the pro-
 6 posed educational reform.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15. School term; exception; levies; ages of persons to whom schools
 are open.

§18-5-18. Kindergarten programs.

§18-5-22a. Policy for the administration of medications.

§18-5-15. School term; exception; levies; ages of persons to whom schools are open.

1 (a) The board shall provide a school term for its
 2 schools which shall be comprised of: (1) An employment
 3 term for teachers; and (2) an instructional term for
 4 pupils. Nothing in this section shall prohibit the
 5 establishment of year-round schools in accordance with
 6 rules to be established by the state board.

7 The employment term for teachers shall be no less
 8 than ten months, a month to be defined as twenty
 9 employment days exclusive of Saturdays and Sundays:
 10 *Provided*, That the board may contract with all or part
 11 of the personnel for a longer term. The employment
 12 term shall be fixed within such beginning and closing
 13 dates as established by the state board: *Provided*,

14 *however*, That the time between the beginning and
15 closing dates does not exceed forty-three weeks.

16 Within the employment term there shall be an
17 instructional term for pupils of not less than one
18 hundred eighty nor more than one hundred eighty-five
19 instructional days: *Provided*, That the minimum instruc-
20 tional term may be decreased, by order of the state
21 superintendent of schools, in any West Virginia county
22 declared to be a federal disaster area by the federal
23 emergency management agency. Instructional and
24 noninstructional activities may be scheduled during the
25 same employment day. Noninstructional interruptions
26 to the instructional day shall be minimized to allow the
27 classroom teacher to teach. The instructional term shall
28 commence no earlier than the twenty-sixth day of
29 August and shall terminate no later than the eighth day
30 of June: *Provided, however*, That the state board of
31 education shall evaluate data which shall be submitted
32 by each county by the first of June, one thousand nine
33 hundred ninety-four, regarding the climate control
34 conditions, such as air conditioning and related informa-
35 tion at each school in the county, and how these
36 conditions impact on the instructional term.

37 The criterion referenced test mandated in section two,
38 article two-e of this chapter shall not be required to be
39 given during school year one thousand nine hundred
40 ninety-three—ninety-four.

41 Noninstructional days in the employment term may
42 be used for making up canceled instructional days,
43 curriculum development, preparation for opening and
44 closing of the instructional term, in-service and profes-
45 sional training of teachers, teacher-pupil-parent confer-
46 ences, professional meetings and other related activities.
47 In addition, each board shall designate and schedule for
48 teachers and service personnel six days to be used by
49 the employee outside the school environment. However,
50 no more than eight noninstructional days, except
51 holidays, may be scheduled prior to the first day of
52 January in a school term.

53 Notwithstanding any other provisions of the law to the

54 contrary, if the board has canceled instructional days
55 equal to the difference between the total instructional
56 days scheduled and one hundred seventy-eight, each
57 succeeding instructional day canceled shall be resched-
58 uled, utilizing only the remaining noninstructional
59 days, except holidays, following such cancellation, which
60 are available prior to the second day before the end of
61 the employment term established by such county board.

62 Where the employment term overlaps a teacher's or
63 service personnel's participation in a summer institute
64 or institution of higher education for the purpose of
65 advancement or professional growth, the teacher or
66 service personnel may substitute, with the approval of
67 the county superintendent, such participation for not
68 more than five of the noninstructional days of the
69 employment term.

70 The board may extend the instructional term beyond
71 one hundred eighty-five instructional days provided the
72 employment term is extended an equal number of days.
73 If the state revenues and regular levies, as provided by
74 law, are insufficient to enable the board of education to
75 provide for the school term, the board may at any
76 general or special election, if petitioned by at least five
77 percent of the qualified voters in the district, submit the
78 question of additional levies to the voters. If at the
79 election a majority of the qualified voters cast their
80 ballots in favor of the additional levy, the board shall
81 fix the term and lay a levy necessary to pay the cost of
82 the additional term. The additional levy fixed by the
83 election shall not continue longer than five years without
84 submission to the voters. The additional rate shall not
85 exceed by more than one hundred percent the maximum
86 school rate prescribed by article eight, chapter eleven
87 of the code, as amended.

88 (b) The public schools shall be open for the full
89 instructional term to all persons who have attained the
90 entrance age as stated in section five, article two and
91 section eighteen, article five, chapter eighteen of this
92 code: *Provided*, That any student suspended or expelled
93 from public or private school shall only be permitted to
94 enroll in public school upon the approval of the

95 superintendent of the county where the student seeks
96 enrollment: *Provided, however,* That in making such
97 decision, the principal of the school in which the student
98 may enroll shall be consulted by the superintendent and
99 the principal may make a recommendation to the
100 superintendent concerning the student's enrollment in
101 his or her new school: *Provided further,* That if enrol-
102 lment to public school is denied by the superintendent,
103 the student may petition the board of education where
104 the student seeks enrollment.

105 Persons over the age of twenty-one may enter only
106 those programs or classes authorized by the state board
107 of education and deemed appropriate by the county
108 board of education conducting any such program or
109 class: *Provided,* That authorization for such programs or
110 classes shall in no way serve to affect or eliminate
111 programs or classes offered by county boards of
112 education at the adult level for which fees are charged
113 to support such programs or classes.

§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 the first day of September of the school year
6 in which the pupil enters such kindergarten program
7 and may establish kindergarten programs designed for
8 children below the age of five: *Provided,* That beginning
9 with the school year one thousand nine hundred ninety-
10 six—ninety-seven, such programs shall be full-day
11 everyday. Before the first day of November, one
12 thousand nine hundred ninety-four, the state board shall
13 review cost estimates and report to the legislative
14 oversight commission on education accountability on the
15 feasibility of implementing a full-time kindergarten
16 program.

17 Persons employed as kindergarten teachers, as
18 distinguished from paraprofessional personnel, shall be
19 required to hold a certificate valid for teaching at the
20 assigned level as prescribed by regulations established

21 by the state board of education. The state board of
22 education shall establish and prescribe guidelines and
23 criteria setting forth the minimum requirements for all
24 paraprofessional personnel employed in kindergarten
25 programs established pursuant to the provisions of this
26 section and no such paraprofessional personnel shall be
27 employed in any kindergarten program unless he meets
28 such minimum requirements.

29 The state board of education with the advice of the
30 state superintendent of free schools shall establish and
31 prescribe guidelines and criteria relating to the estab-
32 lishment, operation and successful completion of kinder-
33 garten programs in accordance with the other provi-
34 sions of this section. Guidelines and criteria so estab-
35 lished and prescribed are also intended to serve for the
36 establishment and operation of nonpublic kindergarten
37 programs and shall be used for the evaluation and
38 approval of such programs, provided application for
39 such evaluation and approval is made in writing to the
40 state board by proper authorities in control of such
41 programs. The state superintendent of free schools at
42 intervals not to exceed two years shall publish a list of
43 nonpublic kindergarten programs that have been
44 approved in accordance with the provisions of this
45 section and a list of Montessori kindergartens estab-
46 lished and operated in accordance with usual and
47 customary practices for the use of the Montessori
48 method. Teachers who have training or experience in
49 the use of the Montessori method of instruction for
50 kindergartens shall be deemed to be approved to teach
51 in such kindergartens using the Montessori method
52 without additional certification.

53 Pursuant to such guidelines and criteria, and only
54 pursuant to such guidelines and criteria, the county
55 boards may establish programs taking kindergarten to
56 the homes of the children involved, using educational
57 television, paraprofessional personnel in addition to and
58 to supplement regularly certified teachers, mobile or
59 permanent classrooms and other means developed to
60 best carry kindergarten to the child in its home and
61 enlist the aid and involvement of its parent or parents

62 in presenting the program to the child; or may develop
63 programs of a more formal kindergarten type, in
64 existing school buildings, or both, as such county board
65 may determine, taking into consideration the cost, the
66 terrain, the existing available facilities, the distances
67 each child may be required to travel, the time each child
68 may be required to be away from home, the child's
69 health, the involvement of parents and such other
70 factors as each county board may find pertinent. Such
71 determinations by any county board shall be final and
72 conclusive.

73 Funds for implementing the kindergarten programs
74 during the fiscal year one thousand nine hundred
75 seventy-two, and thereafter, shall be allocated to
76 counties from a special appropriation to the state
77 department of education from the general revenue fund:
78 *Provided*, That except for expenditures from the general
79 revenue funds for regional kindergarten demonstration
80 centers, in no event shall any state money from the
81 general fund be expended under the provisions of this
82 section unless federal funds are available for the
83 purposes of this section.

84 Allocations to counties will be made on the basis of
85 approved kindergarten programs. The West Virginia
86 board of education shall establish criteria and standards
87 necessary to guide counties in developing approvable
88 kindergarten programs and shall determine funding
89 levels of said programs on local operating costs.

90 An additional appropriation shall be made to the state
91 department of education from the general revenue fund
92 to establish and operate during the fiscal year one
93 thousand nine hundred seventy-two, regional kinder-
94 garten demonstration centers in educational regions
95 three, four, five, six and seven, and thereafter in regions
96 one through seven. Said funds shall be allocated to said
97 regions for establishing and operating regional demon-
98 stration centers in accordance with criteria and stand-
99 ards established by the West Virginia board of educa-
100 tion. Said regional centers shall be established to
101 provide exemplary and innovative kindergarten pro-
102 grams, to provide laboratory experiences for preservice

103 and in-service education for professional personnel and
104 staff development programs for training paraprofes-
105 sional personnel, to establish organizational and admi-
106 nistrative machinery designed to promote cooperation
107 between and among all agencies involved in the
108 education and development of young children and to
109 promote cooperation between counties in providing high
110 cost supervisory, developmental, research and evalua-
111 tive services not currently available to individual
112 counties.

§18-5-22a. Policy for the administration of medications.

1 All county boards of education shall develop a specific
2 medication administration policy which establishes the
3 procedure to be followed for the administration of
4 medication at each school.

5 No school employee shall be required to administer
6 medications: *Provided*, That nothing herein shall
7 prevent any school employee to elect to administer
8 medication after receiving training as provided herein:
9 *Provided, however*, That any school employee in the field
10 of special education whose employment commenced on
11 or after the first day of July, one thousand nine hundred
12 eighty-nine, may be required to administer medications
13 after receiving training as provided herein.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

**§18-5A-5. Public school faculty senates established;
election of officers; powers and duties.**

1 (a) There is established at every public school in this
2 state a faculty senate which shall be comprised of all
3 permanent, full-time professional educators employed at
4 the school who shall all be voting members. Professional
5 educators as used in this section means professional
6 educators as defined in chapter eighteen-a of this code.
7 A quorum of more than one half of the voting members
8 of the faculty shall be present at any meeting of the
9 faculty senate at which official business is conducted.
10 Prior to the beginning of the instructional term each
11 year, but within the employment term, the principal
12 shall convene a meeting of the faculty senate to elect a

13 chair, vice chair and secretary and discuss matters
14 relevant to the beginning of the school year. The vice
15 chair shall preside at meetings when the chair is absent.
16 Meetings of the faculty senate shall be held on a regular
17 basis as determined by a schedule approved by the
18 faculty senate and amended from time to time if needed.
19 Emergency meetings may be held at the call of the chair
20 or a majority of the voting members by petition
21 submitted to the chair and vice chair. An agenda of
22 matters to be considered at a scheduled meeting of the
23 faculty senate shall be available to the members at least
24 two employment days prior to the meeting, and in the
25 case of emergency meetings, as soon as possible prior to
26 the meeting. The chair of the faculty senate may appoint
27 such committees as may be desirable to study and
28 submit recommendations to the full faculty senate, but
29 the acts of the faculty senate shall be voted upon by the
30 full body.

31 (b) In addition to any other powers and duties
32 conferred by law, or authorized by policies adopted by
33 the state or county board of education or bylaws which
34 may be adopted by the faculty senate not inconsistent
35 with law, the powers and duties listed in this subsection
36 are specifically reserved for the faculty senate. The
37 intent of these provisions is neither to restrict nor to
38 require the activities of every faculty senate to the
39 enumerated items except as otherwise stated. Each
40 faculty senate shall organize its activities as it deems
41 most effective and efficient based on school size,
42 departmental structure and other relevant factors.

43 (1) Each faculty senate shall control funds allocated
44 to the school from legislative appropriations pursuant to
45 section nine, article nine-a of this chapter. From such
46 funds, each classroom teacher and librarian shall be
47 allotted fifty dollars for expenditure during the instruc-
48 tional year for academic materials, supplies or equip-
49 ment which in the judgment of the teacher or librarian
50 will assist him or her in providing instruction in his or
51 her assigned academic subjects, or shall be returned to
52 the faculty senate: *Provided*, That nothing contained
53 herein shall prohibit such funds from being used for

54 programs and materials that, in the opinion of the
55 teacher, enhance student behavior, increase academic
56 achievement, improve self-esteem and address the
57 problems of students at-risk. The remainder of funds
58 shall be expended for academic materials, supplies or
59 equipment in accordance with a budget approved by the
60 faculty senate. Notwithstanding any other provisions of
61 the law to the contrary, funds not expended in one school
62 year shall be available for expenditure in the next school
63 year: *Provided, however,* That the amount of county
64 funds budgeted in a fiscal year, shall not be reduced
65 throughout the year as a result of the faculty appropri-
66 ations in the same fiscal year for such materials,
67 supplies and equipment. Accounts shall be maintained
68 of the allocations and expenditures of such funds for the
69 purpose of financial audit. Academic materials, supplies
70 or equipment shall be interpreted broadly, but shall not
71 include materials, supplies or equipment which will be
72 used in or connected with interscholastic athletic events.

73 (2) A faculty senate may establish a process for
74 faculty members to interview new prospective profes-
75 sional educators and paraprofessional employees at the
76 school and submit recommendations regarding employ-
77 ment to the principal, who may also make independent
78 recommendations, for submission to the county superin-
79 tendent: *Provided,* That such process must permit the
80 timely employment of persons to perform necessary
81 duties.

82 (3) A faculty senate may nominate teachers for
83 recognition as outstanding teachers under state and
84 local teacher recognition programs and other personnel
85 at the school, including parents, for recognition under
86 other appropriate recognition programs and may
87 establish such programs for operation at the school.

88 (4) A faculty senate may submit recommendations to
89 the principal regarding the assignment scheduling of
90 secretaries, clerks, aides and paraprofessionals at the
91 school.

92 (5) A faculty senate may submit recommendations to
93 the principal regarding establishment of the master

94 curriculum schedule for the next ensuing school year.

95 (6) A faculty senate may establish a process for the
96 review and comment on sabbatical leave requests
97 submitted by employees at the school pursuant to section
98 eleven, article two of this chapter.

99 (7) Each faculty senate shall elect three faculty
100 representatives to the local school improvement council
101 established pursuant to section two of this article.

102 (8) Each faculty senate may nominate a member for
103 election to the county staff development council pursu-
104 ant to section eight, article three, chapter eighteen-a of
105 this code.

106 (9) Each faculty senate shall have an opportunity to
107 make recommendations on the selection of faculty to
108 serve as mentors for beginning teachers under begin-
109 ning teacher internship programs at the school.

110 (10) A faculty senate may solicit, accept and expend
111 any grants, gifts, bequests, donations and any other
112 funds made available to the faculty senate: *Provided,*
113 That the faculty senate shall select a member who shall
114 have the duty of maintaining a record of all funds
115 received and expended by the faculty senate, which
116 record shall be kept in the school office and shall be
117 subject to normal auditing procedures.

118 (11) On or after the first day of January, one thousand
119 nine hundred ninety-two, any faculty senate may review
120 the evaluation procedure as conducted in their school to
121 ascertain whether such evaluations were conducted in
122 accordance with the written system required pursuant
123 to section twelve, article two, chapter eighteen-a of this
124 code and the general intent of this Legislature regard-
125 ing meaningful performance evaluations of school
126 personnel. If a majority of members of the faculty senate
127 determine that such evaluations were not so conducted,
128 they shall submit a report in writing to the state board
129 of education: *Provided,* That nothing herein shall create
130 any new right of access to or review of any individual's
131 evaluations.

132 (12) Each faculty senate shall be provided by its local

133 board of education at least a two-hour per month block
134 of noninstructional time within the school day: *Provided,*
135 That any such designated day shall constitute a full
136 instructional day. This time may be utilized and
137 determined at the local school level and shall include,
138 but not be limited to, faculty senate meetings.

139 (13) Each faculty senate shall develop a strategic plan
140 to manage the integration of special needs students into
141 the regular classroom at their respective schools and
142 submit said strategic plan to the superintendent of the
143 county board of education by the first day of March, one
144 thousand nine hundred ninety-five, and periodically
145 thereafter pursuant to guidelines developed by the state
146 department of education. Each faculty senate shall
147 encourage the participation of local school improvement
148 councils, parents and the community at large in the
149 development of the strategic plan for each school.

150 Each strategic plan developed by the faculty senate
151 shall include at least: (A) A mission statement; (B) goals;
152 (C) needs; (D) objectives and activities to implement
153 plans relating to each goal; (E) work in progress to
154 implement the strategic plan; (F) guidelines for the
155 placement of additional staff into integrated classrooms
156 to meet the needs of exceptional needs students without
157 diminishing the services rendered to the other students
158 in integrated classrooms; (G) guidelines for implemen-
159 tation of collaborative planning and instruction; and (H)
160 training for all regular classroom teachers who serve
161 students with exceptional needs in integrated class-
162 rooms.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26m. Supplemental benefits for certain teachers.

1 (a) As an additional supplement to other retirement
2 allowances provided, each annuitant whose annuity was
3 approved by the retirement board prior to the first day
4 of January, one thousand nine hundred seventy-one, and
5 who is receiving a monthly pension of three hundred
6 dollars or less, shall receive a monthly amount equal to
7 one dollar multiplied by his or her total service credit.

8 (b) As an additional supplement to other retirement
9 allowances provided, each annuitant whose annuity was
10 approved on or after the first day of July, one thousand
11 nine hundred eighty-two, and before the first day of
12 July, one thousand nine hundred eighty-four, shall
13 receive a monthly amount equal to two dollars multip-
14 lied by his or her total service credit.

**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. The pro rata share of this
4 amount shall be paid upon each date that a member
5 contribution is made and shall be remitted as provided
6 for in section nine of this article for credit to the
7 member's annuity account. Each participating employer
8 has a fiduciary duty to its employees to ensure that the
9 employer contributions are timely made. In the case of
10 an officer or employee of the state, any unpaid contri-
11 bution shall be a state debt, contracted as a result of a
12 casual deficit in state revenues, to be accorded preferred
13 status over other expenditures.

14 In the event that any payment is not timely made, the
15 participating employer shall immediately give to the
16 employee and the state auditor notice in writing of the
17 nonpayment, in such form and accompanied by such
18 documentation as may be required by the auditor.
19 Notice to the auditor shall operate in the manner of a
20 requisition, and the auditor shall transmit a warrant to
21 the treasurer. At such time as funds are available in the
22 appropriate account, the treasurer shall pay the
23 employer contribution, together with appropriate daily
24 interest.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-2. Offenses; penalties; cost of prosecution.

§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.

§18-8-11. School attendance as condition of licensing for privilege of operation of motor vehicle.

§18-8-2. Offenses; penalties; cost of prosecution.

1 Any person who, after receiving due notice, shall fail
2 to cause a child or children under eighteen years of age
3 in that person's legal or actual charge to attend school
4 in violation of the provisions of this article or without
5 just cause, shall be guilty of a misdemeanor, and shall,
6 upon conviction of a first offense, be fined not less than
7 fifty nor more than one hundred dollars together with
8 the costs of prosecution, or required to accompany the
9 child to school and remain through the school day for
10 so long as the magistrate or judge may determine is
11 appropriate. The magistrate or judge, upon conviction
12 and pronouncing sentence, may delay the sentence for
13 a period of sixty school days provided the child is in
14 attendance everyday during said sixty-day period.
15 Following the sixty-day period, if said child was present
16 at school for every school day, the delayed sentence may
17 be suspended and not enacted. Upon conviction of a
18 second offense, a fine may be imposed of not less than
19 fifty dollars nor more than one hundred dollars together
20 with the costs of prosecution and the person may be
21 required to accompany the child to school and remain
22 throughout the school day until such time as the
23 magistrate or judge may determine is appropriate or
24 confined in jail not less than five nor more than twenty
25 days. Every day a child is out of school contrary to the
26 provisions of this article shall constitute a separate
27 offense. Magistrates shall have concurrent jurisdiction
28 with circuit courts for the trial of offenses arising under
29 this section.

30 Any person eighteen years of age or older who is
31 enrolled in school who, after receiving due notice, fails
32 to attend school in violation of the provisions of this
33 article or without just cause, shall be guilty of a
34 misdemeanor and shall, upon conviction of a first
35 offense, be fined not less than fifty dollars nor more than
36 one hundred dollars together with the costs of prosecu-
37 tion and required to attend school and remain through-
38 out the school day. The magistrate or judge, upon
39 conviction and pronouncing sentence, may delay the
40 imposition of a fine for a period of sixty school days

41 provided the person is in attendance every day during
42 said sixty-day period. Following the sixty-day period, if
43 said student was present at school everyday, the delayed
44 sentence may be suspended and not enacted. Upon
45 conviction of a second offense, a fine may be imposed
46 of not less than fifty dollars nor more than one hundred
47 dollars together with the costs of prosecution and the
48 person may be required to go to school and remain
49 throughout the school day until such time as the person
50 graduates or withdraws from school or confined in jail
51 not less than five nor more than twenty days. Every day
52 a student is out of school contrary to the provisions of
53 this article shall constitute a separate offense. Magis-
54 trates shall have concurrent jurisdiction with circuit
55 courts for the trial of offenses arising under this section.

56 Upon conviction of a third offense, any person
57 eighteen years of age or older who is enrolled in school
58 shall be withdrawn from school during the remainder
59 of that school year. Enrollment of that person in school
60 during the next school year or years thereafter shall be
61 conditional upon all absences being excused as defined
62 in law, state board policy and county board of education
63 policy. More than one unexcused absence of such a
64 student shall be grounds for the director of attendance
65 to authorize the school to withdraw the person for the
66 remainder of the school year. Magistrates shall have
67 concurrent jurisdiction with circuit courts for the trial
68 of offenses arising under this section.

**§18-8-4. Duties of attendance director and assistant
directors; complaints, warrants and hear-
ings.**

1 The county attendance director and the assistants
2 shall diligently promote regular school attendance. They
3 shall ascertain reasons for inexcusable absences from
4 school of pupils of compulsory school age as defined
5 under this article and shall take such steps as are, in
6 their discretion, best calculated to correct attitudes of
7 parents and pupils which results in absences from school
8 even though not clearly in violation of law.

9 In the case of five consecutive or ten total unexcused

10 absences of a child during a single semester, the
11 attendance director or assistant shall serve written
12 notice to the parent, guardian or custodian of such child
13 that the attendance of such child at school is required
14 and that within ten days of receipt of such notice the
15 parent, guardian or custodian, accompanied by the
16 child, shall report in person to the school the child
17 attends for a conference with the principal or other
18 designated representative of the school in order to
19 discuss and correct the circumstances causing the
20 inexcusable absences of the child; and if the parent,
21 guardian or custodian does not comply with the provi-
22 sions of this article, then the attendance director or
23 assistant shall make complaint against such parent,
24 guardian or custodian before a magistrate of the county.
25 The attendance director or assistant shall serve such
26 notice for other absences from school found to be in
27 violation of law. For any similar subsequent offense in
28 any school year no notice shall be required. If it appears
29 from the complaint that there is probable cause to
30 believe that an offense has been committed and that the
31 accused has committed it, a warrant for the arrest of
32 the accused shall issue to any officer authorized by law
33 to arrest persons charged with offenses against the state.
34 More than one warrant may be issued on the same
35 complaint. The warrant shall be executed within ten
36 days of its issuance.

37 The magistrate court clerk, or the clerk of the circuit
38 court performing the duties of the magistrate court as
39 authorized in section eight, article one, chapter fifty of
40 this code, shall assign the case to a magistrate within
41 ten days of execution of the warrant. The hearing shall
42 be held within twenty days of the assignment to the
43 magistrate, subject to lawful continuance. The magis-
44 trate shall provide to the accused at least ten days'
45 advance notice of the date, time and place of the
46 hearing.

47 When any doubt exists as to the age of a child absent
48 from school, the attendance director shall have authority
49 to require a properly attested birth certificate or an
50 affidavit from the parent, guardian or custodian of such

51 child, stating age of such child. The county attendance
52 director or assistant shall, in the performance of his
53 duties, have authority to take without warrant any child
54 absent from school in violation of the provisions of this
55 article and to place such child in the school in which
56 such child is or should be enrolled.

57 The county attendance director shall devote such time
58 as is required by section three of this article to the duties
59 of attendance director in accordance with this section
60 during the instructional term and at such other times
61 as the duties of an attendance director are required. All
62 attendance directors hired for more than two hundred
63 days may be assigned other duties determined by the
64 superintendent during the period in excess of two
65 hundred days. The county attendance director shall be
66 responsible under direction of the county superintendent
67 for the efficient administration of school attendance in
68 the county.

69 In addition to those duties directly relating to the
70 administration of attendance, the county attendance
71 director and assistant directors shall also perform the
72 following duties:

73 (a) Assist in directing the taking of the school census
74 to see that it is taken at the time and in the manner
75 provided by law;

76 (b) Confer with principals and teachers on the
77 comparison of school census and enrollment for the
78 detection of possible nonenrollees;

79 (c) Cooperate with existing state and federal agencies
80 charged with enforcement of child labor laws;

81 (d) Prepare a report for submission by the county
82 superintendent to the state superintendent of schools on
83 school attendance, at such times and in such detail as
84 may be required; also, file with the county superintend-
85 ent and county board of education at the close of each
86 month a report showing activities of the school attend-
87 ance office and the status of attendance in the county
88 at the time;

89 (e) Promote attendance in the county by the compi-

90 lation of data for schools and by furnishing suggestions
91 and recommendations for publication through school
92 bulletins and the press, or in such manner as the county
93 superintendent may direct;

94 (f) Participate in school teachers' conferences with
95 parents and students;

96 (g) Assist in such other ways as the county superin-
97 tendent may direct for improving school attendance;

98 (h) Make home visits of students who have excessive
99 unexcused absences, as provided above, or if requested
100 by the chief administrator, principal or assistant
101 principal.

**§18-8-11. School attendance as condition of licensing for
privilege of operation of motor vehicle.**

1 (a) In accordance with the provisions of sections three
2 and five, article two, chapter seventeen-b of this code,
3 the division of motor vehicles shall deny a license or
4 instruction permit for the operation of a motor vehicle
5 to any person under the age of eighteen who does not
6 at the time of application present a diploma or other
7 certificate of graduation issued to the person from a
8 secondary high school of this state or any other state or
9 documentation that the person: (1) Is enrolled and
10 making satisfactory progress in a course leading to a
11 general educational development certificate (GED) from
12 a state approved institution or organization, or has
13 obtained such certificate; (2) is enrolled in a secondary
14 school of this state or any other state; or (3) is excused
15 from such requirement due to circumstances beyond his
16 or her control.

17 (b) The attendance director or chief administrator
18 shall provide documentation of enrollment status on a
19 form approved by the department of education to any
20 student sixteen years of age or older upon request who
21 is properly enrolled in a school under the jurisdiction of
22 said official for presentation to the division of motor
23 vehicles on application for or reinstatement of an
24 instruction permit or license to operate a motor vehicle.
25 Whenever a student sixteen years of age or older

26 withdraws from school, except as provided in subsection
27 (d) of this section, the attendance director or chief
28 administrator shall notify the division of motor vehicles
29 of such withdrawal not later than five days from the
30 withdrawal date. Within five days of receipt of such
31 notice, the division of motor vehicles shall send notice
32 to the licensee that the license will be suspended under
33 the provisions of section three, article two, chapter
34 seventeen-b of this code on the thirtieth day following
35 the date the notice was sent unless documentation of
36 compliance with the provisions of this section is received
37 by the division of motor vehicles before such time.

38 (c) For the purposes of this section, withdrawal shall
39 be defined as more than ten consecutive or fifteen days
40 total unexcused absences during a single semester. For
41 the purposes of this section, suspension or expulsion
42 from school or imprisonment in a jail or a penitentiary
43 is not a circumstance beyond the control of such person.

44 (d) Whenever the withdrawal from school of such
45 student, or such student's failure to enroll in a course
46 leading to or to obtain a GED or high school diploma,
47 is beyond the control of such student, or is for the
48 purpose of transfer to another school as confirmed in
49 writing by the student's parent or guardian, no such
50 notice shall be sent to the division of motor vehicles to
51 suspend the student's motor vehicle operator's license,
52 and if the student is applying for a license, the
53 attendance director or chief administrator shall provide
54 the student with documentation to present to the
55 division of motor vehicles to excuse such student from
56 the provisions of this section. The school district
57 superintendent (or the appropriate school official of any
58 private secondary school) with the assistance of the
59 county attendance director and any other staff or school
60 personnel shall be the sole judge of whether such
61 withdrawal is due to circumstances beyond the control
62 of such person.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-3a. Total state basic foundation program for fiscal year one thousand
nine hundred ninety-four—ninety-five only.

- §18-9A-6. Foundation allowance for fixed charges.
 §18-9A-6a. Teachers retirement fund allowance; unfunded liability allowance.
 §18-9A-6b. Allocation of growth of local share.
 §18-9A-7. Foundation allowance for transportation cost.
 §18-9A-8a. Foundation allowance for regional educational service agencies.
 §18-9A-9. Foundation allowance for other current expense and substitute employees.
 §18-9A-10. Foundation allowance to improve instructional programs.
 §18-9A-24. Foundation allowance for public employees insurance fund.

§18-9A-3a. Total state basic foundation program for fiscal year one thousand nine hundred ninety-four—ninety-five only.

1 Notwithstanding any other provisions 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-four—ninety-five shall be the sum of the amounts
 5 computed in accordance with this section, less the
 6 county's local share:

7 (1) Allowance for professional educators as deter-
 8 mined in accordance with sections four and five-a of this
 9 article;

10 (2) Allowance for service personnel as determined in
 11 accordance with sections five and five-a of this article;

12 (3) Allowance for fixed charges as determined in
 13 accordance with the provisions of sections six and six-
 14 a of this article;

15 (4) Allowance for transportation cost in an amount at
 16 least equal to the appropriation for such allowance in
 17 the fiscal year one thousand nine hundred ninety-three—
 18 ninety-four;

19 (5) Allowance for administrative cost in accordance
 20 with the provisions of sections eight and eight-a of this
 21 article;

22 (6) Allowance for other current expense and substi-
 23 tute employees in an amount at least equal to the
 24 appropriation for such allowance in the fiscal year one
 25 thousand nine hundred ninety-three—ninety-four:
 26 *Provided*, That the allocation of such funds for expen-
 27 diture by faculty senates shall be in accordance with the

28 provisions of section nine of this article;

29 (7) Allowance to improve instructional programs in an
30 amount at least equal to the appropriation for such
31 allowance in the fiscal year one thousand nine hundred
32 ninety-three—ninety-four.

§18-9A-6. Foundation allowance for fixed charges.

1 The total allowance for fixed charges shall be the sum
2 of the following:

3 (1) The sum of the foundation allowance for profes-
4 sional educators and the foundation allowance for other
5 personnel, as determined in sections four and five above,
6 multiplied by the current social security rate of
7 contribution; plus

8 (2) The sum of the foundation allowance for profes-
9 sional educators and the foundation allowance for other
10 personnel, as determined in sections four and five above,
11 multiplied by four hundredths of one percent as an
12 allowance for unemployment compensation contribution;
13 plus

14 (3) The sum of the foundation allowance for profes-
15 sional educators and the foundation allowance for other
16 personnel, as determined in sections four and five above,
17 multiplied by the rate which is derived by dividing the
18 total estimated contributions for workers' compensation
19 for all county boards by the sum of the foundation
20 allowance for professional educators and other person-
21 nel, as determined in sections four and five above. The
22 total estimated contribution for workers compensation is
23 determined by multiplying each county board's allo-
24 wance for professional educators and other personnel, as
25 determined by sections four and five above, by the
26 county's actual contribution rate by using data of the
27 most recent year for which it is available; plus

28 (4) The teachers retirement fund allowance as
29 determined in section six-a of this article.

**§18-9A-6a. Teachers retirement fund allowance; un-
funded liability allowance.**

1 (a) The total teachers retirement fund allowance shall

2 be the sum of the basic foundation allowance for
3 professional educators and the basic foundation allo-
4 wance for service personnel, as provided in sections four
5 and five of this article; all salary equity appropriations
6 authorized in section five, article four of chapter
7 eighteen-a; and such amounts as are to be paid by the
8 counties pursuant to sections five-a and five-b of said
9 article to the extent such county salary supplements are
10 equal to the amount distributed for salary equity among
11 the counties, multiplied by fifteen percent.

12 (b) The teachers retirement fund allowance amounts
13 provided for in subsection (a) of this section shall be
14 accumulated in the employers accumulation fund of the
15 state teachers retirement system pursuant to section
16 eighteen, article seven-a of this chapter, and shall be in
17 lieu of the contribution required of employers pursuant
18 to subsection (b) of said section as to all personnel
19 included in the allowance for state aid in accordance
20 with sections four and five of this article.

21 (c) In addition to the teachers retirement fund
22 allowance provided for in subsection (a) of this section,
23 there shall be an allowance for the reduction of any
24 unfunded liability of the teachers retirement fund in
25 accordance with the following provisions of this subsec-
26 tion. On or before the thirty-first day of December of
27 each year, the actuary or actuarial firm employed in
28 accordance with the provisions of section four, article
29 ten-d, chapter five of this code shall submit a report to
30 the president of the Senate and the speaker of the House
31 of Delegates which sets forth an actuarial valuation of
32 the teachers retirement fund as of the preceding
33 thirtieth day of June. Each annual report shall recom-
34 mend the actuary's best estimate, at that time, of the
35 funding necessary to both eliminate the unfunded
36 liability over a forty-year period beginning on the first
37 day of July, one thousand nine hundred ninety-four, and
38 to meet the cash flow requirements of the fund in
39 fulfilling its future anticipated obligations to its
40 members. In determining the amount of funding
41 required, the actuary shall take into consideration all
42 funding otherwise available to the fund for that year

43 from any source: *Provided*, That the appropriation and
44 allocation to the teachers' retirement fund made
45 pursuant to the provisions of sections six-b of this article
46 shall not be included in the determination of the
47 requisite funding amount. In any year in which the
48 actuary determines that the teachers retirement fund is
49 not being funded in such a manner, the allowance made
50 for the unfunded liability for the next fiscal year shall
51 be not less than the amount of the actuary's best
52 estimate of the amount necessary to conform to the
53 funding requirements set forth in this subsection.

§18-9A-6b. Allocation of growth of local share.

1 Beginning with the first day of July, one thousand
2 nine hundred ninety-five, and thereafter, an appropri-
3 ation and allocation due to the increase in local share
4 not to exceed seven million dollars above that computed
5 for the previous year, which increase may be attribu-
6 table to any increase in the tax rate as enacted by the
7 Legislature in accordance with the provisions of
8 subsection (b), section six-f, article eight, chapter eleven
9 of this code, shall be allocated to the state teachers'
10 retirement system, which appropriation and allocation
11 shall be in addition to the amounts required by section
12 six-a of this article or any other retirement contributions
13 as may be required to the state teachers retirement
14 system set forth in article seven-a of this chapter and
15 which shall be accumulated in the employers accumu-
16 lation fund created in section eighteen of said article
17 seven-a.

§18-9A-7. Foundation allowance for transportation cost.

1 The allowance in the foundation school program for
2 each county for transportation shall be the sum of the
3 following computations:

4 (1) Eighty percent of the transportation cost within
5 each county for maintenance, operation and related
6 costs, exclusive of all salaries: *Provided*, That for the
7 school year beginning the first day of July, one thousand
8 nine hundred ninety-four, and thereafter, in the event
9 a county uses an alternative fuel such as compressed
10 natural gas or other acceptable alternative fuel for the

11 operation of all or any portion of its school bus system,
12 then the allowance in the foundation school program for
13 each such county for that portion of its school bus system
14 shall be ninety percent of the transportation cost for
15 maintenance, operation and related costs, exclusive of
16 all salaries, incurred by the use of the alternatively
17 fueled school buses: *Provided, however,* That any county
18 using an alternative fuel and qualifying for the addi-
19 tional allowance shall submit a plan regarding the
20 intended future use of alternatively fueled school buses:
21 *Provided further,* That the state board shall distribute
22 the additional allowance to qualifying counties only until
23 such time as the state board has distributed in the then
24 current fiscal year one hundred thousand dollars of
25 transportation allowance, in the statewide aggregate,
26 above the eighty percent to qualifying counties, after
27 which the additional ten percent shall no longer be
28 available to any county;

29 (2) The total cost, within each county, of insurance
30 premiums on buses, buildings and equipment used in
31 transportation: *Provided,* That such premiums were
32 procured through competitive bidding;

33 (3) For the school year beginning the first day of July,
34 one thousand nine hundred eighty-nine, and thereafter,
35 an amount equal to ten percent of the current replace-
36 ment value of the bus fleet within each county as
37 determined by the state board, such amount to be used
38 only for the replacement of buses. In addition, in any
39 school year in which its net enrollment increases when
40 compared to the net enrollment the year immediately
41 preceding, a school district may apply to the state
42 superintendent for funding for an additional bus.
43 Furthermore, large, sparsely populated counties may
44 also apply to the state superintendent for funding for
45 additional mini-buses. The state superintendent shall
46 make a decision regarding each application based upon
47 an analysis of the individual school district's net
48 enrollment history and transportation needs or, in the
49 case of a large, sparsely populated county, the popula-
50 tion of the county: *Provided,* That the superintendent
51 shall not consider any application which fails to

52 document that the county has applied for federal
53 funding for additional buses. If the state superintendent
54 finds that a need exists, a request for funding shall be
55 included in the budget request submitted by the state
56 board for the upcoming fiscal year;

57 (4) Eighty percent of the cost of contracted transpor-
58 tation services and public utility transportation with
59 each county;

60 (5) Aid in lieu of transportation equal to the state
61 average amount per pupil for each pupil receiving such
62 aid within each county; and

63 (6) Ninety percent of the total cost of transportation
64 operations and related expenses, excluding salaries and
65 maintenance for transporting students to and from
66 classes at a multicounty vocational center.

67 The total state share for this purpose shall be the sum
68 of the county shares and shall be distributed in
69 accordance with rules to be promulgated by the state
70 board: *Provided*, That no county shall receive an
71 allowance which is greater than one third above the
72 computed state average allowance per mile multiplied
73 by the total mileage in the county.

**§18-9A-8a. Foundation allowance for regional educa-
tional 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-four 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-9. Foundation allowance for other current expense and substitute employees.

1 The total allowance for other current expense and
2 substitute employees shall be the sum of the following:
3 *Provided*, That each of the three amounts set forth in
4 subdivisions (1), (2) and (3) of this section shall not
5 exceed the preceding year's allowance by more than four
6 percent:

7 (1) For current expense, for the year one thousand
8 nine hundred ninety—ninety-one and thereafter, ten
9 percent of the sum of the computed state allocation for
10 professional educators and service personnel as deter-
11 mined in sections four and five of this article. Distribu-
12 tion to the counties shall be made proportional to the
13 average of each county's average daily attendance for
14 the preceding year and the county's second month net
15 enrollment; plus

16 (2) For professional educator substitutes or current
17 expense, two and five-tenths percent of the computed
18 state allocation for professional educators as determined
19 in section four of this article. Distribution to the counties
20 shall be made proportional to the number of professional
21 educators authorized for the county in compliance with
22 sections four and five-a of this article; plus

23 (3) For service personnel substitutes or current
24 expense, two and five-tenths percent of the computed
25 state allocation for service personnel as determined in
26 section five of this article. Distribution to the counties
27 shall be made proportional to the number of service
28 personnel authorized for the county in compliance with
29 sections five and five-a of this article; plus

30 (4) For academic materials, supplies and equipment
31 for use in instructional programs, two hundred dollars
32 multiplied by the number of professional instructional
33 personnel employed in the schools of the county.
34 Distribution shall be made to each county for allocation

35 to the faculty senate of each school in the county on the
36 basis of two hundred dollars per professional instruc-
37 tional personnel employed at the school. Faculty senate
38 means a faculty senate created pursuant to section five,
39 article five-a of this chapter. Decisions for the expendi-
40 ture of such funds shall be made at the school level by
41 the faculty senate in accordance with the provisions of
42 said section five, article five-a and shall not be used to
43 supplant the current expense expenditures of the
44 county. Beginning on the first day of September, one
45 thousand nine hundred ninety-four, and every Sep-
46 tember thereafter, county boards shall forward to each
47 school for the use by faculty senates the appropriation
48 specified in this section. Each school shall be responsible
49 for keeping accurate records of expenditures.

**§18-9A-10. Foundation allowance to improve instruc-
tional programs.**

1 (a) For the school year beginning on the first day of
2 July, one thousand nine hundred ninety-four, and
3 thereafter, the sum of the allocations shall be in an
4 amount at least equal to the amount appropriated by the
5 Legislature, in addition to funds which accrue from
6 balances in the general school fund, or from appropri-
7 ations for such purposes:

8 (1) One hundred fifty thousand dollars shall be
9 allocated to each county;

10 (2) Distribution to the counties of the remainder of
11 these funds shall be made proportional to the average
12 of each county's average daily attendance for the
13 preceding year and the county's second month net
14 enrollment. Moneys allocated by provision of this section
15 shall be used to improve instructional programs
16 according to a plan for instructional improvement which
17 the affected county board shall file with the state board
18 by the first day of August of each year, to be approved
19 by the state board by the first day of September of that
20 year if such plan substantially complies with standards
21 to be adopted by the state board: *Provided*, That
22 notwithstanding any other provision of this code to the
23 contrary, moneys allocated by provision of this section

24 may also be used in the implementation and mainte-
25 nance of the uniform integrated regional computer
26 information system; and

27 (3) Up to twenty-five percent of this allocation may
28 be used to employ professional educators and/or service
29 personnel in counties after all applicable provisions of
30 sections four and five of this article have been fully
31 utilized.

32 Prior to the use of any funds from this section for
33 personnel costs, the county board must receive author-
34 ization from the state superintendent of schools. The
35 state superintendent shall require the district board to
36 demonstrate: (1) The need for the allocation; (2)
37 efficiency and fiscal responsibility in staffing; and (3)
38 sharing of services with adjoining counties and the
39 regional educational service agency for that county in
40 the use of the total local district board budget. District
41 boards shall make application for available funds for the
42 next fiscal year by the first day of May of each year.
43 On or before the first day of June, the state superintend-
44 ent shall review all applications and notify applying
45 district boards of the distribution of the allocation:
46 *Provided*, That for the school year beginning on the first
47 day of July, one thousand nine hundred ninety-three,
48 only, the state superintendent shall review all applica-
49 tions and notify applying district boards of the distri-
50 bution of the allocation on or before the first day of July,
51 one thousand nine hundred ninety-three. Such funds
52 shall be distributed during the fiscal year as approp-
53 riate. The state superintendent shall require the county
54 board to demonstrate the need for an allocation for
55 personnel based upon the county's inability to meet the
56 requirements of state law or state board policy: *Pro-*
57 *vided, however*, That the funds available for personnel
58 under this section may not be used to increase the total
59 number of professional noninstructional personnel in the
60 central office beyond four. Such instructional improve-
61 ment plan shall be made available for distribution to the
62 public at the office of each affected county board.

63 (b) Commencing with the school year beginning on the
64 first day of July, one thousand nine hundred ninety-

65 three, an amount not less than the amount required to
66 meet debt service requirements on any revenue bonds
67 issued prior to the first day of January, one thousand
68 nine hundred ninety-four, and the debt service require-
69 ments on any revenue bonds issued for the purpose of
70 refunding revenue bonds issued prior to the first day of
71 January, one thousand nine hundred ninety-four, shall
72 be paid into the school building capital improvements
73 fund created by section six, article nine-d of this
74 chapter, and shall be used solely for the purposes of said
75 article. The school building capital improvements fund
76 shall not be utilized to meet the debt services require-
77 ment on any revenue bonds or revenue refunding bonds
78 for which moneys contained within the school building
79 debt service fund have been pledged for repayment
80 pursuant to said section.

§18-9A-24. Foundation allowance for public employees insurance fund.

1 (a) Beginning the first day of July, one thousand nine
2 hundred ninety-five, and every year thereafter, the
3 allowance to the public employees insurance agency for
4 school employees shall be made in accordance with the
5 following: The number of individuals employed by
6 county boards of education as professional educators
7 pursuant to section four or five-a of this article,
8 whichever is less, plus the number of individuals
9 employed by county boards of education as service
10 personnel pursuant to section five or five-a of this
11 article, whichever is less, multiplied by the average
12 premium rate for all county board of education em-
13 ployees established by the public employees insurance
14 agency finance board. The average premium rate for all
15 county board of education employees shall be incorpo-
16 rated into each financial plan developed by the finance
17 board in accordance with section five, article sixteen,
18 chapter five of this code. Such premiums shall include
19 any proportionate share of retirees subsidy established
20 by the finance board and the difference, if any, between
21 the previous year's actual premium costs and the
22 previous year's appropriation, if the actual cost was
23 greater than the appropriation.

24 (b) County boards of education shall be responsible for
 25 payments to the public employees insurance agency for
 26 individuals who are employed as professional employees
 27 above and beyond those authorized by section four or
 28 five-a, whichever is less, and individuals who are
 29 employed as service personnel above and beyond those
 30 authorized by section five and five-a whichever is less.
 31 For each such employee, the county board of education
 32 shall forward to the public employees insurance agency
 33 an amount equal to the average premium rate estab-
 34 lished by the finance board in accordance with subsec-
 35 tion (a) of this section: *Provided*, That the county board
 36 shall pay the actual employer premium costs for any
 37 county board employee paid from special revenues,
 38 federal or state grants, or sources other than state
 39 general revenue or county funds.

40 (c) Prior to the first day of July, one thousand nine
 41 hundred ninety-five, nothing in this article shall be
 42 construed to limit the ability of county boards of
 43 education to use funds appropriated to county boards of
 44 education pursuant to this article to pay employer
 45 premiums to the public employees insurance agency for
 46 employees whose positions are funded pursuant to this
 47 article. Funds appropriated to county boards of educa-
 48 tion pursuant to this article shall not be used to pay
 49 employer premiums for employees of such boards whose
 50 positions are not, or will not be within twenty months,
 51 funded by funds appropriated pursuant to this article.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-1c. Integrated classrooms serving students with exceptional needs;
 and requirements as to the assistance, training and informa-
 tion to be provided to the affected classroom teacher.

§18-20-3. County reports.

§18-20-5. Powers and duties of state superintendent.

**§18-20-1c. Integrated classrooms serving students with
 exceptional needs; and requirements as to
 the assistance, training and information to
 be provided to the affected classroom
 teacher.**

1 The regular classroom teacher shall be entitled to the
 2 following when placing a student with exceptional needs

3 into an integrated classroom when the student's individ-
4 ualized education program requires an adjustment in
5 either the curriculum, instruction or service to be
6 provided by the regular classroom teacher:

7 (1) Training provided pursuant to the integrated
8 classroom program and additional individualized
9 training, pursuant to the rules developed by the state
10 board of education, if requested by the regular class-
11 room teacher to prepare the teacher to meet the
12 exceptional needs of individual students. Whenever
13 possible, such training shall be provided prior to such
14 placement. Where prior training is not possible, such
15 training shall be commenced no later than ten days
16 following the placement of said student into the regular
17 classroom. Unavoidable delays in the provision of
18 training shall not result in the exclusion of a special
19 needs student from any class in the event said training
20 cannot be provided in said ten days;

21 (2) A signed copy of the individualized education
22 program for the special needs student prior to or at the
23 time of the placement of the student into the regular
24 classroom. The receiving and referring teachers shall
25 participate in the development of that student's individ-
26 ualized education plan and shall also sign the individ-
27 ualized education plan as developed. In all cases the
28 teacher shall receive a copy of the individualized
29 education plan for the special needs student prior to or
30 at the time of the placement of the student into the
31 regular classroom. Any teacher disagreeing with the
32 individualized education plan committee's recommenda-
33 tion shall file a written explanation outlining his or her
34 disagreement or recommendation;

35 (3) Participation by both receiving and referring
36 teachers, upon the receiving teacher being identified, in
37 all eligibility committees and individualized education
38 program committees which involve possible placement
39 of an exceptional student in an integrated classroom;

40 (4) Opportunity to reconvene the committee responsi-
41 ble for the individualized education program of the
42 student with special needs assigned to the regular

43 classroom teacher. The meeting shall include all persons
44 involved in a student's individualized education pro-
45 gram and shall be held within twenty-one days of the
46 time the request is made;

47 (5) Assistance from persons trained or certified to deal
48 with a student's exceptional needs whenever such
49 assistance is part of the student's individualized
50 education program as necessary to ensure the student's
51 exceptional needs can be met: *Provided*, That aides in
52 the area of special education cannot be reassigned to
53 more than one school without the employee's consent.

§18-20-3. County reports.

1 Counties maintaining special schools, classes, regular
2 class programs, integrated classroom strategic plans
3 and training related to integrated education, basic and
4 specialized health care procedures including the admin-
5 istration of medications, home-teaching or visiting
6 services and receiving or requesting reimbursement
7 from state appropriated funds shall file with the state
8 superintendent of schools on forms supplied by his
9 office, applications, annual reports and such other
10 reports as he may require.

§18-20-5. Powers and duties of state superintendent.

1 The state superintendent of schools shall organize,
2 promote, administer and be responsible for:

3 (1) Stimulating and assisting county boards of
4 education in establishing, organizing and maintaining
5 special schools, classes, regular class programs, home-
6 teaching and visiting-teacher services.

7 (2) Cooperating with all other public and private
8 agencies engaged in relieving, caring for, curing,
9 educating and rehabilitating exceptional children, and
10 in helping coordinate the services of such agencies.

11 (3) Preparing the necessary rules, regulations,
12 formula for distribution of available appropriated funds,
13 reporting forms and procedures necessary to define
14 minimum standards in providing suitable facilities for
15 education of exceptional children and ensuring the

16 employment, certification and approval of qualified
17 teachers and therapists subject to approval by the state
18 board of education.

19 (4) Receiving from county boards of education their
20 applications, annual reports and claims for reimburse-
21 ment from such moneys as are appropriated by the
22 Legislature, auditing such claims and preparing
23 vouchers to reimburse said counties the amounts
24 reimbursable to them.

25 (5) Assuring that all exceptional children in the state,
26 including children in mental health facilities, residential
27 institutions, private schools, and correctional facilities as
28 provided in section thirteen-f, article two of this chapter,
29 receive an education in accordance with state and
30 federal laws: *Provided*, That the state superintendent
31 shall also assure that adults in correctional facilities
32 shall receive an education to the extent funds are
33 provided therefor.

34 (6) Performing such other duties and assuming such
35 other responsibilities in connection with this program as
36 may be needed.

37 (7) Receive the county plan for integrated classroom
38 submitted by the county boards of education, and submit
39 a state plan, approved by the state board of education,
40 to the legislative oversight commission on education
41 accountability no later than the thirtieth day of
42 November, one thousand nine hundred ninety-four.

43 Nothing herein contained shall be construed to
44 prevent any county board of education from establishing
45 and maintaining special schools, classes, regular class
46 programs, home-teaching or visiting-teacher services
47 out of funds available from local revenue.

CHAPTER 18A. SCHOOL PERSONNEL.

Article

- 3B. Educators' Professional Standards Board.
- 4. Salaries, Wages and Other Benefits.
- 5. Authority; Rights; Responsibility.

ARTICLE 3B. EDUCATORS' PROFESSIONAL STANDARDS BOARD.

§18A-3B-1. Establishment of educators; professional standards board.

§18A-3B-2. Educators' professional standards board; composition; appointment; terms of members.

§18A-3B-3. Powers and duties.

§18A-3B-1. Establishment of educators' professional standards board.

1 The Legislature hereby finds and declares that in
2 order to more fully provide for a thorough and efficient
3 system of free schools within the state it is necessary to
4 establish an educators' professional standards board.
5 The board will be responsible for governing the
6 education profession, including the establishment of
7 standards for entering the education profession, and
8 remaining a member of the education profession. The
9 board shall also establish standards for institutions of
10 higher education engaged in teacher preparation
11 programs.

§18A-3B-2. Educators' professional standards board; composition; appointment; terms of members.

1 (a) There is created an educators' professional
2 standards board consisting of nine members appointed
3 by the governor, with the advice and consent of the
4 Senate.

5 (b) The term of office for each member is three years
6 except that the original term of three members,
7 including not more than one teacher, shall be for one
8 year, and the original term of three members, including
9 not more than two teachers, shall be for two years.

10 (c) Any member who, through change of employment
11 standing or other circumstances, no longer meets the
12 criteria for the position to which the member was
13 appointed shall no longer be eligible to serve in that
14 position, and the position on the commission shall
15 become vacant sixty days following the member's
16 change in circumstances.

17 (d) The membership of the educators' professional
18 standards board shall consist of: One classroom teacher
19 currently employed by a county board of education

20 teaching vocational education; one classroom teacher
21 currently employed by a county board of education
22 teaching in an elementary school; one classroom teacher
23 currently employed by a county board of education
24 teaching in a middle school; one classroom teacher
25 currently employed by a county board of education
26 teaching in a secondary school; one classroom teacher
27 currently employed by a county board of education
28 teaching special education; the state superintendent of
29 schools or his or her designee; one elementary school or
30 secondary school principal currently employed by a
31 county board of education; one county superintendent of
32 schools currently employed by a county board of
33 education; and one administrator or faculty member
34 representing a public college or university in West
35 Virginia.

36 No more than five members of the board may belong
37 to the same political party nor reside in the same
38 congressional district. Members of the board must have
39 been actively engaged in teaching, supervising or
40 administering in the public schools or in approved
41 teacher education institutions in West Virginia for the
42 period of five years immediately preceding appoint-
43 ment. In addition, members appointed to represent
44 classroom teachers under this section must hold valid
45 West Virginia teaching certificates other than permits.

46 (e) A member of the board shall receive no compen-
47 sation for his or her services as a member, but subject
48 to any other applicable law regulating travel and other
49 expenses for state officer, he or she shall receive his or
50 her actual and necessary travel and other expenses
51 incurred in the performance of his or her official duties:
52 *Provided*, That any member who is an employee of a
53 county board of education shall be released by his or her
54 employer to attend board meetings without loss of salary
55 or personal leave.

§18A-3B-3. Powers and duties.

1 Prior to the first day of January, one thousand nine
2 hundred ninety-five, the professional standards board
3 shall develop a plan and propose legislation which w

4 expand the powers and duties of the professional
 5 standards board to include the following: (1) Establish
 6 and maintain standards and requirements for obtaining
 7 and maintaining a license for teaching; (2) issue, renew,
 8 suspend, and revoke teaching licenses; (3) hear appeals
 9 regarding application, renewal, suspension or revocation
 10 of licenses; (4) enter into reciprocity agreements to
 11 provide for licensing of applicants from other states or
 12 nations; (5) set standards, approve, and evaluate teacher
 13 preparation programs; (6) adopt standards for examina-
 14 tions and assessments to assure eligibility for licenses to
 15 enter the profession of teaching; (7) create other actions
 16 that relate to the improvement of instruction through
 17 teacher education and professional development and to
 18 attract qualified candidates for teacher training from
 19 among the citizens of West Virginia; and (8) perform
 20 other actions that relate to the improvement of instruc-
 21 tion through teacher education and professional devel-
 22 opment and to attract qualified candidates for teacher
 23 training from among the citizens of West Virginia.

24 On or before the first day of January, one thousand
 25 nine hundred ninety-five, the board shall submit copies
 26 of the proposed legislation to the governor, president of
 27 the Senate, speaker of the House of Delegates and the
 28 legislative oversight commission on education accounta-
 29 bility.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-5. Salary equity among the counties; state salary supplement.

§18A-4-19. Alteration of contract.

§18A-4-5. Salary equity among the counties; state salary supplement.

1 (a) For the purposes of this section, salary equity
 2 among the counties means that the salary potential of
 3 school employees employed by the various districts
 4 throughout the state does not differ by greater than ten
 5 percent between those offering the highest salaries and
 6 those offering the lowest salaries. In the case of
 7 professional educators, the difference shall be calculated
 8 utilizing the average of the professional educator salary
 9 schedules, degree classifications B.A. through doctorate

10 and years of experience zero through twenty, in effect
11 in the five counties offering the highest salary schedules
12 compared to the lowest salary schedule in effect among
13 the fifty-five counties. In the case of school service
14 personnel, the difference shall be calculated utilizing the
15 average of the school service personnel salary schedules,
16 pay grades "A" through "H" and years of experience
17 zero through thirty, in effect in the five counties offering
18 the highest salary schedules compared to the lowest
19 salary schedule in effect among the fifty-five counties.

20 For the school year beginning the first day of July,
21 one thousand nine hundred ninety-four, and thereafter,
22 in the counties that jointly support a multicounty
23 vocational school, salary equity funding shall be
24 distributed to nonfiscal agent counties based on: (1)
25 Calculating the amount of salary equity funding each
26 nonfiscal agent county would receive for the employees
27 for which it is charged in the public school support
28 program, as provided in section four, article nine-a,
29 chapter eighteen of this code, if this salary equity
30 funding were distributed to nonfiscal agent counties;
31 and (2) deducting the salary equity funding to be
32 received by the fiscal agent county in the public school
33 support program for those employees for which the
34 nonfiscal agent county is charged in the public school
35 support program.

36 (b) To assist the state in meeting its objective of salary
37 equity among the counties, as defined in subsection (a)
38 of this section, on and after the first day of July, one
39 thousand nine hundred eighty-four, subject to available
40 state appropriations and the conditions set forth herein,
41 each teacher and school service personnel shall receive
42 a supplemental amount in addition to the amount from
43 the state minimum salary schedules provided for in this
44 article.

45 State funds for this purpose shall be paid within the
46 West Virginia public school support plan in accordance
47 with article nine-a, chapter eighteen of this code. The
48 amount allocated for salary equity shall be apportioned
49 between teachers and school service personnel in direct
50 proportion to that amount necessary to support the

51 professional salaries and service personnel salaries
52 statewide under sections four and five, article nine-a,
53 chapter eighteen of this code: *Provided*, That in making
54 this division an adequate amount of state equity funds
55 shall be reserved to finance the appropriate foundation
56 allowances and staffing incentives provided for in
57 article nine-a, chapter eighteen of this code.

58 Pursuant to this section, each teacher and school
59 service personnel shall receive the amount that is the
60 difference between their authorized state minimum
61 salary and ninety-five percent of the maximum salary
62 schedules prescribed in sections five-a and five-b of this
63 article, reduced by any amount provided by the county
64 as a salary supplement for teachers and school service
65 personnel on the first day of January of the fiscal year
66 immediately preceding that in which the salary equity
67 appropriation is distributed: *Provided*, That the amount
68 received pursuant to this section shall not be decreased
69 as a result of any county supplement increase instituted
70 after the first day of January, one thousand nine
71 hundred eighty-four, until the objective of salary equity
72 is reached: *Provided, however*, That any amount received
73 pursuant to this section may be reduced proportionately
74 based upon the amount of funds appropriated for this
75 purpose.

76 No county may reduce any salary supplement that
77 was in effect on the first day of January, one thousand
78 nine hundred eighty-four, except as permitted by
79 sections five-a and five-b of this article.

§18A-4-19. Alteration of contract.

1 (a) Notwithstanding the provisions of section seven-a
2 of this article relating to professional personnel or any
3 other section of this code to the contrary, any alteration
4 of an employment contract of a professional educator
5 who is employed for more than two hundred days, which
6 alteration changes the number of days in the employ-
7 ment term, shall not be deemed a creation of a new
8 position, nor shall such alteration require the posting of
9 the position.

10 Notwithstanding the provisions of section seven-a of

11 this article relating to professional personnel or any
12 other section of this code to the contrary, any alteration
13 of an employment contract of a professional educator
14 which reduces or eliminates the local salary supplement
15 or the benefits provided to such employee due to a defeat
16 of a special levy, or a loss in assessed values or events
17 over which it has no control and for which the county
18 board has received approval from the state board prior
19 to making such reduction or elimination in accordance
20 with section five-a of this article, shall not be deemed
21 a creation of a new position, nor shall such alteration
22 require the posting of the position.

23 (b) Notwithstanding the provisions of section eight-b
24 of this article relating to school service personnel or any
25 other section of this code to the contrary, any alteration
26 of an employment contract of a service personnel
27 employee who is employed for more than two hundred
28 days, which alteration changes the number of days in
29 the employment term, shall not be deemed a creation of
30 a new position, nor shall such alteration require the
31 posting of the position.

32 Notwithstanding the provisions of section eight-b of
33 this article relating to school service personnel or any
34 other section of this code to the contrary, any alteration
35 of an employment contract of a service personnel
36 employee which reduces or eliminates the local salary
37 supplement or the benefits provided to such employee
38 due to a defeat of a special levy, or a loss in assessed
39 values or events over which it has no control and for
40 which the county board has received approval from the
41 state board prior to making such reduction or elimina-
42 tion in accordance with section five-b of this article,
43 shall not be deemed a creation of a new position, nor
44 shall such alteration require the posting of the position.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1a. Assaults by pupils upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; expulsion; exception.

1 (a) Any pupil who threatens to cause, attempts to
2 cause, or causes a bodily injury to a school employee may
3 be suspended or expelled from school in accordance with
4 the provisions of this section.

5 (b) The actions of any pupil which may be grounds
6 for his suspension or expulsion under the provisions of
7 this section shall be reported immediately to the
8 principal of the school in which such pupil is enrolled.
9 If the principal determines that the alleged actions of
10 the pupil would be grounds for suspension, he shall
11 conduct an informal hearing for the pupil as soon as
12 practicable after the alleged actions have occurred. The
13 hearing shall be held before the pupil is suspended
14 unless the principal believes that the continued presence
15 of the pupil in the school poses a continuing danger to
16 persons or property or an ongoing threat of disrupting
17 the academic process, in which case the pupil may be
18 suspended immediately and a hearing held as soon as
19 practicable after the suspension.

20 The pupil and his parent or parents or custodial
21 guardian, as the case may be, shall be given written
22 notice by certified mail, return receipt requested, of this
23 informal hearing, which notice shall briefly state the
24 grounds for suspension.

25 At the commencement of the informal hearing, the
26 principal shall inquire of the pupil as to whether he
27 admits or denies the charges. If the pupil does not admit
28 the charges, he shall be given an explanation of the
29 evidence possessed by the principal and an opportunity
30 to present his version of the occurrence. At the conclu-
31 sion of the hearing or upon the failure of the noticed
32 persons to appear, the principal may suspend the pupil
33 for a maximum of ten school days, including the time
34 prior to such hearing, if any, for which the pupil has
35 been excluded from school. If the principal believes a
36 longer suspension or expulsion of the pupil is warranted
37 in addition to a ten-day suspension, he shall so advise
38 the parents and pupil, if present, and recommend such
39 action to the superintendent of schools of the county in
40 which the school where the pupil is enrolled is located.

41 (c) Any suspension shall be reported by the principal
42 the same day it has been decided upon, in writing, to
43 the county superintendent of schools of the county in
44 which the school where the pupil is enrolled is located.

45 (d) If the principal recommends and the superintend-
46 ent agrees that the suspension should be extended for
47 beyond ten school days or that the pupil should be
48 expelled from school, the superintendent shall imme-
49 diately notify the county board of education of this
50 recommendation. Upon receipt of such recommendation,
51 the county board of education shall cause a written
52 notice, which states the charges and the recommended
53 disposition, to be served upon the pupil and his parent
54 or parents or custodial guardian, as the case may be,
55 advising such persons that unless a timely request is
56 made for hearing, the recommended disposition shall
57 become final. Such notice shall set forth a date and time
58 at which such hearing, if requested, shall be held, which
59 date shall be within the ten-day period of suspension
60 imposed by the principal. The notice shall further advise
61 the persons to be noticed thereby that a request for
62 hearing will not be granted unless received by the board
63 more than twenty-four hours before the time proposed
64 for hearing in the notice.

65 Upon timely receipt of a hearing request, the board
66 of education shall hold the scheduled hearing to
67 determine if the pupil should be reinstated or should
68 have his suspension extended or should be expelled from
69 school. At this hearing, the pupil may be represented by
70 counsel, may call his own witnesses to verify his version
71 of the incident and may confront and cross-examine
72 witnesses supporting the charge against him. The
73 hearing may be postponed for good cause shown by the
74 pupil but he shall remain under suspension until after
75 the hearing. The state board of education may adopt
76 other supplementary rules of procedure to be followed
77 in these hearings. At the conclusion of the hearing the
78 county board of education either shall order the pupil
79 reinstated immediately or at the end of his initial
80 suspension or shall suspend the pupil for a further
81 designated number of days or shall expel the pupil from
82 the public schools of such county for a period of time

83 not to exceed one school year.

84 (e) Notwithstanding the preceding provisions of this
85 section, if a pupil has prior to the actions complained
86 of being classified as or is eligible to be classified as an
87 exceptional child, other than gifted, under the provisions
88 of section one, article twenty, chapter eighteen of this
89 code, special consideration shall be given to such pupil
90 as hereinafter provided.

91 In any hearing held pursuant to this section, a pupil,
92 his parent or custodial guardian may show an explana-
93 tion of the actions complained of that such actions were
94 the proximate result of a condition which has qualified
95 or would qualify the pupil for a special educational
96 program other than gifted. If the principal or board
97 finds that such actions were the proximate result of such
98 a condition, the pupil shall not be suspended or expelled
99 pursuant to this section but the pupil shall be forthwith
100 referred to the appropriate personnel within the county
101 school system for development of an individual learning
102 program: *Provided*, That such pupil may be temporarily
103 removed from school according to procedures employed
104 by the school system for special education pupils if, in
105 the opinion of the principal, such removal is necessary
106 for his or her own protection or the protection of other
107 pupils, teachers, school personnel or school property
108 during all or some part of the time required to prepare
109 such individual learning program.

110 (f) In all hearings under this section, facts shall be
111 found by a preponderance of the evidence.

112 (g) For the purpose of this section, "school employee"
113 means a person employed by a county board of education
114 whether employed on a regular full-time basis, an
115 hourly basis or otherwise if, at the time of the commis-
116 sion of an act which would be grounds for suspension
117 or expulsion under this section, such person is engaged
118 in the performance of his duties or is commuting to or
119 from his place of employment. For the purposes of this
120 section, a "school employee" shall be deemed to include
121 a student teacher.

122 (h) The remedies provided for in this section are
123 cumulative.

CHAPTER 25

(S. B. 1008—By Senators Lucht and Burdette, Mr. President)

[Passed March 18, 1994; in effect from passage. Approved by the Governor.]

AN ACT to repeal section thirty-a, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article one, chapter five-g of said code; to amend and reenact section thirty, article fifteen, chapter eleven of said code; to amend and reenact sections two, three, four, six, eight, fifteen and sixteen, article nine-d, chapter eighteen of said code; and to amend and reenact section eighteen, article twenty-two, chapter twenty-nine of said code, all relating to dedicating lottery net profits for debt service on bonds issued by the school building authority; dedicating consumers sales tax proceeds and authorizing appropriations by the Legislature of lottery revenues for school construction projects; creating the school building debt service fund for the deposit of dedicated lottery revenues; creating the school construction fund and the school major improvement fund for the deposit of dedicated consumers sales tax and appropriated lottery revenues; providing for the transfer of funds to the school building authority custodial account from specified funds in the state treasury; and limiting the permissible expenditures from the school building capital improvements fund, the school building debt service fund, the school construction fund and the school major improvement fund.

Be it enacted by the Legislature of West Virginia:

That section thirty-a, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section three, article one, chapter five-g of said code be amended and reenacted; that section thirty, article fifteen, chapter eleven of said code be amended and reenacted; that sections two, three, four, six,

eight, fifteen and sixteen, article nine-d, chapter eighteen of said code be amended and reenacted; and that section eighteen, article twenty-two, chapter twenty-nine of said code be amended and reenacted, all to read as follows:

Chapter

5G. Procurement of Architect-Engineer Services By State and Its Subdivisions.

11. Taxation.

18. Education.

29. Miscellaneous Boards and Officers.

CHAPTER 5G. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES BY STATE AND ITS SUBDIVISIONS.

ARTICLE 1. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES.

§5G-1-3. Contracts for architectural and engineering services; selection process where total project costs are estimated to cost two hundred fifty thousand dollars or more.

1 In the procurement of architectural and engineering
 2 services for projects estimated to cost two hundred fifty
 3 thousand dollars or more, the director of purchasing
 4 shall encourage such firms engaged in the lawful
 5 practice of the profession to submit an expression of
 6 interest, which shall include a statement of qualifica-
 7 tions and performance data, and may include antici-
 8 pated concepts and proposed methods of approach to the
 9 project. All such jobs shall be announced by public
 10 notice published as a Class II legal advertisement in
 11 compliance with the provisions of article three, chapter
 12 fifty-nine of this code. A committee of three to five
 13 representatives of the agency initiating the request shall
 14 evaluate the statements of qualifications and perfor-
 15 mance data and other material submitted by interested
 16 firms and select three firms which, in their opinion, are
 17 best qualified to perform the desired service: *Provided,*
 18 That on projects funded wholly or in part by school
 19 building authority moneys, in accordance with sections
 20 fifteen and sixteen, article nine-d, chapter eighteen of
 21 this code, two of said three firms shall have had offices

22 within this state for a period of at least one year prior
23 to submitting an expression of interest regarding a
24 project funded by school building authority moneys.
25 Interviews with each firm selected shall be conducted
26 and the committee shall conduct discussions regarding
27 anticipated concepts and proposed methods of approach
28 to the assignment. The committee shall then rank, in
29 order of preference, no less than three professional firms
30 deemed to be the most highly qualified to provide the
31 services required, and shall commence scope of service
32 and price negotiations with the highest qualified
33 professional firm for architectural or engineering
34 services or both. Should the agency be unable to
35 negotiate a satisfactory contract with the professional
36 firm considered to be the most qualified, at a fee
37 determined to be fair and reasonable, price negotiations
38 with the firm of second choice shall commence. Failing
39 accord with the second most qualified professional firm,
40 the committee shall undertake price negotiations with
41 the third most qualified professional firm. Should the
42 agency be unable to negotiate a satisfactory contract
43 with any of the selected professional firms, it shall select
44 additional professional firms in order of their compe-
45 tence and qualifications and it shall continue negotia-
46 tions in accordance with this section until an agreement
47 is reached: *Provided, however,* That county boards of
48 education may either elect to start the selection process
49 over in the original order of preference or it may select
50 additional professional firms in order of their compe-
51 tence and qualifications and it shall continue negotia-
52 tions in accordance with this section until an agreement
53 is reached.

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-30. Proceeds of tax; appropriation of certain revenues.

1 (a) The proceeds of the tax imposed by this article
2 shall be deposited in the general revenue fund of the
3 state beginning the first day of July, one thousand nine
4 hundred ninety-four, except as otherwise expressly

5 provided in this article. Prior to the said first day of
6 July, the proceeds of this tax shall, except as otherwise
7 expressly provided in this article, be deposited as
8 provided in chapter three, acts of the Legislature,
9 second extraordinary session, one thousand nine
10 hundred ninety-three, and, for such purpose, such prior
11 law is fully preserved. On the said first day of July, the
12 balance in "WVFIMS" account number fund 6676, fiscal
13 year one thousand nine hundred ninety-four, organiza-
14 tion 0615, shall be transferred to the general revenue
15 fund. On the said first day of July, the balance in
16 "WVFIMS" account number fund 3962, fiscal year one
17 thousand nine hundred ninety-four, organization 0402,
18 shall be transferred to the school construction fund
19 created pursuant to section six, article nine-d, chapter
20 eighteen of this code.

21 (b) *School major improvement fund.* —

22 After the payment or commitment of the proceeds or
23 collections of this tax for the purposes set forth in
24 sections sixteen and eighteen of this article:

25 (1) On the first day of July, one thousand nine
26 hundred ninety-four, there shall be dedicated from the
27 collections of this tax, an amount appropriated by the
28 Legislature to this fund in the general revenue budget
29 for the fiscal year beginning on the first day of July, one
30 thousand nine hundred ninety-four, and the amount
31 dedicated shall be deposited into the school major
32 improvement fund created pursuant to section six,
33 article nine-d, chapter eighteen of this code, as soon as
34 such amount has been accumulated from the collections
35 of this tax.

36 (2) Beginning on the first day of July, one thousand
37 nine hundred ninety-five, and continuing on the first day
38 of each succeeding month thereafter through the
39 thirtieth day of June, two thousand five, there shall be
40 dedicated monthly from the collections of this tax, the
41 amount of four hundred sixteen thousand six hundred
42 sixty-seven dollars and the amount dedicated shall be
43 deposited on a monthly basis into the school major
44 improvement fund created pursuant to section six,

45 article nine-d, chapter eighteen of this code.

46 (c) *School construction fund.* —

47 After the payment or commitment of the proceeds or
48 collections of this tax for the purposes set forth in
49 sections sixteen and eighteen of this article:

50 (1) Beginning the first day of July, one thousand nine
51 hundred ninety-five, and continuing on the first day of
52 each succeeding month thereafter through the last day
53 of June, one thousand nine hundred ninety-six, there
54 shall be dedicated monthly from the collections of this
55 tax, the amount of five hundred eighty-three thousand
56 three hundred thirty-three dollars and the amount
57 dedicated shall be deposited into the school construction
58 fund created pursuant to section six, article nine-d,
59 chapter eighteen of this code.

60 (2) Beginning the first day of July, one thousand nine
61 hundred ninety-six, and continuing on the first day of
62 each succeeding month thereafter through the thirtieth
63 day of June, two thousand five, there shall be dedicated
64 monthly from the collections of this tax, the amount of
65 one million four hundred sixteen thousand six hundred
66 sixty-seven dollars and the amount dedicated shall be
67 deposited into the school construction fund created
68 pursuant to section six, article nine-d, chapter eighteen
69 of this code.

CHAPTER 18. EDUCATION.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

- §18-9D-2. Definitions.
- §18-9D-3. Powers of authority.
- §18-9D-4. School building authority authorized to issue refunding revenue bonds and/or general obligation bonds for school building capital improvement projects.
- §18-9D-6. School building capital improvements fund in state treasury; school construction fund in state treasury; school building debt service fund in state treasury; school improvement fund in state treasury; collections to be paid into special funds; authority to pledge such collections as security for refunding revenue bonds; authority of finance projects on a cash basis.
- §18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.
- §18-9D-15. Legislative intent; distribution of money.
- §18-9D-16. Facilities and major improvement plans generally; need-based eligibility.

§18-9D-2. Definitions.

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

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

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

11 (3) "Construction project" means a project with a cost
12 of project greater than five hundred thousand dollars for
13 the new construction, major renovation of facilities,
14 buildings and structures for school purposes including
15 the acquisition of land for current or future use in
16 connection therewith, as well as new or substantial
17 upgrading of existing equipment, machinery, furnish-
18 ings, installation of utilities and other similar items
19 convenient in connection with placing the foregoing into
20 operation: *Provided*, That a construction project may not
21 include such items as books, computers or equipment
22 used for instructional purposes, fuel, supplies, routine
23 utility services fees, routine maintenance costs, ordinary
24 course of business improvements and other items which
25 are customarily deemed to result in a current or
26 ordinary course of business operating charge: *Provided*,
27 *however*, That a construction project may not include a
28 major improvement project;

29 (4) "Cost of project" means the cost of construction,
30 renovation, repair and safety upgrading of facilities,
31 buildings and structures for school purposes; the cost of
32 land, equipment, machinery, furnishings, installation of
33 utilities and other similar items convenient in connec-
34 tion with placing the foregoing into operation; and the
35 cost of financing, interest during construction, profes-
36 sional service fees and all other charges or expenses
37 necessary, appurtenant or incidental to the foregoing,
38 including the cost of administration of this article;

39 (5) "Facilities plan" means the county-wide compre-
40 hensive educational facilities plan for school facilities
41 required prior to the distribution of state funds to any
42 county board pursuant to subsection (a), section sixteen
43 of this article;

44 (6) "Project" means a construction project or a major
45 improvement project;

46 (7) "Region" means the area encompassed within and
47 serviced by a regional educational service agency
48 established pursuant to section twenty-six, article two of
49 this chapter;

50 (8) "Revenue" or "revenues" means moneys deposited
51 in the school building capital improvements fund
52 pursuant to the operation of section ten, article nine-a
53 of this chapter; moneys deposited in the school construc-
54 tion fund pursuant to the operation of section thirty,
55 article fifteen, chapter eleven of this code and pursuant
56 to the operation of section eighteen, article twenty-two,
57 chapter twenty-nine of this code; moneys deposited in
58 the school building debt service fund pursuant to section
59 eighteen, article twenty-two, chapter twenty-nine of this
60 code; moneys deposited in the school major improvement
61 fund pursuant to the operation of section thirty, article
62 fifteen, chapter eleven of this code; any moneys received,
63 directly or indirectly, from any source for use in any
64 project completed pursuant to this article; and any other
65 moneys received by the authority for the purposes of this
66 article;

67 (9) "School major improvement plan" means the ten-
68 year school maintenance plan to be prepared by each
69 county board of education and by the state board of
70 education or the administrative council of an area
71 vocational educational center if such entity seeks
72 funding from the authority for a major improvement
73 project, which school major improvement plan is
74 required prior to the distribution of state funds for a
75 major improvement project pursuant to subsection (b),
76 section sixteen of this article; and

77 (10) "School major improvement project" means a
78 project with a cost greater than fifty thousand dollars

79 and less than five hundred thousand dollars for the
80 renovation, the repair and safety upgrading of existing
81 school facilities, buildings and structures, including the
82 substantial repair or upgrading of equipment, machin-
83 ery, building systems, utilities and other similar items
84 convenient in connection with such renovation, repair or
85 upgrading: *Provided*, That a major improvement project
86 may not include such items as books, computers or
87 equipment used for instructional purposes, fuel, supp-
88 lies, routine utility services fees, routine maintenance
89 costs, ordinary course of business improvements and
90 other items which are customarily deemed to result in
91 a current or ordinary course of business operating
92 charge.

§18-9D-3. Powers of authority.

- 1 The school building authority has the power:
- 2 (1) To sue and be sued, plead and be impleaded;
- 3 (2) To have a seal and alter the same at pleasure;
- 4 (3) To contract to acquire and to acquire, in the name
5 of the authority by purchase, lease-purchase not to
6 exceed a term of twenty-five years, or otherwise, real
7 property or rights or easements necessary or convenient
8 for its corporate purposes and to exercise the power of
9 eminent domain to accomplish such purposes;
- 10 (4) To acquire, hold and dispose of real and personal
11 property for its corporate purposes;
- 12 (5) To make bylaws for the management and rule of
13 its affairs;
- 14 (6) To appoint, contract with and employ attorneys,
15 bond counsel, accountants, construction and financial
16 experts, underwriters, financial advisers, trustees,
17 managers, officers and such other employees and agents
18 as may be necessary in the judgment of the authority
19 and to fix their compensation: *Provided*, That contracts
20 entered into by the school building authority in connec-
21 tion with the issuance of bonds under this article to
22 provide professional and technical services, including,
23 without limitation, accounting, actuarial, underwriting,

24 consulting, trustee, bond counsel, legal services and
25 contracts relating to the purchase or sale of bonds shall
26 be subject to the provisions of article three, chapter five-
27 a of this code: *Provided, however*, That notwithstanding
28 any other provisions of this code, any authority of the
29 attorney general of this state relating to the review of
30 contracts and other documents to effectuate the issuance
31 of bonds under this article shall be exclusively limited
32 to the form of the contract and document: *Provided*
33 *further*, That the attorney general of this state shall
34 complete all reviews of contracts and documents
35 relating to the issuance of bonds under this article
36 within ten calendar days of receipt of such contract and
37 document for review;

38 (7) To make contracts and to execute all instruments
39 necessary or convenient to effectuate the intent of and
40 to exercise the powers granted to it by this article;

41 (8) To renegotiate all contracts entered into by it
42 whenever, due to a change in situation, it appears to the
43 authority that its interests will be best served;

44 (9) To acquire by purchase, eminent domain or
45 otherwise all real property or interests therein necessary
46 or convenient to accomplish the purposes of this article;

47 (10) To require proper maintenance and insurance of
48 any project authorized hereunder;

49 (11) To charge rent for the use of all or any part of
50 a project or buildings at any time financed, constructed,
51 acquired or improved, in whole or in part, with the
52 revenues of the authority;

53 (12) To assist any county board of education that
54 chooses to acquire land, buildings and capital improve-
55 ments to existing school buildings and property for use
56 as public school facilities, by lease from a private or
57 public lessor for a term not to exceed twenty-five years
58 with an option to purchase pursuant to an investment
59 contract with said lessor on such terms and conditions
60 as may be determined to be in the best interests of the
61 authority, the state board of education and such county
62 board of education, consistent with the purposes of this

63 article, by transferring funds to the state board of
64 education as provided in subsection (d), section fifteen
65 of this article for the use of such county board of
66 education;

67 (13) To accept and expend any gift, grant, contribu-
68 tion, bequest or endowment of money to, or for the
69 benefit of, the authority, from the state of West Virginia
70 or any other source for any or all of the purposes
71 specified in this article or for any one or more of such
72 purposes as may be specified in connection with such
73 gift, grant, contribution, bequest or endowment;

74 (14) To enter on any lands and premises for the
75 purpose of making surveys, soundings and
76 examinations;

77 (15) To contract for architectural, engineering or
78 other professional services considered necessary or
79 economical by the authority to provide consultative or
80 other services to the authority or to any regional
81 educational service agency or county board requesting
82 professional services offered by the authority, to
83 evaluate any facilities plan or any project encompassed
84 therein, to inspect existing facilities or any project that
85 has received or may receive funding from the authority,
86 or to perform any other service considered by the
87 authority to be necessary or economical. Assistance to
88 the region or district may include the development of
89 preapproved systems, plans, designs, models or docu-
90 ments; advice or oversight on any plan or project; or any
91 other service that may be efficiently provided to
92 regional educational service agencies or county boards
93 by the authority;

94 (16) To provide funds on an emergency basis to repair
95 or replace property damaged by fire, flood, wind, storm,
96 earthquake or other natural occurrence, such funds to
97 be made available in accordance with guidelines of the
98 school building authority;

99 (17) To transfer moneys to custodial accounts main-
100 tained by the school building authority with a state
101 financial institution from the school construction fund
102 and the school improvement fund created in the state

103 treasury pursuant to the provisions of section six of this
104 article, as necessary to the performance of any contracts
105 executed by the school building authority in accordance
106 with the provisions of this article; and

107 (18) To do all things necessary or convenient to carry
108 out the powers given in this article.

**§18-9D-4. School building authority authorized to issue
refunding revenue bonds and/or general
obligation bonds for school building capital
improvement projects.**

1 (a) The school building authority may by resolution,
2 in accordance with the provisions of this article, issue
3 revenue bonds of the authority from time to time, either
4 to finance the cost of construction projects for public
5 schools in this state, or to refund, at the discretion of
6 the authority, bonds issued to finance the cost of the
7 construction projects for public schools in this state and
8 outstanding under and pursuant to the provisions of this
9 article as in effect prior to the twentieth day of July,
10 one thousand nine hundred ninety-three. The principal
11 of, interest and redemption premium, if any, on such
12 bonds shall be payable solely from the special fund
13 herein provided for such payment.

14 (b) The school building authority may, in accordance
15 with the provisions of the constitution of West Virginia,
16 issue general obligation bonds from time to time as
17 authorized by referendum pursuant to resolution duly
18 adopted by the Legislature, to finance the cost of
19 construction projects for public schools in this state.

**§18-9D-6. School building capital improvements fund in
state treasury; school construction fund in
state treasury; school building debt service
fund in state treasury; school improvement
fund in state treasury; collections to be paid
into special funds; authority to pledge such
collections as security for refunding revenue
bonds; authority to finance projects on a
cash basis.**

1 (a) There is continued in the state treasury a school

2 building capital improvements fund to be expended by
3 the authority as provided in this article.

4 The school building authority shall have authority to
5 pledge all or such part of the revenues paid into the
6 school building capital improvements fund as may be
7 needed to meet the requirements of any revenue bond
8 issue or issues authorized by this article prior to the
9 twentieth day of July, one thousand nine hundred
10 ninety-three, or revenue bonds issued to refund revenue
11 bonds issued prior to that date, including the payment
12 of principal of, interest and redemption premium, if
13 any, on, such revenue bonds and the establishing and
14 maintaining of a reserve fund or funds for the payment
15 of the principal of, interest and redemption premium,
16 if any, on such revenue bond issue or issues when other
17 moneys pledged may be insufficient therefor, including
18 such additional protective pledge of revenues as the
19 authority in its discretion has provided by resolution
20 authorizing the issue of such bonds or in any trust
21 agreement made in connection therewith. The authority
22 may further provide in such resolution and in such trust
23 agreement for such priorities on the revenues paid into
24 such school building capital improvements fund as may
25 be necessary for the protection of the prior rights of the
26 holders of bonds issued at different times under the
27 provisions of this article.

28 Any balance remaining in the school building capital
29 improvements fund after the authority has issued bonds
30 authorized by this article, and after the requirements of
31 all funds including reserve funds established in connec-
32 tion with the bonds issued prior to the twentieth day of
33 July, one thousand nine hundred ninety-three, pursuant
34 to this article have been satisfied, may be used for the
35 redemption of any of the outstanding bonds issued
36 hereunder which by their terms are then redeemable,
37 or for the purchase of such bonds at the market price,
38 but not exceeding the price, if any, at which such bonds
39 shall in the same year be redeemable, and all bonds
40 redeemed or purchased shall forthwith be canceled and
41 shall not again be issued.

42 The school building authority, in its discretion, may

43 use the moneys in the school building capital improve-
44 ments fund to finance the cost of projects on a cash basis.
45 Any pledge of moneys in such fund for revenue bonds
46 issued prior to the twentieth day of July, one thousand
47 nine hundred ninety-three, shall be a prior and superior
48 charge on such fund over the use of any of the moneys
49 in such fund to pay for the cost of any project on a cash
50 basis: *Provided*, That any expenditures from such fund,
51 other than for the retirement of revenue bonds, may only
52 be made by the authority in accordance with the
53 provisions of this article.

54 (b) There is hereby created in the state treasury a
55 special fund named the school building debt service
56 fund into which shall be deposited on and after the first
57 day of April, one thousand nine hundred ninety-four, the
58 amounts specified in section eighteen, article twenty-
59 two, chapter twenty-nine of this code. All amounts
60 deposited in the fund shall be pledged to the repayment
61 of the principal, interest and redemption premium, if
62 any, on any revenue bonds or refunding revenue bonds
63 authorized by this article: *Provided*, That moneys so
64 deposited may not be pledged to the repayment of any
65 revenue bonds issued prior to the first day of January,
66 one thousand nine hundred ninety-four, or with respect
67 to revenue bonds issued for the purpose of refunding
68 revenue bonds issued prior to the first day of January,
69 one thousand nine hundred ninety-four. The authority
70 may further provide in the resolution and in the trust
71 agreement for priorities on the revenues paid into the
72 school building debt service fund as may be necessary
73 for the protection of the prior rights of the holders of
74 bonds issued at different times under the provisions of
75 this article. On or prior to the first day of May of each
76 year, commencing the first day of May, one thousand
77 nine hundred ninety-four, the authority shall certify to
78 the state lottery director the principal and interest and
79 coverage ratio requirements for the following fiscal year
80 on any revenue bonds issued on or after the first day
81 of January, one thousand nine hundred ninety-four, and
82 for which moneys deposited in the school building debt
83 service fund have been pledged, or will be pledged, for
84 repayment pursuant to this section: *Provided, however*,

85 That before the first day of May, one thousand nine
86 hundred ninety-four, the authority shall also certify to
87 the lottery director of the state the principal, interest
88 and coverage ratio requirements for the fiscal year
89 ending on the thirtieth day of June, one thousand nine
90 hundred ninety-five, on any revenue bonds issued, or to
91 be issued, on or after the first day of January, one
92 thousand nine hundred ninety-four.

93 After the authority has issued bonds authorized by
94 this article, and after the requirements of all funds have
95 been satisfied, including coverage and reserve funds
96 established in connection with the bonds issued pursuant
97 to this article, any balance remaining in the school
98 building debt service fund may be used for the redemp-
99 tion of any of the outstanding bonds issued hereunder
100 which, by their terms, are then redeemable or for the
101 purchase of the outstanding bonds at the market price,
102 but not to exceed the price, if any, at which redeemable,
103 and all bonds redeemed or purchased shall be forthwith
104 canceled and shall not again be issued.

105 (c) There is hereby created in the state treasury a
106 special fund named the school construction fund into
107 which shall be deposited on and after the first day of
108 July, one thousand nine hundred ninety-four, the
109 amounts specified in section thirty, article fifteen,
110 chapter eleven of this code, together with any moneys
111 appropriated thereto by the Legislature. Expenditures
112 from the school construction fund shall be for the
113 purposes set forth in this article, including lease-
114 purchase payments under agreements made pursuant to
115 subsection (e), section fifteen of this article and section
116 nine, article five of this chapter and are authorized from
117 collections in accordance with the provisions of article
118 three, chapter twelve of this code and from other
119 revenues annually appropriated by the Legislature from
120 lottery revenues as authorized by section eighteen,
121 article twenty-two, chapter twenty-nine of this code,
122 pursuant to the provisions set forth in article two,
123 chapter five-a of this code. Amounts collected which are
124 found from time to time to exceed the funds needed for
125 purposes set forth in this article may be transferred to

126 other accounts or funds and redesignated for other
127 purposes by appropriation of the Legislature.

128 (d) There is hereby created in the state treasury a
129 special fund named the school major improvement fund
130 into which shall be deposited on and after the first day
131 of July, one thousand nine hundred ninety-four, the
132 amounts specified in section thirty, article fifteen,
133 chapter eleven of this code, together with any moneys
134 appropriated thereto by the Legislature. Expenditures
135 from the school major improvement fund shall be for the
136 purposes set forth in this article and are authorized
137 from collections in accordance with the provisions of
138 article three, chapter twelve of this code and from other
139 revenues annually appropriated by the Legislature from
140 lottery revenues as authorized by section eighteen,
141 article twenty-two, chapter twenty-nine of this code,
142 pursuant to the provisions set forth in article two,
143 chapter five-a of this code. Amounts collected which are
144 found from time to time to exceed the funds needed for
145 purposes set forth in this article may be transferred to
146 other accounts or funds and redesignated for other
147 purposes by appropriation of the Legislature.

148 (e) The Legislature hereby finds and declares that the
149 supreme court of appeals of West Virginia has held that
150 the issuance of additional revenue bonds authorized
151 under the school building authority act, as enacted in
152 this article prior to the twentieth day of July, one
153 thousand nine hundred ninety-three, constituted an
154 indebtedness of the state in violation of section 4, article
155 X of the constitution of West Virginia, but that revenue
156 bonds issued hereunder prior to the twentieth day of
157 July, one thousand nine hundred ninety-three, are not
158 invalid. The Legislature further finds and declares that
159 the financial capacity of a county to construct, lease and
160 improve school facilities depends upon the county's
161 bonding capacity (local property wealth), voter willing-
162 ness to pass bond issues and the county's ability to
163 reallocate other available county funds instead of
164 criteria related to educational needs or upon the ability
165 of the school building authority created in this article
166 to issue bonds that comply with said holding of the West

167 Virginia supreme court of appeals or otherwise assist
168 counties with the financing of facilities construction and
169 improvement. The Legislature hereby further finds and
170 declares that this section, as well as section eighteen,
171 article twenty-two, chapter twenty-nine of this code,
172 have been reenacted during the first extraordinary
173 session of the West Virginia Legislature in the year one
174 thousand nine hundred ninety-four, in an attempt to
175 comply with said holding of the supreme court of
176 appeals of West Virginia.

177 The Legislature hereby further finds and declares
178 that it intends, through the reenactment of this section
179 and section eighteen, article twenty-two, chapter
180 twenty-nine of this code, to dedicate a source of state
181 revenues to special funds for the purposes of paying the
182 debt service on bonds and refunding bonds issued
183 subsequent to the first day of January, one thousand
184 nine hundred ninety-four, the proceeds of which will be
185 utilized for the construction and improvement of school
186 building facilities. The Legislature hereby further finds
187 and declares that it intends, through the reenactment of
188 this section and section thirty, article fifteen, chapter
189 eleven of this code and section eighteen, article twenty-
190 two, chapter twenty-nine of this code, to appropriate
191 revenues to two special funds for the purposes of
192 construction and improvement of school building
193 facilities. Furthermore, the Legislature intends to
194 encourage county boards of education to maintain
195 existing levels of county funding for construction,
196 improvement and maintenance of school building
197 facilities and to generate additional county funds for
198 such purposes through bonds and special levies whe-
199 never possible. The Legislature further encourages the
200 school building authority, the state board of education
201 and county boards of education to propose uniform
202 project specifications for comparable projects whenever
203 possible to meet county needs at the lowest possible cost.

204 The Legislature hereby further finds and declares
205 that it intends, through the reenactment of this section
206 and section eighteen, article twenty-two, chapter
207 twenty-nine of this code, to comply with the provisions

208 of sections 4 and 6, article X; and section 1, article XII
209 of the constitution of West Virginia.

§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.

1 The maximum aggregate face value of bonds that
2 may be issued by the authority, for which the moneys
3 in the school building debt service fund are to be
4 pledged, is one hundred sixty million dollars. The
5 issuance of revenue bonds under the provisions of this
6 article shall be authorized from time to time by
7 resolution or resolutions of the school building authority,
8 which shall set forth the proposed projects and provide
9 for the issuance of bonds in amounts sufficient, when
10 sold as hereinafter provided, to provide moneys consi-
11 dered sufficient by the authority to pay such costs, less
12 the amounts of any other funds available for said costs
13 or from any appropriation, grant or gift therefor:
14 *Provided*, That bond issues from which bond revenues
15 are to be distributed in accordance with section fifteen
16 of this article shall not be required to set forth the
17 proposed projects in the resolution. Such resolution shall
18 prescribe the rights and duties of the bondholders and
19 the school building authority, and for such purpose may
20 prescribe the form of the trust agreement hereinafter
21 referred to. The bonds may be issued from time to time,
22 in such amounts; shall be of such series; bear such date
23 or dates; mature at such time or times not exceeding
24 forty years from their respective dates; bear interest at
25 such rate or rates; be in such denominations; be in such
26 form, either coupon or registered, carrying such
27 registration, exchangeability and interchangeability
28 privileges; be payable in such medium of payment and
29 at such place or places within or without the state; be
30 subject to such terms of redemption at such prices not
31 exceeding one hundred five percent of the principal
32 amount thereof; and be entitled to such priorities on the
33 revenues paid into the fund pledged for repayment of
34 the bonds as may be provided in the resolution autho-
35 rizing the issuance of the bonds or in any trust
36 agreement made in connection therewith: *Provided*,
37 *however*, That revenue bonds issued on or after the first

38 day of January, one thousand nine hundred ninety-four,
39 which are secured by lottery proceeds shall mature at
40 such time or times not exceeding ten years from their
41 respective dates.

42 The bonds shall be signed by the governor, and by the
43 president or vice president of the authority, under the
44 great seal of the state, attested by the secretary of state,
45 and the coupons attached thereto shall bear the facsimile
46 signature of the president or vice president of the
47 authority. In case any of the officers whose signatures
48 appear on the bonds or coupons cease to be such officers
49 before the delivery of such bonds, such signatures shall
50 nevertheless be valid and sufficient for all purposes the
51 same as if such officers had remained in office until such
52 delivery. Such revenue bonds shall be sold in such
53 manner as the authority may determine to be for the
54 best interests of the state.

55 Any pledge of revenues made by the school building
56 authority for revenue bonds issued prior to the twentieth
57 day of July, one thousand nine hundred ninety-three,
58 pursuant to this article shall be valid and binding
59 between the parties from the time the pledge is made;
60 and the revenues so pledged shall immediately be
61 subject to the lien of such pledge without any further
62 physical delivery thereof or further act. The lien of such
63 pledge shall be valid and binding against all parties
64 having claims of any kind in tort, contract or otherwise,
65 irrespective of whether such parties have notice of the
66 lien of such pledge, and such pledge shall be a prior and
67 superior charge over any other use of such revenues so
68 pledged.

69 The proceeds of such any bonds shall be used solely
70 for the purpose or purposes as may be generally or
71 specifically set forth in the resolution authorizing those
72 bonds and shall be disbursed in such manner and with
73 such restrictions, if any, as the authority may provide
74 in the resolution authorizing the issuance of such bonds
75 or in the trust agreement hereinafter referred to
76 securing the same. If the proceeds of such bonds, by
77 error in calculations or otherwise, shall be less than the
78 cost of any projects specifically set forth in the resolu-

79 tion, additional bonds may in like manner be issued to
80 provide the amount of the deficiency; and unless
81 otherwise provided for in the resolution or trust
82 agreement hereinafter mentioned, such additional bonds
83 shall be considered to be of the same issue, and shall be
84 entitled to payment from the same fund, without
85 preference or priority, as the bonds before issued for
86 such projects. If the proceeds of bonds issued for such
87 projects specifically set forth in the resolution authoriz-
88 ing such bonds issued by the authority exceed the cost
89 thereof, the surplus may be used for such other projects
90 as the school building authority may determine or in
91 such other manner as the resolution authorizing such
92 bonds may provide. Prior to the preparation of definitive
93 bonds, the authority may, under like restrictions, issue
94 temporary bonds with or without coupons, exchangeable
95 for definitive bonds upon the issuance of such definitive
96 bonds.

97 After the issuance of any of such revenue bonds, the
98 revenues therefore pledged shall not be reduced as long
99 as any of such revenue bonds are outstanding and
100 unpaid except under such terms, provisions and condi-
101 tions as shall be contained in the resolution, trust
102 agreement or other proceedings under which such
103 revenue bonds were issued.

104 Such revenue bonds and the revenue refunding bonds,
105 and bonds issued for combined purposes shall, together
106 with the interest thereon, be exempt from all taxation
107 by the state of West Virginia, or by any county, school
108 district, municipality or political subdivision thereof.

109 To meet the operational costs of the school building
110 authority, the school building authority may transfer to
111 a special revenue account in the state treasury interest
112 on any debt service reserve funds created within any
113 resolution authorizing the issue of bonds or any trust
114 agreement made in connection therewith, for expendi-
115 ture in accordance with legislative appropriation or
116 allocation of appropriation.

§18-9D-15. Legislative intent; distribution of money.

1 (a) It is the intent of the Legislature to empower the

2 school building authority to facilitate and provide state
3 funds for the construction and major improvement of
4 school facilities so as to meet the educational needs of
5 the people of this state in an efficient and economical
6 manner. The authority shall make funding determina-
7 tions in accordance with the provisions of this article
8 and shall assess existing school facilities and each
9 facility's school major improvement plan in relation to
10 the needs of the individual student, the general school
11 population, the communities served by the facilities and
12 facility needs statewide.

13 (b) An amount that is no more than three percent of
14 the sum of moneys that are determined by the authority
15 to be available for distribution during the then current
16 fiscal year from: (1) Moneys paid into the school building
17 capital improvements fund pursuant to section ten,
18 article nine-a of this chapter; (2) the issuance of revenue
19 bonds for which moneys in the school building debt
20 service fund are pledged as security; (3) moneys paid
21 into the school construction fund pursuant to section six
22 of this article; and (4) any other moneys received by the
23 authority, except moneys paid into the school major
24 improvement fund pursuant to section six of this article,
25 may be allocated and may be expended by the authority
26 for projects that service the educational community
27 statewide or, upon application by the state board, for
28 educational programs that are under the jurisdiction of
29 the state board. In addition, upon application by the
30 state board or the administrative council of an area
31 vocational educational center established pursuant to
32 article two-b of this chapter, the authority may allocate
33 and expend hereunder moneys for school major im-
34 provement projects proposed by the state board or such
35 administrative council for school facilities under the
36 direct supervision of the state board or such adminis-
37 trative council, respectively: *Provided*, That the author-
38 ity may not expend any moneys for a school major
39 improvement project proposed by the state board or the
40 administrative council of an area vocational educational
41 center unless the state board or such administrative
42 council has submitted a ten-year school major improve-
43 ment plan, to be updated annually, pursuant to section

44 sixteen of this article: *Provided, however,* That the
45 authority shall, before allocating any moneys to the state
46 board or the administrative council of an area vocational
47 educational center for a school improvement project,
48 consider all other funding sources available for such
49 project.

50 (c) An amount that is no more than two percent of the
51 moneys that are determined by the authority to be
52 available for distribution during the current fiscal year
53 from: (1) Moneys paid into the school building capital
54 improvements fund pursuant to section ten, article nine-
55 a of this chapter; (2) the issuance of revenue bonds for
56 which moneys in the school building debt service fund
57 are pledged as security; (3) moneys paid into the school
58 construction fund pursuant to section six of this article;
59 and (4) any other moneys received by the authority,
60 except moneys deposited into the school major improve-
61 ment fund, shall be set aside by the authority as an
62 emergency fund to be distributed in accordance with the
63 guidelines adopted by the school building authority.

64 (d) The remaining moneys determined by the author-
65 ity to be available for distribution during the then
66 current fiscal year from: (1) Moneys paid into the school
67 building capital improvements fund pursuant to section
68 ten, article nine-a of this chapter; (2) the issuance of
69 revenue bonds for which moneys in the school building
70 debt service fund are pledged as security; (3) moneys
71 paid into the school construction fund pursuant to
72 section six of this article; and (4) any other moneys
73 received by the authority, except moneys deposited into
74 the school major improvement fund, shall be allocated
75 and expended on the basis of need and efficient use of
76 resources, such basis to be determined by the authority
77 in accordance with the provisions of section sixteen of
78 this article.

79 (e) If a county board of education proposes to finance
80 a project that is approved pursuant to section sixteen of
81 this article through a lease with an option to purchase
82 leased premises upon the expiration of the total lease
83 period pursuant to an investment contract, the authority
84 may allocate no moneys to such county board in

85 connection therewith: *Provided*, That the authority may
86 transfer moneys to the state board of education, which,
87 with the authority, shall lend the amount so transferred
88 to such county board to be used only for a one-time
89 payment due at the beginning of the lease term, made
90 for the purpose of reducing annual lease payments
91 under the investment contract, subject to the following
92 conditions:

93 (1) Such a loan shall be secured in the manner
94 required by the authority, in consultation with the state
95 board, and shall be repaid in a period and bear interest
96 at a rate as determined by the state board and the
97 authority and shall have such terms and conditions as
98 are required by the authority, all of which shall be set
99 forth in a loan agreement among the authority, the state
100 board of education and such county board;

101 (2) Such loan agreement shall provide for the state
102 board and the authority to defer the payment of
103 principal and interest upon any loan made to such
104 county board during the term of such investment
105 contract, and annual renewals thereof, among the state
106 board, the authority, such county board and a lessor:
107 *Provided*, That in the event a county board of education,
108 which has received a loan from the state building
109 authority for a one-time payment at the beginning of the
110 lease term, does not renew the subject lease annually
111 until performance of the investment contract in its
112 entirety is completed: *Provided, however*, That if a
113 county board renews the lease annually through the
114 performance of the investment contract in its entirety,
115 the county board shall exercise its option to purchase the
116 leased premises: *Provided further*, That the failure of
117 such county board to make a scheduled payment
118 pursuant to the investment contract shall constitute an
119 event of default under the loan agreement: *And provided*
120 *further*, That upon such a default by a county board, the
121 principal of the loan, together with all unpaid interest
122 accrued to the date of such default, shall at the option
123 of the authority, in consultation with the state board,
124 become due and payable immediately or subject to
125 renegotiation among the state board, the authority and

126 such county board: *And provided further*, That if the
127 loan becomes due and payable immediately, the author-
128 ity, in consultation with the state board, shall use all
129 means available under the loan agreement and law to
130 collect the outstanding principal balance of the loan,
131 together with all unpaid interest accrued to the date of
132 payment of such outstanding principal balance; and

133 (3) Such loan agreement shall provide for the state
134 board and the authority to forgive all principal and
135 interest of the loan upon the county board purchasing
136 the leased premises pursuant to the investment contract
137 and performance of the investment contract in its
138 entirety.

139 To encourage county boards to proceed promptly with
140 facilities planning and to prepare for the expenditure of
141 any state moneys derived from the sources described in
142 this subsection, any county board failing to expend
143 money within three years of the allocation thereto shall
144 forfeit such allocation and thereafter shall be ineligible
145 for further allocations pursuant to this subsection until
146 the county board is ready to expend funds in accordance
147 with an approved facilities plan: *Provided*, That the
148 authority may authorize an extension beyond the three-
149 year forfeiture period not to exceed an additional two
150 years. Any amount so forfeited shall be added to the
151 total funds available in the school construction fund of
152 the authority for future allocation and distribution.

153 (f) The remaining moneys that are determined by the
154 authority to be available for distribution during the then
155 current fiscal year from moneys paid into the school
156 major improvement fund pursuant to section six of this
157 article shall be allocated and distributed on the basis of
158 need and efficient use of resources, such basis to be
159 determined by the authority in accordance with the
160 provisions of section sixteen of this article: *Provided*,
161 That such moneys may not be distributed to any county
162 board that does not have an approved school major
163 improvement plan or to any county board that is not
164 prepared to commence expenditures of such funds
165 during the fiscal year in which the moneys are distrib-
166 uted: *Provided, however*, That any moneys allocated to

167 a county board and not distributed to that county board
168 shall be deposited in an account to the credit of that
169 county board, such principal amount to remain to the
170 credit of and available to the county board for a period
171 of two years. Any moneys which are unexpended after
172 a two-year period shall be redistributed on the basis of
173 need from the school major improvement fund in that
174 fiscal year.

175 (g) No local matching funds may be required under
176 the provisions of this section. However, the responsibil-
177 ities of the county boards of education to maintain school
178 facilities shall not be negated by the provisions of this
179 article, and therefore, to be eligible to receive an
180 allocation of school major improvement funds from the
181 authority, a county board must have expended in the
182 previous fiscal year an amount of county moneys equal
183 to or exceeding the lowest average amount of money
184 included in such county board's maintenance budget
185 over any three of the previous five years and must have
186 budgeted an amount equal to or greater than said
187 average in the current fiscal year: *Provided*, That the
188 state board of education shall promulgate rules relating
189 to county boards' maintenance budgets, including items
190 which shall be included therein, as soon as practical and
191 submitted for legislative review no later than the first
192 day of December, one thousand nine hundred ninety-
193 four.

194 (h) Any county board may use moneys provided by the
195 authority under this article in conjunction with local
196 funds derived from bonding, special levy or other
197 sources. Distribution to a county board, or to the state
198 board or the administrative council of an area vocational
199 educational center pursuant to subsection (b) of this
200 section, may be in a lump sum or in accordance with
201 a schedule of payments adopted by the authority
202 pursuant to such guidelines as it shall adopt.

**§18-9D-16. Facilities and major improvement plans
generally; need-based eligibility.**

1 (a) To facilitate the goals as stated in section fifteen
2 of this article and to assure the prudent and resourceful

3 expenditure of state funds for construction projects as
4 described in subsection (d) of said section, each county
5 board of education shall submit a county-wide compre-
6 hensive educational facilities plan that addresses the
7 facilities and major improvement needs of the county
8 pursuant to such guidelines as shall be adopted by the
9 authority in accordance with this section and in
10 accordance with each county's facilities plan approved
11 by the state board of education. Any project receiving
12 funding shall be in furtherance of such approved county-
13 wide facilities plan.

14 (1) To assure efficiency and productivity in the project
15 approval process, the county-wide facilities plan shall be
16 submitted only after a preliminary plan, a plan outline
17 or a proposal for a plan has been submitted to the
18 authority. Selected members of the authority, which
19 selection shall include citizen members, shall then meet
20 promptly with those persons designated by the county
21 board to attend the facilities plan consultation. The
22 purpose of the consultation is to assure understanding
23 of the general goals of the school building authority and
24 the specific goals encompassed in the following criteria
25 and to discuss ways the plan may be structured to meet
26 those goals.

27 (2) The guidelines for the development of a facilities
28 plan shall state the manner, timeline and process for
29 submission of any plan to the authority; such project
30 specifications as may be deemed appropriate by the
31 authority; and those matters which are deemed by the
32 authority to be important reflections of how the project
33 will further the overall goals of the authority.

34 (b) To facilitate the goals as stated in section fifteen
35 of this article and to assure the prudent and resourceful
36 expenditure of state funds derived from the school major
37 improvement fund, each county board of education shall
38 submit to the authority a ten-year county-wide school
39 major improvement plan that addresses the major
40 improvement needs of each school within the county. If
41 the state board of education or the administrative
42 council of an area vocational educational center chooses
43 to seek funding for a major improvement project from

44 the authority pursuant to subsection (f) of said section,
45 the state board or such administrative council shall
46 submit a ten-year school major improvement plan that
47 addresses the major improvement needs of the school or
48 area vocational educational center for which funding is
49 sought. Each ten-year school major improvement plan
50 shall be prepared pursuant to such guidelines as shall
51 be adopted by the authority in accordance with this
52 section and shall be updated annually to reflect projects
53 completed and new or continuing needs. Any school
54 major improvement project funded by the authority
55 shall be in furtherance of such approved school major
56 improvement plan.

57 The guidelines for the development and annual
58 updates of a ten-year school major improvement plan
59 shall state the manner, timeline and process for
60 submission of any plan, including a repair and replace-
61 ment schedule for school facilities, to the authority; such
62 maintenance specifications as may be deemed approp-
63 riate by the authority; and those matters which are
64 deemed by the authority to be important reflections of
65 how the major improvement project or projects will
66 further the overall goals of the authority.

67 (c) The guidelines regarding submission of the
68 facilities plans and school major improvement plans
69 shall include requirements for public hearings, com-
70 ments or other means of providing broad-based input
71 within a reasonable time period as the authority may
72 deem appropriate. The submission of each plan shall be
73 accompanied by a synopsis of all comments received and
74 a formal comment by the county board, the state board
75 or the administrative council of an area vocational
76 educational center submitting such plan.

77 The guidelines regarding project specifications may
78 include such matters as energy efficiency, preferred
79 siting, construction materials, maintenance plan or any
80 other matter related to how the project is to proceed. If
81 a county board of education proposes to finance a
82 construction project through a lease with an option to
83 purchase pursuant to an investment contract as des-
84 cribed in subsection (e), section fifteen of this article, the

85 specifications for such project shall include the term of
86 the lease, the amount of each lease payment, including
87 the payment due upon exercise of the option to purchase,
88 and the terms and conditions of the proposed investment
89 contract.

90 (d) The guidelines pertaining to quality educational
91 facilities shall require that a facilities plan address how
92 the current facilities do not meet and how the proposed
93 plan and any project thereunder does meet the following
94 goals:

95 (1) Student health and safety;

96 (2) Economies of scale, including compatibility with
97 similar schools that have achieved the most economical
98 organization, facility utilization and pupil-teacher
99 ratios;

100 (3) Reasonable travel time and practical means of
101 addressing other demographic considerations;

102 (4) Multicounty and regional planning to achieve the
103 most effective and efficient instructional delivery
104 system;

105 (5) Curriculum improvement and diversification,
106 including computerization and technology and advanced
107 senior courses in science, mathematics, language arts
108 and social studies;

109 (6) Innovations in education;

110 (7) Adequate space for projected student enrollments;
111 and

112 (8) To the extent constitutionally permissible, each
113 facilities plan shall address the history of efforts taken
114 by the county board to propose or adopt local school
115 bond issues or special levies.

116 If the project is to benefit more than one county in
117 the region, the facilities plan shall state the manner in
118 which the cost and funding of the project shall be
119 apportioned among the counties.

120 (e) The guidelines pertaining to quality educational
121 facilities shall require that a school major improvement

122 plan address how the proposed plan and any project
123 thereunder meet the following goals:

124 (1) Student health and safety, including, but not
125 limited to, critical health and safety needs; and

126 (2) Economies of scale, including regularly scheduled
127 preventive maintenance: *Provided*, That each county
128 board's school maintenance plan shall address regularly
129 scheduled maintenance for all facilities within the
130 county.

131 (f) Each county board's facilities plan and school
132 major improvement plan shall prioritize all the con-
133 struction projects or major improvement projects,
134 respectively, within the county. A school major improve-
135 ment plan submitted by the state board or the adminis-
136 trative council of an area vocational educational center
137 shall prioritize all the school improvement projects
138 contained in such plan. Such priority list shall be one
139 of the criteria to be considered by the authority in
140 determining how available funds shall be expended. In
141 prioritizing the projects, the county board, the state
142 board or the administrative council submitting a plan
143 shall make determinations in accordance with the
144 objective criteria formulated by the school building
145 authority.

146 (g) Each facilities plan and school major improvement
147 plan shall include the objective means to be utilized in
148 evaluating implementation of the overall plan and each
149 project included therein. Such evaluation shall measure
150 each project's furtherance of each applicable goal stated
151 in this section and any guidelines adopted hereunder, as
152 well as the overall success of any project as it relates
153 to the facilities plan or school major improvement plan
154 and the overall goals of the authority.

155 (h) The state department of education shall conduct
156 on-site inspections, at least annually, of all facilities
157 which have been funded wholly or in part by moneys
158 from the authority or state board to ensure compliance
159 with the county board's facilities plan and school major
160 improvement plan as related to such facilities; to
161 preserve the physical integrity of the facilities to the

162 extent possible; and to otherwise extend the useful life
163 of the facilities: *Provided*, That the state board shall
164 submit reports regarding its on-site inspections of
165 facilities to the authority within thirty days of comple-
166 tion of such on-site inspections: *Provided, however*, That
167 the state board shall promulgate rules regarding such
168 on-site inspections and matters relating thereto, in
169 consultation with the authority, as soon as practical and
170 shall submit such proposed rules for legislative review
171 no later than the first day of December, one thousand
172 nine hundred ninety-four.

173 (i) The authority may adopt guidelines for requiring
174 that a county board modify, update, supplement or
175 otherwise submit changes or additions to an approved
176 facilities plan or for requiring that a county board, the
177 state board or the administrative council of an area
178 vocational educational center modify, update, supple-
179 ment or otherwise submit changes or additions to an
180 approved county board facilities plan or school major
181 improvement plan. The authority shall provide reasona-
182 ble notification and sufficient time for such change or
183 addition as delineated in guidelines developed by the
184 authority.

185 (j) Based on its on-site inspection or notification by the
186 authority to the state board that the changes or
187 additions to a county's board facilities plan or school
188 major improvement plan required by the authority have
189 not been implemented within the time period prescribed
190 by the authority, the state board shall restrict the use
191 of the necessary funds or otherwise allocate funds from
192 moneys appropriated by the Legislature for those
193 purposes set forth in section nine, article nine-a of this
194 chapter.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18. State lottery fund; appropriations and depos-
its; not part of general revenue; no transfer
of state funds after initial appropriation; use
and repayment of initial appropriation;

allocation of fund for prizes, net profit and expenses; surplus; state lottery education fund; state lottery senior citizens fund; allocation and appropriation of net profits.

1 (a) There is hereby created a special fund in the state
2 treasury which shall be designated and known as the
3 "state lottery fund". The fund shall consist of all
4 appropriations to the fund and all interest earned from
5 investment of the fund and any gifts, grants or contri-
6 butions received by the fund. All revenues received from
7 the sale of lottery tickets, materials and games shall be
8 deposited with the state treasurer and placed into the
9 "state lottery fund". The revenue shall be disbursed in
10 the manner herein provided for the purposes stated
11 herein and shall not be treated by the auditor and
12 treasurer as part of the general revenue of the state.

13 (b) No appropriation, loan or other transfer of state
14 funds may be made to the commission or lottery fund
15 after the initial appropriation.

16 (c) A minimum annual average of forty-five percent
17 of the gross amount received from each lottery shall be
18 allocated and disbursed as prizes.

19 (d) Not more than fifteen percent of the gross amount
20 received from each lottery shall be allocated to and may
21 be disbursed as necessary for fund operation and
22 administration expenses.

23 (e) The excess of the aggregate of the gross amount
24 received from all lotteries over the sum of the amounts
25 allocated by subsections (c) and (d) of this section shall
26 be allocated as net profit. The director is authorized to
27 expend the necessary percentage of the amount allo-
28 cated as net profit, not to exceed six percent of the gross
29 amount received, for the purposes of entering into
30 contractual arrangements for the acquisition, financing,
31 lease and lease-purchase, and other financing transac-
32 tions, of lottery goods and services, including tickets,
33 equipment, machinery, electronic computer systems and
34 terminals, and supplies and maintenance therefor, for
35 the first thirty-six months of operation, and may
36 apportion the costs, expenses and expenditures related

37 thereto among the commission, vendor or vendors and
38 licensed lottery sales agents. In the event that the
39 percentage allotted for operations and administration
40 generates a surplus, the surplus will be allowed to
41 accumulate to an amount not to exceed two hundred
42 fifty thousand dollars. On a monthly basis the director
43 shall report to the joint committee on government and
44 finance of the Legislature any surplus in excess of two
45 hundred fifty thousand dollars and remit to the state
46 treasurer the entire amount of those surplus funds in
47 excess of two hundred fifty thousand dollars which shall
48 be allocated as net profit.

49 (f) After satisfying the requirements for funds
50 dedicated to the school building debt service fund in
51 subsection (h) of this section to retire the ten-year bonds
52 authorized to be issued pursuant to section eight, article
53 nine-d, chapter eighteen of this code, the Legislature
54 shall annually appropriate all of the remaining amounts
55 allocated as net profits above, in such proportions as it
56 deems beneficial to the citizens of this state, to: (1) The
57 lottery education fund created in subsection (g) of this
58 section; (2) the school construction fund as created in
59 section six, article nine-d, chapter eighteen of this code;
60 (3) the lottery senior citizens fund created in subsection
61 (i) of this section; and (4) the commerce division created
62 in article one, chapter five-b of this code, in accordance
63 with subsection (j) of this section: *Provided*, That no
64 transfer to any account other than the school building
65 debt service account may be made in any period in
66 which a default exists in respect to debt service on bonds
67 issued by the school building authority which are
68 secured by lottery proceeds: *Provided, however*, That no
69 additional transfer shall be made to any account other
70 than the school building debt service account when net
71 profits for the preceding twelve months are not at least
72 equal to one hundred fifty percent of debt service on
73 bonds issued by the school building authority which are
74 secured by net profits.

75 (g) There is hereby created a special fund in the state
76 treasury which shall be designated and known as the
77 "lottery education fund". The fund shall consist of the

78 amounts allocated pursuant to subsection (f) of this
79 section, which amounts shall be deposited into the
80 lottery education fund by the state treasurer. The lottery
81 education fund shall also consist of all interest earned
82 from investment of the lottery education fund and any
83 other appropriations, gifts, grants, contributions or
84 moneys received by the lottery education fund from any
85 source. The revenues received or earned by the lottery
86 education fund shall be disbursed in the manner
87 provided below and shall not be treated by the auditor
88 and treasurer as part of the general revenue of the state.
89 Annually, the Legislature shall appropriate the re-
90 venues received or earned by the lottery education fund
91 to the state system of public and higher education for
92 such educational programs as it considers beneficial to
93 the citizens of this state.

94 (h) Beginning on or before the twenty-eighth day of
95 July, one thousand nine hundred ninety-four, and
96 continuing on or before the twenty-eighth day of each
97 succeeding month thereafter through the thirtieth day
98 of June, two thousand five, the lottery director shall
99 allocate to the school building debt service fund created
100 pursuant to the provisions of section six, article nine-d,
101 chapter eighteen of this code, as a first priority from the
102 net profits of the lottery for the preceding month, an
103 amount equal to one tenth of the projected annual
104 principal, interest and coverage ratio requirements on
105 any and all revenue bonds and refunding bonds issued,
106 or to be issued, on or after the first day of April, one
107 thousand nine hundred ninety-four, as certified to the
108 lottery director in accordance with the provisions of said
109 section: *Provided*, That in no event shall said monthly
110 amount exceed one million eight hundred thousand
111 dollars: *Provided, however*, That in no event shall the
112 total allocation of said net profits to be paid into the
113 school building debt service fund, as provided in this
114 section, in any fiscal year exceed the lesser of the
115 principal and interest requirements certified to the
116 lottery director as aforesaid, or eighteen million dollars:
117 *Provided further*, That in the event there are insufficient
118 funds available in any month to transfer the amount
119 required to be transferred pursuant to this subsection

120 to the school debt service fund, the deficiency shall be
121 added to the amount transferred in the next succeeding
122 month in which revenues are available to transfer said
123 deficiency: *And provided further*, That a lien on the
124 proceeds of the state lottery fund up to a maximum
125 amount equal to the projected annual principal, interest
126 and coverage ratio requirements, not to exceed twenty-
127 seven million dollars annually, may be granted by the
128 authority in favor of the bonds issued by the authority
129 which are secured by the net lottery profits.

130 (i) There is hereby created a special fund in the state
131 treasury which shall be designated and known as the
132 "lottery senior citizens fund". The fund shall consist of
133 the amounts allocated pursuant to subsection (f) of this
134 section, which amounts shall be deposited into the
135 lottery senior citizens fund by the state treasurer. The
136 lottery senior citizens fund shall also consist of all
137 interest earned from investment of the lottery senior
138 citizens fund and any other appropriations, gifts, grants,
139 contributions or moneys received by the lottery senior
140 citizens fund from any source. The revenues received or
141 earned by the lottery senior citizens fund shall be
142 disbursed in the manner provided below and shall not
143 be treated by the auditor or treasurer as part of the
144 general revenue of the state. Annually, the Legislature
145 shall appropriate the revenues received or earned by the
146 lottery senior citizens fund to such senior citizens
147 medical care and other programs as it considers
148 beneficial to the citizens of this state.

149 (j) The commerce division may use the amounts
150 allocated to it pursuant to subsection (f) of this section
151 for one or more of the following purposes: (1) The
152 payment of any or all of the costs incurred in the
153 development, construction, reconstruction, maintenance
154 or repair of any project or recreational facility, as such
155 terms are defined in section thirteen-a, article one,
156 chapter five-b of this code, pursuant to the authority
157 granted to it under said article; (2) the payment, funding
158 or refunding of the principal of, interest on or redemp-
159 tion premiums on any bonds, security interests or notes
160 issued by the parks and recreation section of the

161 commerce division under article one, chapter five-b of
162 this code; or (3) the payment of any advertising and
163 marketing expenses for the promotion and development
164 of tourism or any tourist facility or attraction in this
165 state.

CHAPTER 26

(H. B. 5006—By Mr. Speaker, Mr. Chambers, and Delegates Martin,
Michael, Mezzatesta, Houvouras, Kiss and Burk)

[Passed March 18, 1994; in effect July 1, 1994. 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 fifteen-a, relating to creating state infrastructure and jobs development act; defining terms; creating state infrastructure and jobs development council to coordinate the evaluation of disbursement of funds for water and wastewater projects as well as other infrastructure projects and designating members of the council; advisory members of the council; requiring council to develop uniform guidelines for use by state agencies in evaluating funding requests for infrastructure projects and to create a preliminary application form to be used by all persons making such funding requests; providing requirements for project funding; providing exceptions for certain infrastructure projects and projects; permissible recommendations by council; setting forth powers and duties of council; requiring a comprehensive inventory and assessment of needs of water supply systems and sewage systems; authorizing the council to provide grants; coordination of infrastructure needs with division of highways; authorizing the appointment of local infrastructure planning teams; duties of planning teams; creation of infrastructure road improvement reserve account; a study on consolidating public service districts; exempting certain infrastructure projects which council determines are emergency projects from requirement to obtain certificate of public

convenience and necessity from state public service commission and requiring public service commission to review requests for certificates with respect to certain other emergency projects within specified time periods; authorizing the public land corporation to acquire specified property; requiring the water development authority to establish and administer a permanent and special fund permitting water development authority to deposit moneys in infrastructure fund in one or more banking institutions located in this state; recommendations by the council; reservation of specified amount of funds for projects and infrastructure projects; providing water development authority additional powers in connection with infrastructure projects and projects; recommendations by council; prohibiting water development board from receiving benefits or distributions from infrastructure fund; declaring that infrastructure projects financed by water development authority shall not be considered to be "public improvements" within meaning of article five-a, chapter twenty of the code; setting forth procedures regarding competitive bids; and dedicating a portion of annual severance tax collection for funding of projects and infrastructure projects.

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 fifteen-a, to read as follows:

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

- §31-15A-1. Short title.
- §31-15A-2. Definitions.
- §31-15A-3. West Virginia infrastructure and jobs development council created; members of council; staff of council.
- §31-15A-4. Development of guidelines and preliminary application for funding assistance.
- §31-15A-5. Requirements for project funding assistance; review of project preliminary applications by council.
- §31-15A-6. Powers, duties and responsibilities of the council generally; comprehensive assessment.
- §31-15A-7. Current and prospective planning; roads and highways; report to division of highways.

- §31-15A-8. Exemption of certain emergency projects from certificate of public convenience and necessity requirements; review of certain emergency projects by public service commission; and exemption for North Fork Hughes River watershed project.
- §31-15A-9. Infrastructure fund; deposits in fund; disbursements to provide loans, loan guarantees, grants and other assistance; loans, loan guarantees, grants and other assistance shall be subject to assistance agreements.
- §31-15A-10. Recommendations by council for expenditures of funds by loan or grant.
- §31-15A-11. Reservation of funds for projects and infrastructure projects.
- §31-15A-12. Additional powers of water development authority.
- §31-15A-13. Prohibition on funds inuring to the benefit of or being distributable to water development board; transactions between the water development board and officers having certain interests in such transactions.
- §31-15A-14. Termination or dissolution.
- §31-15A-15. Projects not to be considered public improvements; competitive bid requirements.
- §31-15A-16. Dedication of severance tax proceeds.

§31-15A-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 "West Virginia Infrastructure and Jobs Development
- 3 Act."

§31-15A-2. Definitions.

- 1 For purposes of this article:
- 2 (a) "Code" means the code of West Virginia, one
- 3 thousand nine hundred thirty-one, as amended;
- 4 (b) "Cost" means, as applied to any project to be
- 5 financed, in whole or in part, with infrastructure
- 6 revenues or funds otherwise provided pursuant to this
- 7 article, the cost of planning, acquisition, improvement
- 8 and construction of the project; the cost of preliminary
- 9 design and analysis, surveys, borings; the cost of
- 10 environmental, financial, market and engineering
- 11 feasibility studies, assessments, applications, approvals,
- 12 submissions or clearances; the cost of preparation of
- 13 plans and specifications and other engineering services;
- 14 the cost of acquisition of all land, rights-of-way, property
- 15 rights, easements, franchise rights and any other
- 16 interests required for the acquisition, repair, improve-
- 17 ment or construction of the project; the cost of demol-

18 ishing or removing any buildings or structures on land
19 so acquired, including the cost of acquiring any lands
20 to which buildings or structures may be moved; the cost
21 of excavation, grading, shaping or treatment of earth,
22 demolishing or removing any buildings or structures;
23 the cost of constructing any buildings or other improve-
24 ments; the cost of all pumps, tanks, vehicles, apparatus
25 and other machinery, furnishings and equipment; loan
26 or origination fees and all finance charges and interest
27 incurred prior to and during the construction and for
28 no more than six months after completion of construc-
29 tion; the cost of all legal services and expenses; the cost
30 of all plans, specifications, surveys and estimates of cost;
31 all working capital and other expenses necessary or
32 incident to determining the feasibility or practicability
33 of acquiring, repairing, improving or constructing any
34 project; the cost of placing any project in operation; and
35 all other costs and expenses of any kind or nature
36 incurred or to be incurred by the project sponsor
37 developing the project that are reasonable and necessary
38 for carrying out all works and undertakings necessary
39 or incident to the accomplishment of any project:
40 *Provided,* That costs shall not include any amounts
41 related to the ongoing operations of the owner or
42 operator, depreciation thereof or any other cost which
43 the council or the water development authority has not
44 determined to be consistent with the purposes and
45 objectives of this article;

46 (c) "Council" means the West Virginia infrastructure
47 and jobs development council created in section three of
48 this article;

49 (d) "Division of environmental protection" means the
50 division of environmental protection established under
51 article one, chapter twenty-two of this code, or any
52 successor to all or any substantial part of its powers and
53 duties;

54 (e) "Division of health" means the division of health
55 created in article one, chapter sixteen of this code, or
56 any successor to all or any substantial part of its powers
57 and duties;

58 (f) "Economic development authority" means the
59 economic development authority established under
60 article fifteen, chapter thirty-one of the code, or any
61 successor to all or any substantial part of its powers and
62 duties;

63 (g) "Emergency project" means a project which the
64 council has determined (i) is essential to the immediate
65 economic development of an area of the state and (ii) will
66 not likely be developed in that area if construction of the
67 project is not commenced immediately;

68 (h) "Governmental agency" means any county; munic-
69 ipality; watershed improvement district; assessment
70 district; soil conservation district; sanitary district;
71 public service district; drainage district; regional
72 governmental authority and any other state governmen-
73 tal agency, entity, political subdivision or public
74 corporation or agency authorized to acquire, construct
75 or operate water or wastewater facilities or infrastruc-
76 ture projects;

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

81 (j) "Infrastructure fund" means the West Virginia
82 infrastructure fund created and established in section
83 nine of this article;

84 (k) "Infrastructure project" means a project in the
85 state which the council determines is likely to foster and
86 enhance economic growth and development in the area
87 of the state in which the project is developed, for
88 commercial, industrial, community improvement or
89 preservation or other proper purposes, including,
90 without limitation, tourism and recreational housing,
91 land, air or water transportation facilities and bridges,
92 industrial or commercial projects and facilities, mail
93 order, warehouses, wholesale and retail sales facilities
94 and other real and personal properties, including
95 facilities owned or leased by this state or any other
96 project sponsor, and includes, without limitation (1) the
97 process of acquiring, holding, operating, planning,

98 financing, demolition, construction, improving, expand-
99 ing, renovation, leasing or otherwise disposing of the
100 project or any part thereof or interest therein, and (2)
101 preparing land for construction and making, installing
102 or constructing improvements on the land, including
103 water or wastewater facilities or any part thereof,
104 steam, gas, telephone and telecommunications and
105 electric lines and installations, roads, bridges, railroad
106 spurs, buildings, docking and shipping facilities, curbs,
107 gutters, sidewalks, and drainage and flood control
108 facilities, whether on or off the site;

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

117 (m) "Project" means any wastewater facility, water
118 facility project or any combination thereof, constructed
119 or operated or to be constructed or operated by a project
120 sponsor;

121 (n) "Project sponsor" means any governmental agency
122 or person, or any combination thereof, including, but not
123 limited to, any public utility, which intends to plan,
124 acquire, construct, improve or otherwise develop a
125 project;

126 (o) "Public service commission" means the public
127 service commission of West Virginia created and
128 established under section three, article one, chapter
129 twenty-four of this code, or any successor to all or any
130 substantial part of its powers and duties;

131 (p) "Person" means any individual, corporation,
132 partnership, association, limited liability company or
133 any other form of business organization;

134 (q) "Public utility" means any person or persons, or
135 association of persons, however associated, whether
136 incorporated or not, including, without limitation, any

137 governmental agency, operating a wastewater facility or
138 water facility as a public service, which is regulated by
139 the public service commission as a public utility under
140 chapter twenty-four of this code or which is required to
141 file its tariff with the public service commission;

142 (r) "State development office" means the West
143 Virginia development office established under article
144 two, chapter five-b of this code, or any successor to all
145 or any substantial part of its powers and duties;

146 (s) "State infrastructure agency" means the division
147 of health, division of environmental protection, housing
148 development fund, public service commission, state
149 development office, water development authority,
150 economic development authority and any other state
151 agency, division, body, authority, commission, instru-
152 mentality or entity which now or in the future receives
153 applications for the funding of, and provides funding or
154 technical assistance to, the planning, acquisition,
155 construction or improvement of a project;

156 (t) "Wastewater facility" means all facilities, land and
157 equipment used for or in connection with treating,
158 neutralizing, disposing of, stabilizing, cooling, segregat-
159 ing or holding wastewater, including, without limita-
160 tion, facilities for the treatment and disposal of sewage,
161 industrial wastes or other wastes, wastewater, and the
162 residue thereof; facilities for the temporary or perman-
163 ent impoundment of wastewater, both surface and
164 underground; and sanitary sewers or other collection
165 systems, whether on the surface or underground,
166 designed to transport wastewater together with the
167 equipment and furnishings therefor or thereof and their
168 appurtenances and systems, whether on the surface or
169 underground including force mains and pumping
170 facilities therefor;

171 (u) "Water development authority" means the West
172 Virginia water development authority established under
173 article five-c, chapter twenty of this code, or any
174 successor to all or any substantial part of its powers and
175 duties; and

176 (v) "Water facility" means all facilities, land and

177 equipment used for or in connection with the collection
178 and/or storage of water, both surface and underground,
179 transportation of water, storage of water, treatment of
180 water and distribution of water all for the purpose of
181 providing potable, sanitary water suitable for human
182 consumption and use.

§31-15A-3. West Virginia infrastructure and jobs development council created; members of council; staff of council.

1 (a) There is hereby created the West Virginia infra-
2 structure and jobs development council. The council
3 shall be a governmental instrumentality of the state.
4 The exercise by the council of the powers conferred by
5 this article and the carrying out of its purpose and
6 duties shall be considered and held to be, and are hereby
7 determined to be, essential governmental functions and
8 for a public purpose.

9 (b) The council shall consist of nine members,
10 including the executive director of the housing develop-
11 ment fund or his or her designee, the director of the
12 division of environmental protection or his or her
13 designee; the director of the economic development
14 authority or his or her designee; the director of the
15 water development authority or his or her designee, the
16 executive director of the state development office or his
17 or her designee; the director of the division of health or
18 his or her designee, the chairman of the public service
19 commission or his or her designee; and two members
20 representing the general public. The governor shall
21 appoint the public members of the council who shall
22 serve three-year terms. The commissioner of the division
23 of highways, the executive director of the state rail
24 authority, two members of the West Virginia Senate,
25 two members of the West Virginia House of Delegates,
26 one representative of the board of directors of the state
27 college system and one representative of the board of
28 trustees of the university of West Virginia shall serve
29 as advisory members of the council. The governor shall
30 appoint the legislative members of the council: *Provided,*
31 That no more than three of the legislative members may
32 be of the same political party. The governor shall

33 appoint the representatives of the governing boards
34 from a list of three names submitted by each governing
35 board. The advisory members shall be ex officio,
36 nonvoting members of the council.

37 (c) The council shall annually elect one of its members
38 as chairman, and shall appoint a secretary, who need not
39 be a member of the council and who shall keep records
40 of its proceedings. Five members of the council shall
41 constitute a quorum and the affirmative vote of at least
42 the majority of those members present shall be neces-
43 sary for any action taken by vote of the council. No
44 vacancy in the membership of the council impairs the
45 rights of a quorum by such vote to exercise all the rights
46 and perform all the duties of the council.

47 (d) No member of the council shall receive any
48 compensation or reimbursement of expenses for serving
49 as a member.

50 (e) The council shall meet at least monthly to review
51 projects and infrastructure projects requesting funding
52 assistance and otherwise to conduct its business, and
53 shall meet more frequently if it considers it necessary.

54 (f) The water development authority shall provide
55 office space for the council, and each governmental
56 agency represented on the council shall provide staff
57 support for the council in the manner determined by the
58 council from time to time.

59 (g) The council shall invite to all its meetings one or
60 more representatives of the United States department
61 of agriculture, the farmers home administration, the
62 United States economic development agency and the
63 United States army corps of engineers or any successors
64 thereto.

**§31-15A-4. Development of guidelines and preliminary
application for funding assistance.**

1 (a) To implement and carry out the intent of this
2 article, the council shall promulgate legislative rules in
3 accordance with article three, chapter twenty-nine-a of
4 this code to develop comprehensive, uniform guidelines
5 for use by the council and other state infrastructure

6 agencies in evaluating any request by a project sponsor
7 for funding assistance to plan, acquire, construct,
8 improve or otherwise develop a project or infrastructure
9 project. The guidelines shall include the following
10 factors: (1) The public health benefits of the project or
11 infrastructure project; (2) the economic development
12 benefits of the project or infrastructure project; (3) the
13 degree to which the project or infrastructure project
14 will correct deficiencies in the compliance of water
15 supply or sewage treatment facilities with state or
16 federal laws, regulations or standards; (4) the degree to
17 which the project or infrastructure project encourages
18 effective and efficient consolidation of water or sewage
19 treatment systems consistent with the comprehensive
20 plan developed pursuant to section six of this article; (5)
21 the cost effectiveness of the project or infrastructure
22 project as compared with alternatives which achieve
23 substantially the same public health or economic
24 development benefits, including the consideration of
25 providing maximum feasible fire protection; (6) the
26 availability of alternative sources of funding which
27 could finance all or a part of the project and infrastruc-
28 ture project, and the need for the assistance of the
29 council to finance the project or infrastructure project
30 or attract other sources of funding; (7) the applicant's
31 ability to operate and maintain the system if the project
32 or infrastructure project is approved; (8) the degree to
33 which the project or infrastructure project achieves
34 other state or regional planning goals; (9) the estimated
35 date upon which the project or infrastructure project
36 could commence if funding were available and the
37 estimated completion date of the project or infrastruc-
38 ture project; and (10) such other considerations as the
39 council may consider necessary or appropriate to
40 accomplish the purpose and intent of this article.

41 (b) The council shall create a preliminary application
42 form which shall be used by all project sponsors
43 requesting funding assistance from state infrastructure
44 agencies to plan, acquire, construct, improve or other-
45 wise develop an infrastructure project or project. The
46 preliminary application form shall contain all informa-
47 tion required by all state infrastructure agencies that

48 will be required to issue permits and/or certificates
49 regarding the project or infrastructure project. The
50 preliminary application shall require the project
51 sponsor to set forth the type and proposed location of the
52 infrastructure project or project; the estimated total cost
53 of the project; the amount of funding assistance required
54 and the specific uses of the funding; other sources of
55 funding available or potentially available for the
56 infrastructure project or project; information demon-
57 strating the need for the infrastructure project or
58 project and that the proposed funding of the project is
59 the most economically feasible and viable alternative to
60 completing the project or infrastructure project; and
61 such other information as the council considers neces-
62 sary to enable it to recommend the type of project or
63 infrastructure project financing, in terms of the kind,
64 amount and source of funding, which the project sponsor
65 should pursue and which the state infrastructure agency
66 or agencies should consider an appropriate investment
67 of public funds, and to otherwise carry out the intent
68 of this article.

**§31-15A-5. Requirements for project funding assistance;
review of project preliminary applications
by council.**

1 (a) No project sponsor may apply for or receive any
2 loan, loan guarantee, grant or other funding assistance
3 for a project or infrastructure project from any state
4 infrastructure agency (i) unless the project sponsor
5 requiring the funding assistance first submits a com-
6 pleted preliminary application to the council on the form
7 prepared for such purpose by the council pursuant to
8 section four of this article, and (ii) except as may be
9 recommended by the council after consideration of the
10 preliminary application: *Provided*, That any project
11 sponsor which has an infrastructure project or project
12 with either acceptable bids or all funding in place on
13 the effective date of this act is not required to comply
14 with the provisions of this section.

15 (b) The council shall, within thirty days of receipt of
16 each completed preliminary application submitted to it,
17 review the preliminary application and either (i) make

18 a written recommendation as to the infrastructure
19 project or project financing, in terms of the kind,
20 amount and source of funding, which the project sponsor
21 submitting the application should pursue and which the
22 state infrastructure agency or agencies should consider
23 an appropriate investment of public funds, or (ii) if the
24 council determines that (1) the proposed project or
25 infrastructure project is not eligible for funding
26 assistance from any state infrastructure agency, or (2)
27 the proposed project or infrastructure project is not
28 otherwise an appropriate or prudent investment of state
29 funds, the council shall recommend that the project
30 sponsor not seek funding from any state infrastructure
31 agency. A project sponsor shall include the preliminary
32 application and the council's recommendations in any
33 application to a state infrastructure agency.

34 (c) The council shall provide a copy of its recommen-
35 dation with respect to each preliminary application,
36 together with a copy of the preliminary application, to
37 all appropriate state infrastructure agencies, which
38 shall take into account the council's recommendations
39 with respect to a project or infrastructure project before
40 taking any action with respect to the project. No state
41 infrastructure agency shall take any action inconsistent
42 with the recommendation of the council unless the
43 governing body of the agency, or the head of the agency
44 if it has no governing body, expressly finds and
45 determines that the recommendation is not in the best
46 interest of the state or the area in which the proposed
47 infrastructure project or project is to be located.

48 (d) In reviewing each preliminary application, the
49 council shall use the engineering, financial and technical
50 expertise of the respective staffs of the state infrastruc-
51 ture agencies represented on the council so as to
52 recommend for funding those projects or infrastructure
53 projects which are consistent with the purposes and
54 intent of this article and with the policies and priorities
55 of this state generally. The council may include in its
56 findings a recommendation that a state infrastructure
57 agency consider technical reports on the project pre-
58 pared by other infrastructure agencies or by any federal
59 agency.

§31-15A-6. Powers, duties and responsibilities of the council generally; comprehensive assessment.

1 (a) In addition to the powers set forth elsewhere in
2 this article, the council is hereby granted, has and may
3 exercise all powers necessary or appropriate to carry out
4 and effectuate the purposes and intent of this article.
5 The council shall have the power and capacity to:

6 (1) Provide consultation services to project sponsors in
7 connection with the planning, acquisition, improvement,
8 construction or development of any infrastructure
9 project or project;

10 (2) Periodically prepare a list of infrastructure
11 projects or projects which cannot meet the established
12 funding guidelines of the various state infrastructure
13 agencies, other than the housing development fund, but
14 which are consistent with the mandates of this article
15 and recommend to the water development authority that
16 it make a grant or loan to the project sponsors from the
17 infrastructure fund to finance the cost of one or more
18 such projects or infrastructure projects;

19 (3) Do all other acts necessary and proper to carry out
20 the powers expressly granted to the authority in this
21 article; and

22 (4) Make and execute contracts, commitments and
23 obligations and other instruments necessary or conven-
24 ient for the exercise of its powers.

25 (b) The council shall develop a comprehensive state-
26 wide inventory of water supply systems and sewage
27 treatment systems and an assessment of current and
28 future needs by the first day of July, one thousand nine
29 hundred ninety-six. The assessment shall identify the
30 areas of the state which do not have adequate public
31 water or sewage systems and offer recommendations for
32 the construction of new facilities or the extension or
33 expansion of existing facilities to meet the identified
34 needs. The council shall include in the assessment an
35 identification of the obstacles, issues and problems
36 which prevent or inhibit development of adequate infra-

37 structure throughout the state, including financial,
38 governmental, physical, or geographical factors and
39 make recommendation as the council considers appropriate
40 regarding the obstacles, issues or problems
41 identified. This comprehensive inventory and assessment
42 shall be updated at least once in every three-year
43 period after the initial assessment and inventory is
44 completed.

45 (c) The council shall study the viability of the
46 consolidation of public service districts throughout the
47 state: *Provided*, That the study shall encompass not only
48 public service districts but also any and all entities
49 which provide or supply water and sewer service to the
50 general public: *Provided, however*, That the council
51 shall, in the preparation of the study, consult with the
52 public service district division of the public service
53 commission and representatives of the West Virginia
54 rural water association and the West Virginia association
55 of public service districts, as needed. The council
56 shall report their findings and conclusions on or before
57 the sixteenth of January of the year one thousand nine
58 hundred ninety-five to the governor, speaker of the
59 House of Delegates and president of the Senate.

**§31-15A-7. Current and prospective planning; roads and
highways; report to division of highways.**

1 (a) The council shall take into account the current and
2 prospective infrastructure needs in relation to plans of
3 the division of highways for the development and
4 building of new roads. Upon completion of an environ-
5 mental impact study, the commissioner of highways
6 shall provide the council with plans for any and all new
7 roads. In a timely manner, the council shall advise the
8 commissioner of the division of highways on the
9 feasibility of the expansion of new or existing water and
10 sewer lines concomitant to the construction of the new
11 roads.

12 (b) The council has the authority to appoint local
13 infrastructure planning teams. The local infrastructure
14 planning teams may consist of the following: A designee
15 of the division of highways from the region where the

16 new road is being built; a designee of the division of
17 highways from the central state office; a designee from
18 the environmental engineers division of the department
19 of health and human resources; a designee from the local
20 developmental authority where the new road is being
21 built; a designee from the regional developmental
22 authority in the area where the new road is being built;
23 a designee from the public service commission; a
24 designee from the division of environmental protection;
25 a designee from the county commission where the new
26 road is being built who shall serve as chairperson of the
27 planning team; a citizen of the county where the new
28 road is being built to be chosen by the county commis-
29 sion; and the elected state delegates and senators from
30 the area where the new road is being built. In order to
31 avoid delay of any highway project, immediately upon
32 appointment of a local infrastructure planning team, the
33 director of the division of highways shall submit to the
34 council a time frame within which the planning team
35 must act and within which the planning team must
36 submit any plans, maps, recommendations or reports
37 developed pursuant to this subsection. The local infra-
38 structure planning team shall meet prior to the devel-
39 opment and building of a new road. Members of the
40 local infrastructure planning team shall only receive
41 payment for actual expenses incurred. The local infra-
42 structure planning team shall advise the commissioner
43 of the division of highways on the feasibility of an
44 infrastructure plan. The local infrastructure planning
45 team shall meet to develop an infrastructure plan that
46 includes an assessment study of existing water and
47 sewer lines and a feasibility study on future develop-
48 ment and laying of water and sewer lines. After these
49 studies are completed, a developmental map shall be
50 drawn of the proposed road route with overlays of the
51 proposed water and sewer lines. These studies and the
52 map shall be presented to the commissioner of the
53 division of highways and shall be used by the commis-
54 sioner in the planning, developing and building of the
55 road.

56 (c) The water development authority shall establish a
57 restricted account within the infrastructure fund to be

58 expended for the construction of water and sewage lines
59 as may be recommended by the council in accordance
60 with this article and specifically, in accordance with the
61 plan developed under subsection (b) of this section. The
62 reserve account shall be known as the "infrastructure
63 road improvement reserve account". The council and the
64 division of highways may enter into agreements to share
65 the cost of financing projects approved in accordance
66 with this section from moneys available in the infras-
67 tructure road reserve account and moneys available
68 from the state road fund. Annually, the council may
69 direct the water development authority to transfer funds
70 from the infrastructure fund in an amount not to exceed
71 one million dollars to the restricted account: *Provided,*
72 That at no time may the balance of the restricted
73 account exceed one million dollars.

74 (d) For the purposes of this section the term "new"
75 means a road right-of-way being built for the first time.

76 (e) After the construction of water and sewer lines
77 adjacent to the new roads these new lines shall be turned
78 over to existing utilities by expansion of boundaries of
79 public service districts or shall be main extensions from
80 the municipality.

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

1 (a) If the council determines a project to be an
2 emergency and the emergency project will be funded
3 solely with grant money for the extension of an existing
4 certificated water facility or wastewater facility, and if
5 the council finds in its recommendation that the
6 construction and acquisition of the emergency project
7 will have no effect on the public utility's customer rates
8 and will have no significant effect on its operational
9 costs as a result of the project cost, then the emergency
10 project is exempt from the requirement to obtain a
11 certificate of public convenience and necessity under

12 section eleven, article two, chapter twenty-four of this
13 code. If the public utility is a public service district, it
14 is exempt from the approval of the public service
15 commission required under section twenty-five, article
16 thirteen-a, chapter sixteen of this code.

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

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

35 (d) The North Fork Hughes River watershed project,
36 proposed to enhance economic growth and development
37 through tourism as provided in subsection (k), section
38 two of this article and to include a water facility project
39 as defined in subsection (m), section two of this article,
40 is hereby specifically exempted from any requirement
41 imposed by this article, except that the provisions of
42 subsection (a) of this section are specifically made
43 applicable to the project. The project is hereby specif-
44 ically authorized and the public land corporation shall
45 have and may exercise the power of eminent domain and
46 all authority otherwise prescribed by law to acquire
47 necessary land and rights-of-way, to include approxi-
48 mately four hundred seventy-eight acres, in connection
49 with the project. Funding for the project shall be
50 provided by the federal government from the Appalach-
51 ian regional commission through the United States soil
52 conservation service. Upon completion of the project, the

53 property acquired shall be transferred to the state park
54 system. The commissioner of the division of tourism and
55 parks or the successor to the commissioner's powers and
56 duties is directed to expand the boundaries of North
57 Bend state park to include the project area and to
58 operate the expanded park property, including im-
59 proved recreational facilities, from funds appropriated
60 for that purpose.

**§31-15A-9. Infrastructure fund; deposits in fund; dis-
bursements to provide loans, loan guaran-
tees, grants and other assistance; loans,
loan guarantees, grants and other assist-
ance shall be subject to assistance
agreements.**

1 (a) There is hereby created a special revenue account
2 in the state treasury to be appropriated by the Legis-
3 lature for use by the water development authority,
4 which shall be designated and known as the "West
5 Virginia infrastructure fund." The infrastructure fund
6 shall consist of (1) infrastructure revenues; (2) any
7 appropriations, grants, gifts, contributions, loan pro-
8 ceeds or other revenues received by the infrastructure
9 fund from any source, public or private; (3) amounts
10 received as payments on any loans made by the water
11 development authority to pay for the cost of a project
12 or infrastructure project; (4) insurance proceeds payable
13 to the water development authority or the infrastructure
14 fund in connection with any infrastructure project or
15 project; (5) all income earned on moneys held in the
16 infrastructure fund; and (6) all funds deposited in
17 accordance with section sixteen of this article. Amounts
18 in the infrastructure fund shall be segregated and
19 administered by the water development authority
20 separate and apart from its other assets and programs.
21 Amounts in the infrastructure fund may not be trans-
22 ferred to any other fund or account or used, other than
23 indirectly, for the purposes of any other program of the
24 water development authority, except that the water
25 development authority may use funds in the infrastruc-
26 ture fund to reimburse itself for any administrative
27 costs incurred by it and approved by the council in

28 connection with any loan, loan guarantee, grant or other
29 funding assistance made by the water development
30 authority pursuant to this article.

31 (b) Notwithstanding any provision of this code to the
32 contrary, amounts in the infrastructure fund may be
33 deposited by the water development authority in one or
34 more banking institutions located in this state and
35 selected by the water development authority. Pending
36 the disbursement of any money from the infrastructure
37 fund as authorized under this section, the water
38 development authority shall invest and reinvest the
39 moneys subject to the limitations set forth in article
40 eighteen, chapter thirty-one of this code.

41 (c) To further accomplish the purposes and intent of
42 this article, the water development authority may
43 pledge infrastructure revenues and from time to time
44 establish one or more restricted accounts within the
45 infrastructure fund for the purpose of providing funds
46 to guarantee loans for infrastructure projects or
47 projects: *Provided*, That for any fiscal year the water
48 development authority may not deposit into the re-
49 stricted accounts more than twenty percent of the
50 aggregate amount of infrastructure revenues deposited
51 into the infrastructure fund during the fiscal year. No
52 loan guarantee shall be made pursuant to this article
53 unless recourse under the loan guarantee is limited
54 solely to amounts in the restricted account or accounts.
55 No person shall have any recourse to any restricted
56 accounts established pursuant to this subsection other
57 than those persons to whom the loan guarantee or
58 guarantees have been made.

59 (d) Each loan, loan guarantee, grant or other assist-
60 ance made or provided by the water development
61 authority shall be evidenced by a loan, loan guarantee,
62 grant or assistance agreement between the water
63 development authority and the project sponsor to which
64 the loan, loan guarantee, grant or assistance shall be
65 made or provided, which agreement shall include,
66 without limitation and to the extent applicable, the
67 following provisions:

68 (1) The estimated cost of the infrastructure project or
69 project, the amount of the loan, loan guarantee or grant
70 or the nature of the assistance, and in the case of a loan
71 or loan guarantee, the terms of repayment and the
72 security therefor, if any;

73 (2) The specific purposes for which the loan or grant
74 proceeds shall be expended or the benefits to accrue
75 from such loan guarantee or other assistance, and the
76 conditions and procedure for disbursing loan or grant
77 proceeds;

78 (3) The duties and obligations imposed regarding the
79 acquisition, construction, improvement or operation of
80 the project or infrastructure project; and

81 (4) The agreement of the governmental agency to
82 comply with all applicable federal and state laws, and
83 all rules and regulations issued or imposed by the water
84 development authority or other state, federal or local
85 bodies regarding the acquisition, construction, improve-
86 ment or operation of the infrastructure project or
87 project and granting the water development authority
88 the right to appoint a receiver for the project or
89 infrastructure if the project sponsor should default on
90 any terms of the agreement.

91 (e) Any resolution of the water development authority
92 approving loan, loan guarantee, grant or other assist-
93 ance shall include a finding and determination that the
94 requirements of this section have been met.

**§31-15A-10. Recommendations by council for expendi-
tures of funds by loan or grant.**

1 (a) To further accomplish the purpose and intent of
2 this article, the water development authority shall use
3 the moneys in the infrastructure fund created pursuant
4 to section nine of this article, upon receipt of one or more
5 recommendations from the council pursuant to section
6 five of this article, to make loans, with or without
7 interest, loan guarantees or grants and to provide other
8 assistance, financial, technical or otherwise, to finance
9 all or part of the costs of infrastructure projects or
10 projects to be undertaken by a project sponsor: *Provided,*

11 That no loan, loan guarantee, grant or other assistance
12 shall be made or provided except upon a determination
13 by the council that the loan, loan guarantee, grant or
14 other assistance and the manner in which it will be
15 provided are necessary or appropriate to accomplish the
16 purposes and intent of this article, based upon an
17 application submitted to the council: *Provided, however,*
18 That no grant shall be made to a profit sponsor that is
19 not a governmental agency or a not for profit corpora-
20 tion under the provisions of Section 501(c) of the
21 Internal Revenue Code of 1986, as amended. Applica-
22 tions for loans, loan guarantees, grants or other
23 assistance may be submitted by a project sponsor for one
24 or more infrastructure projects or projects from time to
25 time, and shall be submitted in the manner and on the
26 preliminary application form prepared by the council
27 pursuant to section four of this article. Any recommen-
28 dation of the council approving a loan, loan guarantee,
29 grant or other assistance shall include a finding and
30 determination by the council that the requirements of
31 this section have been met.

32 (b) The council has the authority in its sole discretion
33 to make grants to project sponsors if it finds that (1) the
34 level of rates for the users would otherwise be an
35 unreasonable burden given the users' likely ability to
36 pay; or (2) the absence of a sufficient number of users
37 prevents funding of the project except through grants.
38 Therefore, the council may consider the economic or
39 financial conditions of the area to be served. As a
40 condition for receipt of a grant under this subsection,
41 the council may require, in addition to any other
42 conditions, that the applicant pursue other state or
43 federal grant or loan programs. Upon a recommenda-
44 tion by the council, the water development authority
45 shall provide the grant in accordance with the recom-
46 mendation. The council shall develop criteria to be
47 considered in making grants to project sponsors which
48 shall require consideration of the economic or financial
49 conditions of the area to be served and the availability
50 of other funding sources. The council shall adopt
51 procedural rules regarding the manner in which grants
52 will be awarded in conformity with this section. The

53 procedural rules shall be adopted pursuant to article
54 three, chapter twenty-nine-a of this code.

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

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

§31-15A-12. Additional powers of water development authority.

1 To accomplish the purpose and intent of this article,
2 the water development authority is hereby empowered,
3 in addition to all other powers granted to it under this
4 code, upon approval of the council, to (1) enter into
5 agreements or other transactions with any federal or
6 state agency in connection with any infrastructure
7 project or project; (2) receive or administer on behalf of
8 any federal or state agency grants, subsidies or other
9 payments to be applied to the costs of any infrastructure
10 project or project financed, in whole or in part, or
11 otherwise assisted by the water development authority,
12 including, but not limited to, payments to be applied to
13 operating costs and debt service or obligations of any
14 project sponsor; (3) receive and accept aid or contribu-
15 tions from any source of money, property, labor or other
16 things of value, to be held, used and applied only for the
17 purposes for which such grants and contributions are
18 made; (4) establish and amend the criteria and qualifi-

19 cations for making loans, loan guarantees or grants, or
20 providing any other assistance, for any infrastructure
21 project or project, and the terms of any loans, loan
22 guarantee, grant or assistance agreement for any
23 project; and (5) do all things which are necessary to
24 further the purposes and intent of this article.

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

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

§31-15A-14. Termination or dissolution.

1 Upon the termination or dissolution of the water
2 development authority, all rights and properties of the
3 water development authority with respect to the
4 infrastructure fund shall pass to and be vested in the
5 state, subject to the rights of lienholders and other
6 creditors.

§31-15A-15. Projects not to be considered public improvements; competitive bid requirements.

1 (a) No project or infrastructure project acquired,
2 constructed, maintained or financed, in whole or in part,
3 by the water development authority shall be considered

4 to be a "public improvement" within the meaning of the
5 provisions of article five-a, chapter twenty-one of this
6 code, as a result of such financing.

7 (b) The state and its subdivisions shall, except as
8 provided in this subsection, solicit competitive bids and
9 require the payment of prevailing wage rates as
10 provided in article five-a, chapter twenty-one of this
11 code for every project or infrastructure project funded
12 pursuant to this article exceeding twenty-five thousand
13 dollars in total cost. Following the solicitation of the
14 bids, the construction contract shall be awarded to the
15 lowest qualified responsible bidder, who shall furnish a
16 sufficient performance and payment bond: *Provided*,
17 That the state and its subdivisions may reject all bids
18 and solicit new bids on the project. Nothing in this
19 subsection applies to work performed on construction or
20 repair projects not exceeding a total cost of twenty-five
21 thousand dollars by regular full-time employees of the
22 state or its subdivisions, nor shall anything in this
23 subsection prevent students enrolled in vocational
24 educational schools from being utilized in the construc-
25 tion or repair projects when such use is a part of the
26 students' training program. Nothing in this subsection
27 applies to emergency repairs to building components
28 and systems: *Provided, however*, That the term "emer-
29 gency repairs" means repairs that if not made imme-
30 diately will seriously impair the use of the building
31 components and systems or cause danger to those
32 persons using the building components and systems.
33 This subsection shall not apply to any situation where
34 the state or a subdivision thereof comes to an agreement
35 with volunteers, or a volunteer group, whereby the
36 governmental body will provide construction or repair
37 materials, architectural, engineering, technical or any
38 other professional services and the volunteers will
39 provide the necessary labor without charge to, or
40 liability upon, the governmental body: *Provided further*,
41 That the total cost of the construction or repair projects
42 does not exceed twenty-five thousand dollars.

43 (c) The provisions of subsection (b) of this section shall
44 not apply to privately owned projects or infrastructure

45 projects constructed on lands not owned by the state or
46 a subdivision of the state.

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

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

9 (b) Notwithstanding any other provision of this code
10 to the contrary, beginning on the first day of July, one
11 thousand nine hundred ninety-five, the first sixteen
12 million dollars of the tax collected pursuant to article
13 thirteen-a, chapter eleven of this code shall be deposited
14 to the credit of the West Virginia infrastructure fund
15 created pursuant to section nine of this article: *Provided,*
16 That none of the collections from the tax imposed
17 pursuant to section six, article thirteen-a, chapter eleven
18 of this code shall be so dedicated or deposited: *Provided,*
19 *however,* That the portion of the tax imposed by article
20 thirteen-a, chapter eleven and dedicated for purposes of
21 medicaid and the division of forestry pursuant to section
22 twenty-a of said article thirteen-a shall remain dedi-
23 cated for the purposes set forth in said section twenty-
24 a.

CHAPTER 27

(S. B. 1005—By Senators Burdette, Mr. President, and Boley)

[By Request of the Executive]

[Passed March 16, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, seven, eight, seventeen and eighteen, article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the promulgation of administrative rules and regulations by

the various executive or administrative agencies and the procedures relating 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 the air pollution control commission to promulgate legislative rules relating to emission standards for hazardous air pollutants; authorizing the air pollution control commission to promulgate legislative rules relating to the air pollution control commission to prevent and control air pollution from the emission of sulfur oxides, as modified; authorizing the air pollution control commission to promulgate legislative rules relating to permits for construction, modification, relocation and operation of stationary sources of air pollutants, notification requirements, temporary permits, general permits and procedures for evaluation; authorizing the air pollution control commission to promulgate legislative rules relating to prevention and control of particulate air pollution from manufacturing process operations; authorizing the air pollution control commission to promulgate legislative rules relating to standards of performance for new stationary sources; authorizing the air pollution control commission to promulgate legislative rules relating to prevention and control of air pollution from hazardous waste treatment, storage or disposal facilities, as modified; authorizing the air pollution control commission to promulgate legislative rules relating to requirements for operating permits; authorizing the division of banking to promulgate legislative rules relating to acquisition of property by financial institutions and valuation of real estate owned by state-chartered banks, as modified; authorizing the division of banking to promulgate legislative rules relating to notice and treatment of joint accounts,

as modified; authorizing the division of labor to promulgate legislative rules relating to the elevator safety act, as modified; authorizing the division of natural resources to promulgate legislative rules relating to prohibitions when hunting and trapping, as amended; authorizing the division of natural resources to promulgate legislative rules relating to special fishing, as modified and amended; authorizing the division of natural resources to promulgate legislative rules relating to commercial whitewater commission, as amended; authorizing the division of environmental protection to promulgate legislative rules relating to solid waste landfill closure assistance program, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to monitoring wells, as modified and amended; authorizing the division of environmental protection to promulgate legislative rules relating to groundwater protection, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to groundwater protection and coal mining operations, as amended; authorizing the division of environmental protection to promulgate legislative rules relating to sewage sludge management, as modified and amended; authorizing the division of environmental protection to promulgate legislative rules relating to groundwater protection act fee schedule, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to underground injection control fee schedule, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to underground storage tanks, as modified and amended; authorizing the division of environmental protection to promulgate legislative rules relating to commercial hazardous waste management facility siting fees, as modified and amended; authorizing the division of environmental protection to promulgate legislative rules relating to hazardous waste management; authorizing the division of environmental protection to promulgate legislative rules relating to dam safety, as modified and amended; authorizing the division of environmental protection to promulgate

legislative rules relating to groundwater quality standard variances, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to lead acid battery, as modified and amended; authorizing the division of environmental protection to promulgate legislative rules relating to yard waste composting, as modified and amended; authorizing the division of environmental protection to promulgate legislative rules relating to the assessment of civil administrative penalties, as modified; authorizing the director of the office of miners' health, safety and training to promulgate legislative rules relating to rules and regulations governing the standards for certification of blasters for surface coal mines and surface areas of underground coal mines, as modified; and authorizing the director of the office of miners' health, safety and training to promulgate legislative rules relating to first aid training of shaft and/or slope employees, as modified.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.

- §64-3-1. Air pollution control commission.
- §64-3-2. Division of banking.
- §64-3-7. Division of labor.
- §64-3-8. Division of natural resources.
- §64-3-17. Division of environmental protection.
- §64-3-18. 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
30 regulation 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 And,

37 Such rules shall also include a section which shall
38 read as follows:

39 "The commission shall report to the legislative rule-
40 making review committee as required by that commit-
41 tee, but in no event later than the first day of the regular
42 session of the Legislature in the year one thousand nine
43 hundred eighty-five. Such report shall include informa-

44 tion regarding the commission's data gathering efforts,
45 the development of compliance programs, the progress
46 in implementation, and such other matters as the
47 committee may require, pertaining to the regulations
48 hereby authorized."

49 (f) The legislative rules filed in the state register on
50 the ninth day of January, one thousand nine hundred
51 eighty-four, relating to the air pollution control commis-
52 sion (permits for construction and modification of
53 stationary sources of air pollution for the prevention of
54 significant deterioration) (series XIV), are authorized.

55 (g) The legislative rules filed in the state register on
56 the thirtieth day of December, one thousand nine
57 hundred eighty-eight, modified by the air pollution
58 control commission to meet the objections of the
59 legislative rule-making review committee and refiled in
60 the state register on the twenty-third day of February,
61 one thousand nine hundred eighty-nine, relating to the
62 air pollution control commission (prevention and control
63 of air pollution from hazardous waste treatment, storage
64 or disposal facilities), are authorized.

65 (h) The legislative rules filed in the state register on
66 the thirtieth day of December, one thousand nine
67 hundred eighty-eight, modified by the air pollution
68 control commission to meet the objections of the
69 legislative rule-making review committee and refiled in
70 the state register on the twenty-third day of February,
71 one thousand nine hundred eighty-nine, relating to the
72 air pollution control commission (good engineering
73 practice as applicable to stack heights), are authorized.

74 (i) The legislative rules filed in the state register on
75 the thirtieth day of December, one thousand nine
76 hundred eighty-eight, modified by the air pollution
77 control commission to meet the objections of the
78 legislative rule-making review committee and refiled in
79 the state register on the twenty-third day of February,
80 one thousand nine hundred eighty-nine, relating to the
81 air pollution control commission (TP-2, compliance test
82 procedures for regulation 2 — to prevent and control
83 particulate air pollution from combustion of fuel in

84 indirect heat exchangers), are authorized.

85 (j) The legislative rules filed in the state register on
86 the sixth day of September, one thousand nine hundred
87 eighty-nine, modified by the air pollution control
88 commission to meet the objections of the legislative rule-
89 making review committee and refiled in the state
90 register on the tenth day of January, one thousand nine
91 hundred ninety, relating to the air pollution control
92 commission (ambient air quality standards for sulfur
93 oxides and particulate matter), are authorized.

94 (k) The legislative rules filed in the state register on
95 the sixth day of September, one thousand nine hundred
96 eighty-nine, modified by the air pollution control
97 commission to meet the objections of the legislative rule-
98 making review committee and refiled in the state
99 register on the tenth day of January, one thousand nine
100 hundred ninety, relating to the air pollution control
101 commission (prevention of air pollution emergency
102 episodes), are authorized.

103 (l) The legislative rules filed in the state register on
104 the sixth day of September, one thousand nine hundred
105 eighty-nine, modified by the air pollution control
106 commission to meet the objections of the legislative rule-
107 making review committee and refiled in the state
108 register on the tenth day of January, one thousand nine
109 hundred ninety, relating to the air pollution control
110 commission (permits for construction and major modi-
111 fication of major stationary sources of air pollution for
112 the prevention of significant deterioration), are
113 authorized.

114 (m) The legislative rules filed in the state register on
115 the sixth day of September, one thousand nine hundred
116 eighty-nine, relating to the air pollution control commis-
117 sion (standards of performance for new stationary
118 sources), are authorized.

119 (n) The legislative rules filed in the state register on
120 the sixth day of September, one thousand nine hundred
121 eighty-nine, relating to the air pollution control commis-
122 sion (emission standards for hazardous air pollutants),
123 are authorized.

124 (o) The legislative rules filed in the state register on
125 the sixteenth day of October, one thousand nine hundred
126 eighty-nine, modified by the air pollution control
127 commission to meet the objections of the legislative rule-
128 making review committee and refiled in the state
129 register on the tenth day of January, one thousand nine
130 hundred ninety, relating to the air pollution control
131 commission (prevention and control of emissions of toxic
132 air pollutants), are authorized.

133 (p) The legislative rules filed in the state register on
134 the tenth day of August, one thousand nine hundred
135 ninety, relating to the air pollution control commission
136 (prevention and control of air pollution from the
137 emission of volatile organic compounds from bulk
138 gasoline terminals), are authorized.

139 (q) The legislative rules filed in the state register on
140 the thirteenth day of August, one thousand nine hundred
141 ninety, modified by the air pollution control commission
142 to meet the objections of the legislative rule-making
143 review committee and refiled in the state register on the
144 fifteenth day of November, one thousand nine hundred
145 ninety, relating to the air pollution control commission
146 (air quality management fee program), are authorized.

147 (r) The legislative rules filed in the state register on
148 the tenth day of August, one thousand nine hundred
149 ninety, relating to the air pollution control commission
150 (prevention and control of air pollution from the
151 emission of volatile organic compounds from the storage
152 of petroleum liquids in fixed roof tanks), are authorized.

153 (s) The legislative rules filed in the state register on
154 the tenth day of August, one thousand nine hundred
155 ninety, relating to the air pollution control commission
156 (prevention and control of air pollution from the
157 emission of volatile organic compounds from petroleum
158 refinery sources), are authorized.

159 (t) The legislative rules filed in the state register on
160 the eighteenth day of December, one thousand nine
161 hundred ninety-one, modified by the air pollution
162 control commission to meet the objections of the
163 legislative rule-making review committee and refiled in

164 the state register on the fifteenth day of December, one
165 thousand nine hundred ninety-two, relating to the air
166 pollution control commission (regulations to prevent and
167 control air pollution from the emission of volatile
168 organic compounds), are authorized with the amend-
169 ments set forth below:

170 On page 26, subsection §45-21-9.2, by striking all of
171 §45-21-9.2 and inserting in lieu thereof a new §45-21-9.2,
172 to read as follows:

173 “9.2 Registration. — Within thirty (30) days after May
174 31, 1993, all persons owning and/or operating a source
175 subject to this regulation and not previously registered
176 shall have registered such source(s) with the chief:
177 *Provided*, That on a case-by-case basis, the chief may
178 extend the thirty-day period for the registration of
179 sources to allow sources up to one hundred eighty (180)
180 days after May 31, 1993 to register. The information
181 required for registration shall be determined and
182 provided in the manner specified by the chief. Registra-
183 tion forms shall be requested from the chief by the
184 owner or operator of such source(s).”;

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 amendment set forth below:

212 On page fourteen, subsection §45.13.6.5 after the word
213 “[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 the amendment set forth
238 below:

239 On page twenty-one, subsection §45.19.12.5 after the
240 word “[W]ithin” by striking the word “twelve (12)” and
241 inserting in lieu thereof the word “six (6)”.

242 (z) The legislative rules filed in the state register on
243 the twenty-eighth day of August, one thousand nine
244 hundred ninety-two, modified by the air pollution
245 control commission to meet the objections of the
246 legislative rule-making review committee and refiled in
247 the state register on the nineteenth day of February, one
248 thousand nine hundred ninety-three, relating to the air
249 pollution control commission (requiring the submission
250 of emission statements for volatile organic compound
251 emissions and oxides of nitrogen emissions), are autho-
252 rized with the amendment set forth below:

253 On page four, section 2.27. after the words "VOC or"
254 by striking out the words "100 tons per year or more
255 of".

256 (aa) The legislative rules filed in the state register on
257 the thirteenth day of August, one thousand nine hundred
258 ninety-three, relating to the air pollution control
259 commission (emission standards for hazardous air
260 pollutants), are authorized.

261 (bb) The legislative rules filed in the state register on
262 the thirteenth day of August, one thousand nine hundred
263 ninety-three, modified by the air pollution control
264 commission to meet the objections of the legislative rule-
265 making review committee and refiled in the state
266 register on the twenty-first day of January, one thou-
267 sand nine hundred ninety-four, relating to the air
268 pollution control commission (to prevent and control air
269 pollution from the emission of sulfur oxides), are
270 authorized.

271 (cc) The legislative rules filed in the state register on
272 the thirteenth day of August, one thousand nine hundred
273 ninety-three, relating to the air pollution control
274 commission (permits for construction, modification,
275 relocation and operation of stationary sources of air
276 pollutants, notification requirements, temporary per-
277 mits, general permits, and procedures for evaluation),
278 are authorized.

279 (dd) The legislative rules filed in the state register on
280 the seventh day of October, one thousand nine hundred
281 ninety-three, relating to the air pollution control

282 commission (to prevent and control particulate air
283 pollution from manufacturing process operations), are
284 authorized.

285 (ee) The legislative rules filed in the state register on
286 the thirteenth day of August, one thousand nine hundred
287 ninety-three, relating to the air pollution control
288 commission (standards of performance for new station-
289 ary sources), are authorized.

290 (ff) The legislative rules filed in the state register on
291 the thirteenth day of August, one thousand nine hundred
292 ninety-three, modified by the air pollution control
293 commission to meet the objections of the legislative rule-
294 making review committee and refiled in the state
295 register on the sixth day of January, one thousand nine
296 hundred ninety-four, relating to the air pollution control
297 commission (to prevent and control air pollution from
298 hazardous waste treatment, storage or disposal facili-
299 ties), are authorized.

300 (gg) The legislative rules filed in the state register on
301 the thirteenth day of August, one thousand nine hundred
302 ninety-three, relating to the air pollution control
303 commission (requirements for operating permits), are
304 authorized.

§64-3-2. Division of banking.

1 (a) The legislative rules filed in the state register on
2 the eleventh day of June, one thousand nine hundred
3 eighty-two, relating to commissioner of banking (com-
4 munication terminals and interchange systems), are
5 authorized.

6 (b) The legislative rules filed in the state register on
7 the fifteenth day of December, one thousand nine
8 hundred eighty-three, relating to the commissioner of
9 banking (consumer credit sales), are authorized.

10 (c) The legislative rules filed in the state register on
11 the nineteenth day of August, one thousand nine
12 hundred eighty-three, relating to the commissioner of
13 banking (legal lending limit), are authorized.

14 (d) The legislative rules filed in the state register on

15 the seventh day of November, one thousand nine
16 hundred eighty-six, modified by the commissioner of
17 banking to meet the objections of the legislative rule-
18 making review committee and refiled in the state
19 register on the eleventh day of December, one thousand
20 nine hundred eighty-six, relating to the commissioner of
21 banking (implementing the West Virginia community
22 reinvestment act), are authorized.

23 (e) The legislative rules filed in the state register on
24 the twenty-fifth day of October, one thousand nine
25 hundred eighty-eight, modified by the commissioner of
26 banking to meet the objections of the legislative rule-
27 making review committee and refiled in the state
28 register on the seventh day of December, one thousand
29 nine hundred eighty-eight, relating to the commissioner
30 of banking (subsidiary bank holding the stock of its
31 parent company as collateral), are authorized.

32 (f) The legislative rules filed in the state register on
33 the twelfth day of August, one thousand nine hundred
34 ninety-one, modified by the division of banking to meet
35 the objections of the legislative rule-making review
36 committee and refiled in the state register on the
37 fifteenth day of November, one thousand nine hundred
38 ninety-one, relating to the division of banking (West
39 Virginia consumer credit and protection act), are
40 authorized.

41 (g) The legislative rules filed in the state register on
42 the ninth day of August, one thousand nine hundred
43 ninety-one, modified by the division of banking to meet
44 the objections of the legislative rule-making review
45 committee and refiled in the state register on the
46 fifteenth day of November, one thousand nine hundred
47 ninety-one, relating to the division of banking (lease
48 financing transactions), are authorized.

49 (h) The legislative rules filed in the state register on
50 the ninth day of August, one thousand nine hundred
51 ninety-one, modified by the division of banking to meet
52 the objections of the legislative rule-making review
53 committee and refiled in the state register on the
54 fifteenth day of November, one thousand nine hundred

55 ninety-one, relating to the division of banking (operation
56 of state-chartered financial institutions in West Virgi-
57 nia), are authorized.

58 (i) The legislative rules filed in the state register on
59 the twelfth day of August, one thousand nine hundred
60 ninety-one, modified by the division of banking to meet
61 the objections of the legislative rule-making review
62 committee and refiled in the state register on the
63 fifteenth day of November, one thousand nine hundred
64 ninety-one, relating to the division of banking (West
65 Virginia industrial bank and industrial loan company
66 act), are authorized.

67 (j) The legislative rules filed in the state register on
68 the twelfth day of August, one thousand nine hundred
69 ninety-one, modified by the division of banking to meet
70 the objections of the legislative rule-making review
71 committee and refiled in the state register on the
72 fifteenth day of November, one thousand nine hundred
73 ninety-one, relating to the division of banking (West
74 Virginia consumer credit and protection act and the
75 money and interest article of chapter forty-seven), are
76 authorized.

77 (k) The legislative rules filed in the state register on
78 the ninth day of August, one thousand nine hundred
79 ninety-one, modified by the division of banking to meet
80 the objections of the legislative rule-making review
81 committee and refiled in the state register on the
82 fifteenth day of November, one thousand nine hundred
83 ninety-one, relating to the division of banking (permiss-
84 ible additional charges in connection with a consumer
85 credit sale), are authorized.

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.

95 (m) The legislative rules filed in the state register on
96 the sixteenth day of August, one thousand nine hundred
97 ninety-three, modified by the division of banking to meet
98 the objections of the legislative rule-making review
99 committee and refiled in the state register on the
100 twenty-first day of October, one thousand nine hundred
101 ninety-three, relating to the division of banking (acqui-
102 sition of property by financial institutions and valuation
103 of real estate owned by state-chartered banks), are
104 authorized.

105 (n) The legislative rules filed in the state register on
106 the sixteenth day of August, one thousand nine hundred
107 ninety-three, modified by the division of banking to meet
108 the objections of the legislative rule-making review
109 committee and refiled in the state register on the
110 seventeenth day of November, one thousand nine
111 hundred ninety-three, relating to the division of banking
112 (notice and treatment of joint accounts), are authorized.

§64-3-7. Division of labor.

1 (a) The legislative rules filed in the state register on
2 the tenth day of May, one thousand nine hundred eighty-
3 two, relating to the commissioner of labor (steam boiler
4 rules) as modified by the legislative rule-making review
5 committee, are authorized.

6 (b) The legislative rules filed in the state register on
7 the seventh day of December, one thousand nine
8 hundred eighty-three, relating to the department of
9 labor (hazardous chemical substances), are authorized.

10 (c) The legislative rules filed in the state register on
11 the second day of February, one thousand nine hundred
12 eighty-four, relating to the department of labor (poly-
13 graph examinations), are authorized.

14 (d) The legislative rules filed in the state register on
15 the twenty-second day of December, one thousand nine
16 hundred eighty-seven, relating to the commissioner of
17 labor (West Virginia occupational safety and health act),
18 are authorized.

19 (e) The legislative rules filed in the state register on
20 the twenty-second day of December, one thousand nine

21 hundred eighty-seven, modified by the commissioner of
22 labor to meet the objections of the legislative rule-
23 making review committee and refiled in the state
24 register on the twentieth day of January, one thousand
25 nine hundred eighty-eight, relating to the commissioner
26 of labor (wage payment and collection act), are
27 authorized.

28 (f) The legislative rules filed in the state register on
29 the sixteenth day of November, one thousand nine
30 hundred eighty-seven, relating to the commissioner of
31 the department of labor (standards for weights and
32 measures inspectors—adoption of NBS Handbook 130,
33 1987), are authorized.

34 (g) The legislative rules filed in the state register on
35 the twelfth day of January, one thousand nine hundred
36 eighty-eight, relating to the commissioner of labor
37 (steam boiler inspection fee schedule), are authorized.

38 (h) The legislative rules filed in the state register on
39 the thirteenth day of September, one thousand nine
40 hundred eighty-eight, modified by the department of
41 labor to meet the objections of the legislative rule-
42 making review committee and refiled in the state
43 register on the seventh day of December, one thousand
44 nine hundred eighty-eight, relating to the department of
45 labor (amusement rides and amusement attractions
46 safety act), are authorized.

47 (i) The legislative rules filed in the state register on
48 the sixteenth day of June, one thousand nine hundred
49 eighty-nine, modified by the department of labor to meet
50 the objections of the legislative rule-making review
51 committee and refiled in the state register on the first
52 day of August, one thousand nine hundred eighty-nine,
53 relating to the department of labor (wage payment and
54 collection act), are authorized.

55 (j) The legislative rules filed in the state register on
56 the eleventh day of August, one thousand nine hundred
57 ninety-three, modified by the division of labor to meet
58 the objections of the legislative rule-making review
59 committee and refiled in the state register on the eighth
60 day of October, one thousand nine hundred ninety-three.

61 relating to the division of labor (elevator safety act), are
62 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 On page 3-4, §3E.01 by adding after the word
7 "engineer" the words "or licensed land surveyor.";

8 On page 3-5, §3E.02, subsection (a), by adding after
9 the word "mining" the words "or civil.";

10 And,

11 On page 3-5, §3E.02, subsection (b), by adding after
12 the first sentence — "Those persons who have been
13 approved 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 On 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 And,

28 On page 15, section 6.03(c)(1) in the first full sentence,
29 after the word "cease", strike the remainder of the
30 sentence and insert in lieu thereof the words "within
31 fifteen (15) days of receipt of an order of suspension" and
32 in the second sentence strike the word "recommence"
33 and insert the words "continue beyond fifteen (15) days";
34 (c)(2) in the first full sentence, after the word "cease"

35 by striking out the remainder of the sentence and insert
36 in lieu thereof the words "immediately upon receipt of
37 an order of revocation."

38 (c) The legislative rules filed in the state register on
39 the twenty-sixth day of September, one thousand nine
40 hundred eighty-four, relating to the department of
41 natural resources (public use of state parks, forests,
42 hunting and fishing areas), are authorized.

43 (d) The legislative rules filed in the state register on
44 the seventh day of November, one thousand nine
45 hundred eighty-four, relating to the department of
46 natural resources (surface mining reclamation), are
47 authorized.

48 (e) The legislative rules filed in the state register on
49 the seventh day of November, one thousand nine
50 hundred eighty-four, relating to the department of
51 natural resources (coal refuse disposal), are authorized.

52 (f) The legislative rules filed in the state register on
53 the ninth day of November, one thousand nine hundred
54 eighty-four, relating to the department of natural
55 resources (transfer of the state national pollutant
56 discharge elimination system program), are authorized
57 with the amendment set forth below:

58 On page 10-5, by striking §10B.19 and inserting in
59 lieu thereof a new §10B.19, to read as follows: "'Effluent
60 limitations guidelines' means a regulation published by
61 the Administrator under Section 304(b) or Section
62 301(b)(1)(B) of the CWA to adopt or revise effluent
63 limitations or levels of effluent quality attainable
64 through the application of secondary or equivalent
65 treatment. For the coal industry these regulations are
66 published at 40 C.F.R. Parts 434 and 133. (See:
67 Appendix G and H)."

68 (g) The legislative rules filed in the state register on
69 the twenty-eighth day of August, one thousand nine
70 hundred eighty-four, relating to the department of
71 natural resources (small arms hunting), are authorized.

72 (h) The legislative rules filed in the state register on
73 the sixth day of January, one thousand nine hundred

74 eighty-four, relating to the department of natural
75 resources (hazardous waste management), are
76 authorized.

77 (i) The legislative rules filed in the state register on
78 the third day of December, one thousand nine hundred
79 eighty-four, modified by the department of natural
80 resources to meet the objections of the legislative rule-
81 making review committee and refiled in the state
82 register on the thirteenth day of February, one thousand
83 nine hundred eighty-five, relating to the department of
84 natural resources (hazardous waste management), are
85 authorized.

86 (j) The legislative rules filed in the state register on
87 the tenth day of October, one thousand nine hundred
88 eighty-five, relating to the department of natural
89 resources (hazardous waste management: Small quan-
90 tity generators and waste minimization certification),
91 are authorized with the amendment set forth below:

92 On page 1, §3.1.4b, delete the word "or" in the
93 reference to "paragraph (g) or (j)" and insert in lieu
94 thereof the words "and, if applicable."

95 (k) The legislative rules filed in the state register on
96 the ninth day of September, one thousand nine hundred
97 eighty-five, relating to the department of natural
98 resources (WV/NPDES regulations for the coal mining
99 point source category and related sewage facilities), are
100 authorized.

101 (l) The legislative rules filed in the state register on
102 the eleventh day of December, one thousand nine
103 hundred eighty-five, modified by the department of
104 natural resources to meet the objections of the legislative
105 rule-making review committee and refiled in the state
106 register on the twentieth day of February, one thousand
107 nine hundred eighty-six, relating to the department of
108 natural resources (hazardous waste management), are
109 authorized.

110 (m) The legislative rules filed in the state register on
111 the twenty-sixth day of September, one thousand nine
112 hundred eighty-six, modified by the department of

113 natural resources to meet the objections of the legislative
114 rule-making review committee and refiled in the state
115 register on the ninth day of December, one thousand
116 nine hundred eighty-six, relating to the department of
117 natural resources (hazardous waste management regu-
118 lations), are authorized.

119 (n) The legislative rules filed in the state register on
120 the seventh day of August, one thousand nine hundred
121 eighty-six, relating to the director of the department of
122 natural resources (procedures for transporting and
123 dealing in fur-bearing animals), are authorized.

124 (o) The legislative rules filed in the state register on
125 the thirtieth day of December, one thousand nine
126 hundred eighty-six, relating to the department of
127 natural resources (WV/NPDES program for coal mines
128 and preparation plants, and the refuse and waste
129 therefrom), are authorized with the amendments set
130 forth below:

131 On page four, §1.9.1.a by inserting the words "five
132 thousand dollars or" after the words "significant portion
133 of income' means.;"

134 And,

135 On page four, §1.9.1.a by inserting the words "whi-
136 chever is less," after the words "ten percent or more of
137 gross personal income for a calendar year."

138 (p) The legislative rules filed in the state register on
139 the fifth day of March, one thousand nine hundred
140 eighty-six, relating to the department of natural
141 resources (hazardous waste management), are
142 authorized.

143 (q) The legislative rules filed in the state register on
144 the twelfth day of August, one thousand nine hundred
145 eighty-seven, relating to the department of natural
146 resources (WV/NPDES regulations for coal mining
147 facilities), are authorized.

148 (r) The legislative rules filed in the state register on
149 the tenth day of June, one thousand nine hundred
150 eighty-seven, relating to the director of the department

151 of natural resources (outfitters and guides), are
152 authorized.

153 (s) The legislative rules filed in the state register on
154 the ninth day of January, one thousand nine hundred
155 eighty-seven, relating to the department of natural
156 resources (hazardous waste management regulations),
157 are authorized.

158 (t) The legislative rules filed in the state register on
159 the fifth day of March, one thousand nine hundred
160 eighty-seven, relating to the department of natural
161 resources (hazardous waste management regulations,
162 series 35), are authorized.

163 (u) The legislative rules filed in the state register on
164 the seventh day of December, one thousand nine
165 hundred eighty-seven, relating to the department of
166 natural resources (hazardous waste management regu-
167 lations, series 35), are authorized.

168 (v) The legislative rules filed in the state register on
169 the sixteenth day of December, one thousand nine
170 hundred eighty-seven, modified by the department of
171 natural resources to meet the objections of the legislative
172 rule-making review committee and refiled in the state
173 register on the fourteenth day of January, one thousand
174 nine hundred eighty-eight, relating to the department of
175 natural resources (solid waste management), are
176 authorized.

177 (w) The legislative rules filed in the state register on
178 the twenty-eighth day of July, one thousand nine
179 hundred eighty-seven, modified by the director of the
180 department of natural resources to meet the objections
181 of the legislative rule-making review committee and
182 refiled in the state register on the seventh day of
183 August, one thousand nine hundred eighty-seven,
184 relating to the director of the department of natural
185 resources (boating regulations), are authorized with the
186 amendment set forth below:

187 On page 16, section 6.2, line 3 by inserting following
188 the period "This regulation does not apply to licensed
189 outfitters and guides." These rules were proposed by the

190 director of the department of natural resources pursu-
191 ant to section seven, article one and section twenty-two,
192 article seven, chapter twenty of this code.

193 (x) The legislative rules filed in the state register on
194 the second day of September, one thousand nine
195 hundred eighty-eight, modified by the department of
196 natural resources to meet the objections of the legislative
197 rule-making review committee and refiled in the state
198 register on the seventeenth day of October, one thousand
199 nine hundred eighty-eight, relating to the department of
200 natural resources (hazardous waste management), are
201 authorized.

202 (y) The legislative rules filed in the state register on
203 the thirty-first day of August, one thousand nine
204 hundred eighty-eight, relating to the director of the
205 department of natural resources (boating), are
206 authorized.

207 (z) The legislative rules filed in the state register on
208 the eighth day of March, one thousand nine hundred
209 eighty-eight, modified by the director of the department
210 of natural resources to meet the objections of the
211 legislative rule-making review committee and refiled in
212 the state register on the thirtieth day of August, one
213 thousand nine hundred eighty-eight, relating to the
214 director of the department of natural resources (com-
215 mercial sale of wildlife), are authorized.

216 (aa) The legislative rules filed in the state register on
217 the twenty-seventh day of January, one thousand nine
218 hundred eighty-eight, relating to the director of the
219 department of natural resources (catching and selling
220 bait fish), are authorized.

221 (bb) The legislative rules filed in the state register on
222 the twenty-fifth day of March, one thousand nine
223 hundred eighty-eight, relating to the director of the
224 department of natural resources (West Virginia public
225 hunting and fishing areas), are authorized with the
226 following amendment:

227 On page three, section 3.8.4, by inserting after the
228 word "vehicle" the following: ", all terrain vehicle

229 (ATV).”

230 (cc) The legislative rules filed in the state register on
231 the seventeenth day of March, one thousand nine
232 hundred eighty-nine, modified by the division of natural
233 resources to meet the objections of the legislative rule-
234 making review committee and refiled in the state
235 register on the sixteenth day of January, one thousand
236 nine hundred ninety, relating to the division of natural
237 resources (solid waste management), are authorized
238 with the amendments set forth below:

239 On page 13, Section 3.2.6, by deleting the current
240 language and inserting in lieu thereof the following:

241 “3.2.6. Within two hundred (200) feet of faults that
242 have had displacement in Holocene time (i.e., during the
243 last eleven thousand years)”;

244 On page 64, Section 3.14.25, by deleting the current
245 language and inserting in lieu thereof the following
246 language:

247 “3.14.25. Environmental Compliance History. The
248 chief or the director may refuse to grant any permit if
249 he has reasonable cause to believe, as indicated by
250 documented evidence, that the applicant, or any officer,
251 director or manager, thereof, or shareholder owning
252 twenty percent (20%) or more of its capital stock,
253 beneficial or otherwise, or other person conducting or
254 managing the affairs of the applicant or of the proposed
255 permitted premises, in whole or part, has exhibited a
256 pattern of violation of the environmental statutes or
257 regulations of this State, any other state, or the federal
258 government.”;

259 On page 104, section 4.5.4.a, by inserting after the
260 words “at that landfill” the following:

261 “Nothing within these regulations shall be construed
262 to allow the installations of any liner or system on areas
263 not lined as of November 30, 1989, that is not in
264 conformance with section 4.5.4.a.E or 4.5.4.a.G of these
265 regulations. Landfills that do have an article 5f permit
266 and a liner installed as of November 30, 1989, may
267 install a liner as approved by the chief.”;

268 And,

269 On pages 147 through 151, sections 4.11.5 and 4.11.6,
270 by deleting the current language and inserting in lieu
271 thereof the following:

272 "4.11.5. Corrective Action Program.

273 Whenever a statistically significant increase is found
274 in a Phase II or Phase III monitoring parameter, or
275 when groundwater contamination is otherwise identified
276 by the Chief at sites without monitoring programs,
277 which is determined by the Chief to have resulted in a
278 significant adverse effect on an aquifer, and which is
279 attributable to a solid waste facility, the Chief may
280 require appropriate corrective or remedial action
281 pursuant to W. Va. Code Chapter 20, article 5A, and
282 Chapter 20, article 5F to abate, remediate or correct
283 such pollution. Any such corrective or remedial action
284 order shall take into account any applicable ground-
285 water quality protection standards, the existing use of
286 such waters, the reasonable uses of such waters,
287 background water quality, and the protection of human
288 health and the environment."

289 (dd) The legislative rules filed in the state register on
290 the seventeenth day of February, one thousand nine
291 hundred eighty-nine, relating to the director of the
292 department of natural resources (underground storage
293 tanks), are authorized.

294 (ee) The legislative rules filed in the state register on
295 the twenty-seventh day of January, one thousand nine
296 hundred eighty-nine, relating to the director of the
297 department of natural resources (transporting and
298 selling wildlife pelts), are authorized.

299 (ff) The legislative rules filed in the state register on
300 the seventeenth day of February, one thousand nine
301 hundred eighty-nine, modified by the director of the
302 department of natural resources to meet the objections
303 of the legislative rule-making review committee and
304 refiled in the state register on the ninth day of August,
305 one thousand nine hundred eighty-nine, relating to the
306 director of the department of natural resources (under-

307 ground storage tank fee assessments), are authorized.

308 (gg) The legislative rules filed in the state register on
309 the twenty-fourth day of April, one thousand nine
310 hundred eighty-nine, modified by the director of the
311 department of natural resources to meet the objections
312 of the legislative rule-making review committee and
313 refiled in the state register on the twenty-second day of
314 May, one thousand nine hundred eighty-nine, relating to
315 the director of the department of natural resources
316 (public hunting and fishing areas), are authorized.

317 (hh) The legislative rules filed in the state register on
318 the first day of December, one thousand nine hundred
319 eighty-nine, relating to the department of natural
320 resources (water pollution control permit fee schedules),
321 are authorized with the amendments set forth below:

322 On page five, section 3.3, by deleting the following:
323 "Submitted fees are not refundable.";

324 On page two, after section 2.6, by inserting the
325 following:

326 "Customer" means any person that purchases waste
327 disposal services from a facility permitted under article
328 five-a, chapter twenty of the code of West Virginia, one
329 thousand nine hundred thirty-one, as amended. For the
330 purposes of these regulations, commercial and other
331 non-single family dwelling customers shall be translated
332 into customer equivalents by dividing the total daily
333 estimated volume of waste water by three hundred and
334 fifty gallons per day." and renumbering the remaining
335 subsections.;

336 On page nine, section 7.2, by striking out the words
337 "seven hundred fifty dollars (\$750)." and inserting in
338 lieu thereof the following:

339 "determined using Table D, but in no case shall be
340 less than two hundred fifty dollars (\$250).";

341 And,

342 On page thirteen, by striking out all of Table D,
343 Schedule of Annual Permit Fees, and inserting in lieu
344 thereof a new Table D, designated "Schedule of Annual

345 Permit Fees", to read as follows:

346

"TABLE D

347

SCHEDULE OF ANNUAL PERMIT FEES

348

SEWAGE FACILITIES

349	Number of Customers	Annual Permit Fee
350	less than 1000	\$ 250
351	1000 to 1499	\$ 500
352	1500 to 1999	\$ 750
353	2000 to 2499	\$1000
354	2500 to 2999	\$1250
355	3000 to 3499	\$1500
356	3500 to 3999	\$1750
357	4000 to 4499	\$2000
358	4500 to 4999	\$2250
359	greater than 5000	\$2500

360

INDUSTRIAL OR OTHER WASTE FACILITIES

361	Average Discharge Volume	Annual Permit Fee
362	(gallons per day)	
363	less than 1,000	\$ 50
364	1,001 to 10,000	\$ 500
365	10,001 to 50,000	\$1000
366	greater than 50,000	\$2500"

367 (ii) The legislative rules filed in the state register on
 368 the twenty-fifth day of July, one thousand nine hundred
 369 eighty-nine, modified by the director of the department
 370 of natural resources to meet the objections of the
 371 legislative rule-making review committee and refiled in
 372 the state register on the fifteenth day of September, one
 373 thousand nine hundred eighty-nine, relating to the
 374 director of the department of natural resources (revoca-
 375 tion of hunting and fishing licenses), are authorized.

376 (jj) The legislative rules filed in the state register on
 377 the twentieth day of December, one thousand nine
 378 hundred eighty-nine, modified by the division of natural
 379 resources to meet the objections of the legislative rule-
 380 making review committee and refiled in the state
 381 register on the twenty-fourth day of January, one

382 thousand nine hundred ninety, relating to the division
383 of natural resources (state water pollution control
384 revolving fund program), are authorized.

385 (kk) The legislative rules filed in the state register on
386 the twenty-ninth day of March, one thousand nine
387 hundred ninety, modified by the division of natural
388 resources to meet the objections of the legislative rule-
389 making review committee and refiled in the state
390 register on the thirtieth day of August, one thousand
391 nine hundred ninety, relating to the division of natural
392 resources (assessment of civil administrative penalties),
393 are authorized.

394 (ll) The legislative rules filed in the state register on
395 the sixth day of August, one thousand nine hundred
396 ninety, relating to the division of natural resources
397 (water pollution control permit fee schedules), are
398 authorized.

399 (mm) The legislative rules filed in the state register
400 on the fifteenth day of June, one thousand nine hundred
401 ninety, modified by the division of natural resources to
402 meet the objections of the legislative rule-making review
403 committee and refiled in the state register on the
404 twenty-second day of August, one thousand nine
405 hundred ninety, relating to the division of natural
406 resources (underground storage tank insurance trust
407 fund), are authorized with the amendment set forth
408 below:

409 On page four, after subsection 5.1, by inserting a new
410 subdivision 5.1.1 to read as follows:

411 "5.1.1 The fee shall be one hundred dollars per tank
412 per year (\$100/tank/year) for a period of not less than
413 one (1) year and not more than three (3) years. Second
414 and third year capitalization fees may be levied if there
415 is an inadequate surplus of funds, as determined by the
416 Board of Risk and Insurance Management, the Division
417 of Natural Resources and the Underground Storage
418 Tank Advisory Committee pursuant to W. Va. Code,
419 §20-5H-7."

420 (nn) The legislative rules filed in the state register on

421 the thirteenth day of August, one thousand nine hundred
422 ninety, modified by the division of natural resources to
423 meet the objections of the legislative rule-making review
424 committee and refiled in the state register on the second
425 day of October, one thousand nine hundred ninety,
426 relating to the division of natural resources (under-
427 ground storage tanks), are authorized with the amend-
428 ment set forth below:

429 On page four, section five, subsection 5.1, after the
430 word "requirements" by striking out the remainder of
431 the subsection and inserting in lieu thereof, the
432 following:

433 "of Title 47, Series 37 (Underground Storage Tank
434 Fee Assessments); Title 47, Series 36, Section 4 (Noti-
435 fication Requirements); and Title 47, Series 37A, Section
436 5 (Capitalization Fees) of the Code of State Regulations
437 and the owner or operator presents proof of the
438 certification to the carrier."

439 (oo) The legislative rules filed in the state register on
440 the thirteenth day of August, one thousand nine hundred
441 ninety, relating to the division of natural resources (dam
442 safety), are authorized.

443 (pp) The legislative rules filed in the state register on
444 the thirteenth day of August, one thousand nine hundred
445 ninety, modified by the division of natural resources to
446 meet the objections of the legislative rule-making review
447 committee and refiled in the state register on the
448 twenty-eighth day of November, one thousand nine
449 hundred ninety, relating to the division of natural
450 resources (hazardous waste management), are
451 authorized.

452 (qq) The legislative rules filed in the state register on
453 the first day of July, one thousand nine hundred ninety-
454 one, modified by the division of natural resources to
455 meet the objections of the legislative rule-making review
456 committee and refiled in the state register on the
457 nineteenth day of September, one thousand nine
458 hundred ninety-one, relating to the division of natural
459 resources (special motorboating regulations), are
460 authorized.

461 (rr) The legislative rules filed in the state register on
462 the first day of May, one thousand nine hundred ninety-
463 one, modified by the division of natural resources to
464 meet the objections of the legislative rule-making review
465 committee and refiled in the state register on the
466 twenty-second day of July, one thousand nine hundred
467 ninety-one, relating to the division of natural resources
468 (special fishing regulations), are authorized with the
469 amendment set forth below:

470 On page one, by striking out subsection 2.1 and
471 inserting in lieu thereof, a new subsection 2.1, to read
472 as follows:

473 "2.1 "Daylight hours" means the time period between
474 sixty minutes before sunrise and sixty minutes after
475 sunset."

476 (ss) The legislative rules filed in the state register on
477 the first day of July, one thousand nine hundred ninety-
478 one, modified by the division of natural resources to
479 meet the objections of the legislative rule-making review
480 committee and refiled in the state register on the
481 twenty-first day of November, one thousand nine
482 hundred ninety-one, relating to the division of natural
483 resources (boating regulations), are authorized.

484 (tt) The Legislature hereby authorizes and directs the
485 division of natural resources to promulgate the legisla-
486 tive rule relating to water pollution control permit fee
487 schedules, 47 CSR 26, effective the twenty-second day
488 of April, one thousand nine hundred ninety-one, with the
489 amendment set forth below:

490 On page eight, subdivision 7.4.1, at the end of the
491 subdivision by striking the period and adding the
492 following:

493 " *Provided*, That if the chief determines that a facility
494 is in substantial compliance with its existing permit, the
495 fee is one thousand two hundred fifty dollars
496 (\$1,250.00)."

497 (uu) The Legislature hereby authorizes and directs
498 the division of natural resources to amend its rules
499 relating to water pollution control permit fee schedules

500 which were filed in the code of state regulations (47 CSR
501 26) on the thirteenth day of April, one thousand nine
502 hundred ninety-two, with the following amendments set
503 forth below:

504 On page nine, after section 7.5, by inserting the
505 following:

506 "7.6. Facilities Discharging Stormwater. The annual
507 permit fee for a facility that discharges stormwater only
508 shall be determined through the use of Table F of these
509 regulations.

510 7.7. Aquaculture facilities. The annual permit fees for
511 aquaculture facilities that are subject to the provisions
512 of the water pollution control regulations shall be
513 determined by Table G of these regulations.";

514 And after Table E, on page ten, by inserting Table
515 F, designated "Schedule of Annual Permit Fees For
516 Facilities Discharging Stormwater," and inserting
517 Table G, designated "Schedule of Annual Permit Fees
518 For Aquaculture Facilities" to read as follows:

519 "TABLE F

520 SCHEDULE OF ANNUAL PERMIT FEES FOR

521 FACILITIES DISCHARGING

522 STORMWATER

523 Average Discharge Volume	Annual Permit Fee
524 (gallons per day)	
525 less than 5,001	\$ 50
526 5,001 to 15,000	\$ 125
527 15,001 to 50,000	\$ 250
528 50,001 to 100,000	\$ 500
529 greater than 100,000	\$ 750";

530 And,

531 "TABLE G

532 SCHEDULE OF ANNUAL PERMIT FEES FOR

533 AQUACULTURE FACILITIES

	# Feed/Month	Annual Fee	Application Fee (Initial and Reissuance)
534			
535			
536			
537	5,000 to 9,999	\$ 250	\$ 250
538	10,000 to 14,999	\$ 500	\$ 250
539	15,000 to 19,999	\$ 750	\$ 250
540	20,000 to 24,999	\$1,000	\$ 250
541	25,000 to 29,999	\$1,250	\$ 250
542	greater than 30,000	\$1,750	\$ 250"

543 (vv) The legislative rules filed in the state register on
 544 the seventeenth day of September, one thousand nine
 545 hundred ninety-two, modified by the division of natural
 546 resources to meet the objections of the legislative rule-
 547 making review committee and refiled in the state
 548 register on the sixteenth day of December, one thousand
 549 nine hundred ninety-two, relating to the division of
 550 natural resources (commercial sale of wildlife), are
 551 authorized.

552 (ww) The legislative rules filed in the state register
 553 on the ninth day of September, one thousand nine
 554 hundred ninety-two, modified by the division of natural
 555 resources to meet the objections of the legislative rule-
 556 making review committee and refiled in the state
 557 register on the seventh day of December, one thousand
 558 nine hundred ninety-two, relating to the division of
 559 natural resources (deer hunting), are authorized.

560 (xx) The legislative rules filed in the state register on
 561 the ninth day of September, one thousand nine hundred
 562 ninety-two, modified by the division of natural resources
 563 to meet the objections of the legislative rule-making
 564 review committee and refiled in the state register on the
 565 seventh day of December, one thousand nine hundred
 566 ninety-two, relating to the division of natural resources
 567 (defining the terms to be used concerning all hunting
 568 and trapping regulations), are authorized.

569 (yy) The legislative rules filed in the state register on
 570 the ninth day of September, one thousand nine hundred
 571 ninety-two, modified by the division of natural resources
 572 to meet the objections of the legislative rule-making
 573 review committee and refiled in the state register on the

574 seventh day of December, one thousand nine hundred
575 ninety-two, relating to the division of natural resources
576 (dog training), are authorized.

577 (zz) The legislative rules filed in the state register on
578 the ninth day of September, one thousand nine hundred
579 ninety-two, modified by the division of natural resources
580 to meet the objections of the legislative rule-making
581 review committee and refiled in the state register on the
582 seventh day of December, one thousand nine hundred
583 ninety-two, relating to the division of natural resources
584 (general hunting regulations), are authorized.

585 (aaa) The legislative rules filed in the state register
586 on the ninth day of September, one thousand nine
587 hundred ninety-two, modified by the division of natural
588 resources to meet the objections of the legislative rule-
589 making review committee and refiled in the state
590 register on the seventh day of December, one thousand
591 nine hundred ninety-two, relating to the division of
592 natural resources (general trapping regulations), are
593 authorized.

594 (bbb) The legislative rules filed in the state register
595 on the ninth day of September, one thousand nine
596 hundred ninety-two, modified by the division of natural
597 resources to meet the objections of the legislative rule-
598 making review committee and refiled in the state
599 register on the seventh day of December, one thousand
600 nine hundred ninety-two, relating to the division of
601 natural resources (special migratory bird hunting
602 regulations), are authorized.

603 (ccc) The legislative rules filed in the state register
604 on the ninth day of September, one thousand nine
605 hundred ninety-two, modified by the division of natural
606 resources to meet the objections of the legislative rule-
607 making review committee and refiled in the state
608 register on the seventh day of December, one thousand
609 nine hundred ninety-two, relating to the division of
610 natural resources (prohibitions when hunting and
611 trapping), are authorized with the amendment set forth
612 below:

613 On page two, subsection 3.9., by striking out the

614 words "No person may use portable tree stands on
615 public lands" and inserting in lieu thereof the words "No
616 person may use tree stands, except for portable tree
617 stands, on public lands."

618 (ddd) The legislative rules filed in the state register
619 on the twenty-first day of April, one thousand nine
620 hundred ninety-two, modified by the division of natural
621 resources to meet the objections of the legislative rule-
622 making review committee and refiled in the state
623 register on the sixteenth day of December, one thousand
624 nine hundred ninety-two, relating to the division of
625 natural resources (revocation of hunting and fishing
626 licenses), are authorized with the amendments set forth
627 below:

628 On page two, subsection 4.1., by striking out the word
629 "court" and inserting in lieu thereof the word
630 "commission";

631 And,

632 On page two, subdivision 4.1.1, by striking out the
633 word "court" and inserting in lieu thereof the word
634 "commission".

635 (eee) The legislative rules filed in the state register
636 on the ninth day of September, one thousand nine
637 hundred ninety-two, modified by the division of natural
638 resources to meet the objections of the legislative rule-
639 making review committee and refiled in the state
640 register on the seventh day of December, one thousand
641 nine hundred ninety-two, relating to the division of
642 natural resources (special bear hunting regulations), are
643 authorized.

644 (fff) The legislative rules filed in the state register on
645 the seventeenth day of September, one thousand nine
646 hundred ninety-two, modified by the division of natural
647 resources to meet the objections of the legislative rule-
648 making review committee and refiled in the state
649 register on the sixteenth day of December, one thousand
650 nine hundred ninety-two, relating to the division of
651 natural resources (special requirements concerning
652 boating), are authorized with the following amendment

653 set forth below:

654 On page one, after subdivision 3.1, by inserting a new
655 subdivision, designated 3.2, to read as follows:

656 3.2. The Pipestem Creek Cove portion of Bluestone
657 Lake in Bluestone State Park is designated for marina
658 use only and is restricted from fishing and other
659 recreational use not directly related to use as a marina.

660 (ggg) The legislative rules filed in the state register
661 on the ninth day of September, one thousand nine
662 hundred ninety-two, modified by the division of natural
663 resources to meet the objections of the legislative rule-
664 making review committee and refiled in the state
665 register on the seventh day of December, one thousand
666 nine hundred ninety-two, relating to the division of
667 natural resources (special waterfowl hunting regula-
668 tions), are authorized.

669 (hhh) The legislative rules filed in the state register
670 on the ninth day of September, one thousand nine
671 hundred ninety-two, modified by the division of natural
672 resources to meet the objections of the legislative rule-
673 making review committee and refiled in the state
674 register on the seventh day of December, one thousand
675 nine hundred ninety-two, relating to the division of
676 natural resources (wild boar hunting), are authorized.

677 (iii) The legislative rules filed in the state register on
678 the ninth day of September, one thousand nine hundred
679 ninety-two, modified by the division of natural resources
680 to meet the objections of the legislative rule-making
681 review committee and refiled in the state register on the
682 seventh day of December, one thousand nine hundred
683 ninety-two, relating to the division of natural resources
684 (wild turkey hunting), are authorized.

685 (jjj) The legislative rules filed in the state register on
686 the tenth day of September, one thousand nine hundred
687 ninety-two, modified by the division of natural resources
688 to meet the objections of the legislative rule-making
689 review committee and refiled in the state register on the
690 eighth day of December, one thousand nine hundred
691 ninety-two, relating to the division of natural resources

692 (West Virginia wildlife management areas), are
693 authorized.

694 (kkk) The legislative rules filed in the state register
695 on the seventeenth day of September, one thousand nine
696 hundred ninety-two, modified by the division of natural
697 resources to meet the objections of the legislative rule-
698 making review committee and refiled in the state
699 register on the twenty-fifth day of January, one
700 thousand nine hundred ninety-three, relating to the
701 division of natural resources (recycling assistance fund
702 grant program), are authorized.

703 (lll) The legislative rules filed in the state register on
704 the seventeenth day of August, one thousand nine
705 hundred ninety-three, relating to the division of natural
706 resources (prohibitions when hunting and trapping), are
707 authorized with the amendment set forth below:

708 On page two, by striking out sections 3.12 in its
709 entirety.

710 (mmm) The legislative rules filed in the state register
711 on the seventeenth day of August, one thousand nine
712 hundred ninety-three, modified by the division of
713 natural resources to meet the objections of the legislative
714 rule-making review committee and refiled in the state
715 register on the ninth day of November, one thousand
716 nine hundred ninety-three, relating to the division of
717 natural resources (special fishing), are authorized with
718 the amendment set forth below:

719 On page 4, after 4.1.4 by adding two new subsections
720 to read as follows:

721 "4.1.5. Raleigh County Airport—A .5 acre pond at the
722 entrance to Raleigh County Airport.

723 4.1.6 Woodbine Area of Cranberry River—A 300 yard
724 long section of Cranberry River at the Woodbine
725 Recreation Area in Nicholas County."

726 (nnn) The legislative rules filed in the state register
727 on the twenty-fourth day of January, one thousand nine
728 hundred ninety-four, relating to the division of natural
729 resources (commercial whitewater commission), are

730 authorized with the amendments set forth below:

731 On page six, subsections 6.1 and 6.2, by striking out
732 the word "unduly" and inserting in lieu thereof the word
733 "unreasonably";

734 And,

735 On page seven, subsection 7.2, by striking out the
736 word "unduly" and inserting in lieu thereof the word
737 "unreasonably".

§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 environ-
32 mental 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.

61 (h) The legislative rules filed in the state register on
62 the twenty-third day of April, one thousand nine
63 hundred ninety-three, modified by the division of
64 environmental protection to meet the objections of the
65 legislative rule-making review committee and refiled in
66 the state register on the twenty-seventh day of October,
67 one thousand nine hundred ninety-three, relating to the
68 division of environmental protection (solid waste landfill
69 closure assistance program), are authorized.

70 (i) The legislative rules filed in the state register on
71 the twenty-eighth day of January, one thousand nine
72 hundred ninety-three, modified by the division of
73 environmental protection to meet the objections of the
74 legislative rule-making review committee and refiled in
75 the state register on the sixth day of October, one
76 thousand nine hundred ninety-three, relating to the
77 division of environmental protection (monitoring wells),
78 are authorized with the amendment set forth below:

79 On page 2, by striking out subsection 4.1 in its
80 entirety and inserting in lieu thereof a new subsection
81 4.1 as follows:

82 "4.1 There shall be a certified monitoring well driller
83 on site in direct charge of actively drilling, constructing,
84 altering, testing or abandoning any monitoring well."

85 (j) The legislative rules filed in the state register on
86 the twenty-eighth day of January, one thousand nine
87 hundred ninety-three, modified by the division of
88 environmental protection to meet the objections of the
89 legislative rule-making review committee and refiled in
90 the state register on the twentieth day of January, one
91 thousand nine hundred ninety-four, relating to the
92 division of environmental protection (groundwater
93 protection), are authorized.

94 (k) The legislative rules filed in the state register on
95 the eighth day of February, one thousand nine hundred
96 ninety-three, relating to the division of environmental
97 protection (groundwater protection, coal mining opera-
98 tions), are authorized with the amendments set forth
99 below:

100 On page 3, following section 2.11, by adding a new
101 section to read as follows:

102 "2.12 Exempted coal mining operations means those
103 operations subject to the exemption set forth in West
104 Virginia Code, §20-5M-5(h), and which are of an earth
105 disturbing nature resulting from and directly related to
106 coal extraction. Exempted coal mining operations
107 include: coal and slurry impoundments; refuse areas and
108 on-site haulways.";

109 On page 3, section 3.1, by striking out the following:
110 "In cases where such statute or legislative rules are
111 more restrictive or in conflict with the Act or these
112 legislative rules, the statute or rule most protective of
113 groundwater applies.";

114 On page 3, by striking out all of section 3.2 and
115 renumbering the remaining sections;

116 On page 3, Section 3.3, by striking out all of Section
117 3.3, and inserting in lieu thereof the following: "All coal
118 mining operations which are not subject to the exemp-
119 tion set forth in subsection (h), Section 5 of the Act, shall
120 conduct groundwater protection practices, and prepare
121 and implement groundwater protection plans, as set
122 forth in this regulation. All exempted coal mining
123 operations must conduct groundwater protection prac-
124 tices consistent with West Virginia Code, §20-5A-1 et
125 seq, and West Virginia Code, §22A-3-1 et seq. Exempted
126 operations are not subject to the existing quality or to
127 the related provisions of subsections (f) and (g), Section
128 5, of the Act. Further, exempted operations are not
129 subject to water quality standards promulgated by the
130 Water Resources Board pursuant to the Act. Such
131 operations shall nonetheless be designed, constructed,
132 operated, maintained, and closed in such manner as to
133 reasonably protect groundwater from contamination.";

134 On page 4, Section 3.4.1.a. by striking out all of
135 Section 3.4.1.a. and inserting in lieu thereof the
136 following: "An inventory of all operations and activities
137 that are not exempted operations and may reasonably
138 be expected to contaminate groundwater, and an
139 indication of the current existence of and the potential
140 for groundwater contamination. These include but are
141 not limited to evaluation of materials handling areas,
142 loading and unloading areas, equipment cleaning,
143 maintenance activities, pipelines carrying contaminants,
144 sumps and tanks containing contaminants.";

145 On page 4, Section 3.4.2 after the word "all" by adding
146 the words "existing nonexempt";

147 On page 5, by striking out all of section 3.4.2.a.;

148 On page 5, by striking out all of section 3.5 and
149 renumbering the remaining sections;

150 On page 6, by striking out all of section 3.5.1;

151 On page 6, by striking out all of section 3.5.2;

152 On page 6, Section 3.6, after the word "for" by
153 inserting the words "noncoal";

154 On pages 6 and 7, by striking out all of Section 3.7
155 and renumbering the remaining sections;

156 On page 11, Section 8.1, by inserting before the words
157 "The Director may" the words "For all nonexempt coal
158 mining operations";

159 On page 11, by striking out all of Section 8.6;

160 On page 12, by striking out all of Section 9.2.;

161 And,

162 On page 12, following Section 9.2, by inserting a new
163 section as follows:

164 **"10. Appropriateness Study.**

165 The Environmental Protection Advisory Council shall
166 conduct a study and report back to the Joint Committee
167 on Government and Finance on or before November 1,
168 1995. The study shall be an evaluation of the appropri-
169 ateness and effectiveness of these rules and shall include
170 any recommendations, modifications or alternatives
171 thereto."

172 (m) The legislative rules filed in the state register on
173 the eighth day of July, one thousand nine hundred
174 ninety-three, modified by the division of environmental
175 protection to meet the objections of the legislative rule-
176 making review committee and refiled in the state
177 register on the twenty-first day of January, one thou-
178 sand nine hundred ninety-four, relating to the division
179 of environmental protection (sewage sludge manage-
180 ment), are authorized with the amendments set forth
181 below:

182 On pages 7 and 8, by striking out sections 3.2.2 and
183 3.2.2a in their entirety and inserting in lieu thereof new

184 sections 3.2.2 and 3.2.2a as follows:

185 "3.2.2. No person or entity shall be allowed to apply
186 sewage sludge to land in a manner that will result in
187 exceeding the maximum soil concentration for arsenic,
188 cadmium, chromium, copper, lead, mercury, molybde-
189 num, nickel, selenium and zinc, as listed in Table 3 of
190 this rule and the soil testing requirements of this rule.

191 3.2.2a. The director shall assign an individual and
192 lifetime loading rate for each land application site by
193 considering background soil concentrations and maxi-
194 mum allowable pollutant concentrations as per Table 1
195 and per Table 3 of this rule, except as provided for in
196 3.2.2.b.

197 3.2.2.b. If circumstances at sewage sludge processing
198 facilities result in short term excursions of Table 1
199 criteria, the director may develop temporary loading
200 rates, for a period not to exceed six months, based on
201 the provisional limitations of Table 2 of this rule.";

202 On page 10, section 4.1.2 after the words "all
203 permitted facilities", by striking out the words "whose
204 methods of operations are not in compliance with this
205 rule";

206 On page 19, section 6.4.1 by striking out "\$10.00" and
207 inserting in lieu thereof "\$5.00";

208 On page 19, by striking out Section 6.4.2. in its
209 entirety and by renumbering the remaining sections;

210 On page 19, in renumbered section 6.4.3., following
211 the words "Fees generated pursuant to", by striking out
212 the words "paragraphs 6.4.1 and 6.4.2" and insert in lieu
213 thereof the words "paragraph 6.4.1";

214 On page 19, in the renumbered section 6.4.3, by
215 striking out "\$500,000" and inserting in lieu thereof
216 "\$200,000";

217 On page 21, Table 1, by striking out the title
218 "POLLUTANT CONCENTRATION OF METALS IN
219 SEWAGE SLUDGE" and inserting in lieu thereof the
220 title "MAXIMUM CONCENTRATION OF METALS
221 IN SEWAGE SLUDGE FOR LAND APPLICATION";

222 And,

223 On page 21, Table 2, by striking out the title
224 "MAXIMUM CONCENTRATION OF METALS IN
225 SEWAGE SLUDGE FOR LAND APPLICATION" and
226 inserting in lieu thereof the title "PROVISIONAL
227 MAXIMUM CONCENTRATION OF METALS IN
228 SEWAGE SLUDGE FOR PRODUCERS NOT MEET-
229 ING TABLE 1 CRITERIA".

230 (n) The legislative rules filed in the state register on
231 the twelfth day of August, one thousand nine hundred
232 ninety-three, modified by the division of environmental
233 protection to meet the objections of the legislative rule-
234 making review committee and refiled in the state
235 register on the nineteenth day of January, one thousand
236 nine hundred ninety-four, relating to the division of
237 environmental protection (groundwater protection act
238 fee schedule), are authorized.

239 (o) The legislative rules filed in the state register on
240 the twelfth day of August, one thousand nine hundred
241 ninety-three, modified by the division of environmental
242 protection to meet the objections of the legislative rule-
243 making review committee and refiled in the state
244 register on the nineteenth day of January, one thousand
245 nine hundred ninety-four, relating to the division of
246 environmental protection (underground injection control
247 fee schedule), are authorized.

248 (p) The legislative rules filed in the state register on
249 the twelfth day of August, one thousand nine hundred
250 ninety-three, modified by the division of environmental
251 protection to meet the objections of the legislative rule-
252 making review committee and refiled in the state
253 register on the fourteenth day of January, one thousand
254 nine hundred ninety-four, relating to the division of
255 environmental protection (underground storage tanks),
256 are authorized with the amendments set forth below:

257 On page 3, section 3.4.5.a, following the word "clo-
258 sure" by inserting a period and the following: "The
259 director can make available to applicants alternative
260 testing procedures";

261 And,

262 On page 4, subsection 3.4.6, by striking out "\$100" and
263 inserting in lieu thereof "\$75", and by striking out "\$50"
264 and inserting in lieu thereof "\$35".

265 (q) The legislative rules filed in the state register on
266 the sixteenth day of August, one thousand nine hundred
267 ninety-three, modified by the division of environmental
268 protection to meet the objections of the legislative rule-
269 making review committee and refiled in the state
270 register on the twenty-first day of January, one thou-
271 sand nine hundred ninety-four, relating to the division
272 of environmental protection (commercial hazardous
273 waste management facility siting fees), are authorized
274 with the amendment set forth below:

275 On page 2, section 3.1 by striking out the words "sixty
276 thousand dollars (\$60,000)" and inserting in lieu thereof
277 the words "one hundred thousand dollars (\$100,000)".

278 (r) The legislative rules filed in the state register on
279 the sixteenth day of August, one thousand nine hundred
280 ninety-three, relating to the division of environmental
281 protection (hazardous waste management), are
282 authorized.

283 (s) The legislative rules filed in the state register on
284 the sixteenth day of August, one thousand nine hundred
285 ninety-three, modified by the division of environmental
286 protection to meet the objections of the legislative rule-
287 making review committee and refiled in the state
288 register on the twentieth day of January, one thousand
289 nine hundred ninety-four, relating to the division of
290 environmental protection (dam safety), are authorized
291 with the amendment set forth below:

292 On page 19, by striking out the entirety of sections
293 7.1.1.b.A. and 7.1.1.b.B. and inserting in lieu thereof
294 new sections 7.1.1.b.A and 7.1.1.b.B as follows:

295 "7.1.1.b.A. Class A Dams—Class A dams shall be
296 designed for a minimum P100 storm of six hours in
297 duration.

298 7.1.1.b.B. Class B Dams—Class B dams shall be

299 designed for a minimum P100 storm to one-half
300 probable maximum precipitation storm of six hours
301 duration. The magnitude of storm must closely relate to
302 the degree of anticipated damage downstream based
303 upon information supplied to the Director.”

304 (t) The legislative rules filed in the state register on
305 the sixteenth day of August, one thousand nine hundred
306 ninety-three, modified by the division of environmental
307 protection to meet the objections of the legislative rule-
308 making review committee and refiled in the state
309 register on the nineteenth day of January, one thousand
310 nine hundred ninety-four, relating to the division of
311 environmental protection (groundwater quality stand-
312 ard variances), are authorized.

313 (u) The legislative rules filed in the state register on
314 the sixteenth day of August, one thousand nine hundred
315 ninety-three, modified by the division of environmental
316 protection to meet the objections of the legislative rule-
317 making review committee and refiled in the state
318 register on the twenty-first day of January, one thou-
319 sand nine hundred ninety-four, relating to the division
320 of environmental protection (lead acid battery), are
321 authorized with the amendment set forth below:

322 On page 3, section 3.4, by striking out the word “five
323 (5)” and inserting in lieu thereof the word “three (3)”.

324 (v) The legislative rules filed in the state register on
325 the sixteenth day of August, one thousand nine hundred
326 ninety-three, modified by the division of environmental
327 protection to meet the objections of the legislative rule-
328 making review committee and refiled in the state
329 register on the twenty-first day of January, one thou-
330 sand nine hundred ninety-four, relating to the division
331 of environmental protection (yard waste composting),
332 are authorized with the following amendment:

333 On page 2, by striking out all of section 2.3 and
334 inserting in lieu thereof a new section 2.3 as follows:

335 “2.3. **“Non-residential composting activities”** means
336 a composting activity by persons such as landscape
337 contractors, nurseries or greenhouses, lawn and garden

338 companies, solid waste authorities and municipalities
339 which are authorized to compost up to twelve thousand
340 (12,000) tons per year of yard waste materials consisting
341 of grass clippings, weeds, leaves, brush/shrub or tree
342 prunings and other acceptable compostable materials
343 which have been approved in writing by the chief to
344 produce a safe product for use as a soil amendment/soil
345 conditioner.”

346 (w) The legislative rules filed in the state register on
347 the twenty-eighth day of January, one thousand nine
348 hundred ninety-three, modified by the division of
349 environmental protection to meet the objections of the
350 legislative rule-making review committee and refiled in
351 the state register on the sixth day of October, one
352 thousand nine hundred ninety-three, relating to the
353 division of environmental protection (assessment of civil
354 administrative penalties), are authorized.

§64-3-18. Office of miners' health, safety and training.

1 (a) The legislative rules filed in the state register on
2 the thirteenth day of November, one thousand nine
3 hundred ninety-two, modified by the director of the
4 office of miners' health, safety and training to meet the
5 objections of the legislative rule-making review commit-
6 tee 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.

13 (b) The legislative rules filed in the state register on
14 the twenty-seventh day of July, one thousand nine
15 hundred ninety-three, modified by the office of miners'
16 health, safety and training to meet the objections of the
17 legislative rule-making review committee and refiled in
18 the state register on the second day of November, one
19 thousand nine hundred ninety-three, relating to the
20 office of miners' health, safety and training (first-aid
21 training of shaft and/or slope employees), are autho-
22 rized.

CHAPTER 28

(S. B. 1006—By Senators Burdette, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 15, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and eight, article five, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section nine, all relating generally to the promulgation of administrative rules and regulations by the governmental agencies within the department of health and human resources; authorizing certain agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the department of health and human resources to promulgate legislative rules relating to public water systems, as modified; authorizing the department of health and human resources to promulgate legislative rules relating to distribution of state aid funds to local boards of health, as modified; authorizing the department of health and human resources to promulgate legislative rules relating to hospital licensure, as modified and amended; authorizing the division of health to promulgate legislative rules relating to cancer registry, as modified; authorizing the human rights commission to promulgate legislative rules relating to the discrimination against individuals with disabilities, as modified and amended; and authorizing the commission on aging to promulgate legislative rules relating to West Virginia long-term care ombudsman program, as modified.

Be it enacted by the Legislature of West Virginia:

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

**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.

§64-5-8. Human rights commission.

§64-5-9. Commission on aging.

§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, 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., 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., after the words
42 '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.

66 (e) The legislative rules filed in the state register on
67 the third day of May, one thousand nine hundred ninety-
68 three, modified by the department of health and human
69 resources to meet the objections of the legislative rule-
70 making review committee and refiled in the state
71 register on the eighth day of July, one thousand nine
72 hundred ninety-three, relating to the department of
73 health and human resources (public water systems), are
74 authorized.

75 (f) The legislative rules filed in the state register on
76 the ninth day of September, one thousand nine hundred
77 ninety-three, modified by the department of health and
78 human resources to meet the objections of the legislative
79 rule-making review committee and refiled in the state
80 register on the twenty-fourth day of January, one
81 thousand nine hundred ninety-four, relating to the
82 department of health and human resources (distribution
83 of state aid funds to local boards of health), are
84 authorized.

85 (g) The legislative rules filed in the state register on
86 the seventh day of January, one thousand nine hundred
87 ninety-four, modified by the department of health and
88 human resources to meet the objections of the legislative
89 rule-making review committee and refiled in the state
90 register on the twenty-fourth day of January, one
91 thousand nine hundred ninety-four, relating to the
92 department of health and human resources (hospital
93 licensure), are authorized with the amendments set
94 forth below:

95 "On page 4, section 3.20, by striking out all of section
96 3.20 and inserting in lieu thereof the following: "Section
97 6a Hospital — A nonprofit hospital, as identified in W.
98 Va. Code §16-5-B-6a, whether governed by an in-state
99 or out-of-state board of directors, or a hospital owned by
100 a county, city or other political subdivision of the State
101 of West Virginia, except for existing nonprofit hospitals
102 which are owned or operated by a corporation which
103 was incorporated in another state prior to March 9,
104 1983: *Provided, however,* This definition does not include
105 the corporation defined in W. Va. Code §18-11C-1(d)
106 and";

107 On page 16, section 8.3.2. by striking the comma after
108 the word "safety" and inserting in lieu thereof the word
109 "or";

110 On page 16, section 8.3.2. after the word "et seq.," by
111 striking out the words "or involves a cost in excess of
112 two hundred thousand dollars (\$200,000)";

113 On page 17, section 8.4.2. by striking the comma after
114 the word "safety" and inserting in lieu thereof the word
115 "or";

116 On page 17, section 8.4.2. after the word "et seq.," by
117 striking out the words "or involves a cost in excess of
118 two hundred thousand dollars (\$200,000)"; and

119 On page 45, section 12, by striking all of subdivision
120 12.2.1 and inserting in lieu thereof a new subdivision
121 12.2.1 to read as follows:

122 12.2.1. All general acute care hospitals shall provide
123 emergency services: *Provided*, That the Director may
124 grant exceptions to this requirement based upon (a) the
125 need to avoid an unnecessary duplication of services, (b)
126 a recognition of practical economies of scale within the
127 community, or (c) other such appropriate factors
128 relating to the optimum delivery of emergency services
129 within available resources and deemed by the director
130 to be substantial. The requirement of this subdivision
131 for the provision of emergency services shall be waived
132 by the director in the case of a rural primary care
133 hospital if such hospital has entered into an appropriate
134 patient transfer agreement with another referral
135 hospital to provide for emergency services. If the
136 hospital provides emergency services, it shall have an
137 emergency room which is located so as to permit easy
138 access from automobiles and ambulances. The emer-
139 gency service shall be of a size comparable to the need
140 imposed upon it and shall be adequately equipped to
141 provide whatever life-saving measures may be needed
142 for patients admitted to this service."

§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 gonorrhea), are
9 authorized.

10 (c) The legislative rules filed in the state register on
11 the second day of June, one thousand nine hundred
12 eighty-two, relating to the state board of health (public
13 water supply operators) with the modification of §11.02
14 as presented to the legislative rule-making review
15 committee on the ninth day of November, one thousand
16 nine hundred eighty-two, are authorized.

17 (d) The legislative rules filed in the state register on
18 the twenty-second day of October, one thousand nine
19 hundred eighty-two, relating to the state board of health
20 (sewage systems) with the modification presented to the
21 legislative rule-making review committee on the sixth
22 day of December, one thousand nine hundred eighty-
23 two, are authorized except lines ten through seventeen,
24 page eight of the rules shall be stricken in their entirety
25 and the remaining paragraphs renumbered.

26 (e) The legislative rules filed in the state register on
27 the second day of June, one thousand nine hundred
28 eighty-two, relating to the state board of health
29 (approval of laboratories), are authorized.

30 (f) The legislative rules filed in the state register on
31 the twenty-fourth day of November, one thousand nine
32 hundred eighty-two, relating to the state board of health
33 (permit fees), are authorized.

34 (g) The legislative rules filed in the state register on
35 the third day of June, one thousand nine hundred eighty-
36 two, relating to the state board of health (certificate of
37 need), are authorized.

38 (h) The legislative rules filed in the state register on
39 the sixteenth day of August, one thousand nine hundred
40 eighty-two, relating to the state board of health (eyes of
41 newborn children), are authorized.

42 (i) The legislative rules filed in the state register on
43 the thirteenth day of August, one thousand nine hundred
44 eighty-two, and filed with amendments on the eleventh
45 day of January, one thousand nine hundred eighty-three,
46 relating to the state board of health (nursing home
47 licensure), are authorized with the amendment of
48 §5.15.02 of those rules as set forth below:

49 By striking the word "and" at the end of subdivision
50 (f), by changing the period at the end of subdivision (g)
51 to a semicolon, and by adding the following after
52 subdivision (g): "(h) One (1) member who represents
53 social work services."

54 (j) The legislative rules filed in the state register on
55 the twenty-fourth day of November, one thousand nine
56 hundred eighty-two, relating to the state board of health
57 (guardianship service), are authorized with the excep-
58 tion of section 9.3 of those rules which may not be
59 promulgated.

60 (k) The legislative rules filed in the state register on
61 the third day of June, one thousand nine hundred eighty-
62 two, relating to the state board of health (controlled
63 substances research program and certification), are
64 authorized.

65 (l) The legislative rules filed in the state register on
66 the fifth day of November, one thousand nine hundred
67 eighty-two, relating to the state board of health
68 (chemical test for intoxication), are authorized.

69 (m) The legislative rules filed in the state register on
70 the nineteenth day of December, one thousand nine
71 hundred eighty-three, relating to the state board of
72 health (birthing center licensure), are authorized.

73 (n) The legislative rules filed in the state register on
74 the fourteenth day of November, one thousand nine
75 hundred eighty-three, relating to the state board of
76 health (licensure of behavioral health centers), are
77 authorized with the amendment set forth below:

78 Page 45, §12.8.2. In the first sentence delete the words
79 "without delay" and insert in lieu thereof the words
80 "within twenty-four hours after receiving a report of a

81 complaint.”

82 (o) The legislative rules filed in the state register on
83 the nineteenth day of December, one thousand nine
84 hundred eighty-three, relating to the state board of
85 health (procedures for recovery of corneal tissue for
86 transplant), are authorized.

87 (p) The legislative rules filed in the state register on
88 the seventh day of September, one thousand nine
89 hundred eighty-three, relating to the state board of
90 health (well water regulations), are authorized with the
91 amendments set forth below:

92 §4.1. In the first sentence delete the word “obtaining”
93 and insert in lieu thereof the words “applying for”. In
94 the second sentence after “4.3” add “and 4.5.”

95 §4.2. At the end of the second sentence, strike the
96 period and add the words “unless emergency conditions
97 prevail as noted under §4.3.”

98 With the balance of §4.2 and create a new §4.3 with
99 the following changes: In the first sentence delete the
100 word “deadline” and insert in lieu thereof the word
101 “requirements.” Add after the first sentence the
102 sentence, “Emergency conditions and unavoidable
103 circumstances are those conditions involving acts of God,
104 water outages or disruption of water service, unsatisfac-
105 tory water quality or quantity or public health threats.”
106 In the third sentence delete the word “exceed” and insert
107 in lieu thereof the words “be made in excess of.”

108 Renumber §4.3 as §4.4 and add the following two
109 sentences at the end of the section: “Such standards shall
110 constitute the minimum standards for the installation,
111 the alteration or the deepening of water wells. Any plans
112 approved by the director pursuant to these regulations
113 shall be in substantial compliance with the heretofore
114 mentioned standards.”

115 Renumber §4.4 as §4.5, §4.5 as §4.6, §4.6 as §4.7, §4.7
116 as §4.8 and §4.8 as §4.9.

117 And,

118 §5.2. Delete the words “four (4)” and insert in lieu

119 thereof the words "two (2)" and delete the words "active,
120 continuous."

121 (q) The legislative rules filed in the state register on
122 the third day of October, one thousand nine hundred
123 eighty-four, relating to the state board of health (trauma
124 center or facility designation), are authorized.

125 (r) The legislative rules filed in the state register on
126 the twenty-first day of December, one thousand nine
127 hundred eighty-four, relating to the state board of
128 health (reportable diseases), are authorized.

129 (s) The legislative rules filed in the state register on
130 the twenty-first day of December, one thousand nine
131 hundred eighty-four, relating to the state board of
132 health (licensure of medical adult day care centers), are
133 authorized.

134 (t) The legislative rules filed in the state register on
135 the third day of October, one thousand nine hundred
136 eighty-four, relating to the state board of health (retail
137 food store sanitation), are authorized.

138 (u) The legislative rules filed in the state register on
139 the seventeenth day of December, one thousand nine
140 hundred eighty-five, modified by the director of health
141 to meet the objections of the legislative rule-making
142 review committee and refiled in the state register on the
143 fifteenth day of January, one thousand nine hundred
144 eighty-six, relating to the director of health (adult group
145 home licensure), are authorized.

146 (v) The legislative rules filed in the state register on
147 the twenty-ninth day of October, one thousand nine
148 hundred eighty-five, modified by the state board of
149 health to meet the objections of the legislative rule-
150 making review committee and refiled in the state
151 register on the twenty-seventh day of December, one
152 thousand nine hundred eighty-five, relating to the state
153 board of health (licensure of hospice care programs), are
154 authorized.

155 (w) The legislative rules filed in the state register on
156 the thirty-first day of October, one thousand nine
157 hundred eighty-five, modified by the director of health

158 to meet the objections of the legislative rule-making
159 review committee and refiled in the state register on the
160 twenty-seventh day of December, one thousand nine
161 hundred eighty-five, relating to the director of health
162 (rules governing emergency medical services), are
163 authorized with the amendments set forth below:

164 On page 3, §3.9 shall read as follows:

165 “3.9 Quorum — When applied to the EMSAC, a
166 majority of the members thereof, except in the instance
167 when at any meeting of the EMSAC, where a quorum
168 is not present and the director causes to be deposited in
169 the United States mail, postage prepaid, return receipt
170 requested, to each member of the EMSAC within three
171 days, a notice calling a meeting of the EMSAC at some
172 convenient place in the state of West Virginia two weeks
173 after the meeting at which no quorum was present.
174 Quorum means any number of members of the EMSAC
175 who attend such subsequent meeting. Any member
176 missing two consecutive meetings shall be removed from
177 the EMSAC.”

178 On page 6, §4.7.1 shall be deleted in its entirety;

179 And,

180 On page 7, §4.10.1 shall read as follows:

181 “4.10.1 every applicant for certification as an EMSP
182 prior to such certification, shall demonstrate his or her
183 knowledge and ability by undergoing a written exam-
184 ination and a demonstration of skills, and by attaining
185 a passing score on the same. Passing score shall be the
186 same for all testing programs.”

187 (x) The legislative rules filed in the state register on
188 the fifth day of September, one thousand nine hundred
189 eighty-five, relating to the state department of health
190 (revising the list of hazardous substances), are
191 authorized.

192 (y) The legislative rules filed in the state register on
193 the thirteenth day of August, one thousand nine hundred
194 eighty-six, modified by the director of the department
195 of health to meet the objections of the legislative rule-

196 making review committee and refiled in the state
197 register on the sixteenth day of October, one thousand
198 nine hundred eighty-six, relating to the director of the
199 department of health (hazardous material treatment
200 information repository), are authorized.

201 (z) The legislative rules filed in the state register on
202 the seventeenth day of July, one thousand nine hundred
203 eighty-six, modified by the state board of health to meet
204 the objections of the legislative rule-making review
205 committee and refiled in the state register on the
206 sixteenth day of October, one thousand nine hundred
207 eighty-six, relating to the state board of health (methods
208 and standards for chemical tests for intoxication), are
209 authorized.

210 (aa) The legislative rules filed in the state register on
211 the twenty-first day of November, one thousand nine
212 hundred eighty-six, modified by the state board of
213 health to meet the objections of the legislative rule-
214 making review committee and refiled in the state
215 register on the twenty-third day of December, one
216 thousand nine hundred eighty-six, relating to the state
217 board of health (licensure of behavioral health centers),
218 are authorized.

219 (bb) The legislative rules filed in the state register on
220 the eighteenth day of April, one thousand nine hundred
221 eighty-six, modified by the state board of health to meet
222 the objections of the legislative rule-making review
223 committee and refiled in the state register on the
224 seventeenth day of October, one thousand nine hundred
225 eighty-six, relating to the state board of health (hospital
226 licensure), are authorized.

227 (cc) The legislative rules filed in the state register on
228 the ninth day of December, one thousand nine hundred
229 eighty-six, modified by the state board of health to meet
230 the objections of the legislative rule-making review
231 committee and refiled in the state register on the
232 twenty-third day of December, one thousand nine
233 hundred eighty-six, relating to the state board of health
234 (hospital licensure and allowing hospitals to have
235 licensed hospital professionals, other than licensed

236 physicians, on their medical staff), are authorized.

237 (dd) The legislative rules filed in the state register on
238 the ninth day of December, one thousand nine hundred
239 eighty-six, modified by the state board of health to meet
240 the objections of the legislative rule-making review
241 committee and refiled in the state register on the
242 twenty-third day of December, one thousand nine
243 hundred eighty-six, relating to the state board of health
244 (vital statistics), are authorized.

245 (ee) The legislative rules filed in the state register on
246 the eleventh day of September, one thousand nine
247 hundred eighty-seven, relating to the director of the
248 department of health (immunization criteria for
249 transfer students), are authorized.

250 (ff) The legislative rules filed in the state register on
251 the sixteenth day of November, one thousand nine
252 hundred eighty-seven, relating to the director of the
253 department of health (hazardous substances), are
254 authorized with the amendment set forth below:

255 Page 33, section 8, line 8 (unnumbered), by adding at
256 the end of section 8 the following proviso: "*Provided,*
257 That the owner's or operator's submissions are based on
258 the threshold reporting requirements contained in
259 section 5, article 31, chapter 16."

260 (gg) The legislative rules filed in the state register on
261 the eighteenth day of November, one thousand nine
262 hundred eighty-seven, relating to the director of the
263 department of health (trauma center or facility desig-
264 nation), are authorized.

265 (hh) The legislative rules filed in the state register on
266 the twenty-second day of June, one thousand nine
267 hundred eighty-eight, modified by the state board of
268 health to meet the objections of the legislative rule-
269 making review committee and refiled in the state
270 register on the fifteenth day of September, one thousand
271 nine hundred eighty-eight, relating to the state board of
272 health (licensure of hospice care programs), are
273 authorized.

274 (ii) The legislative rules filed in the state register on

275 the fifteenth day of September, one thousand nine
276 hundred eighty-eight, modified by the state board of
277 health to meet the objections of the legislative rule-
278 making review committee and refiled in the state
279 register on the third day of November, one thousand
280 nine hundred eighty-eight, relating to the state board of
281 health (water wells), are authorized with the amend-
282 ment set forth below:

283 On page 2, §3.8, shall read as follows:

284 “3.8 Water Well — Any excavation or penetration in
285 the ground, whether drilled, bored, cored, driven or
286 jettied 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.

471 (ccc) The legislative rules filed in the state register

472 on the sixteenth day of August, one thousand nine
473 hundred ninety-three, modified by the division of health
474 to meet the objections of the legislative rule-making
475 review committee and refiled in the state register on the
476 fifteenth day of October, one thousand nine hundred
477 ninety-three, relating to the division of health (cancer
478 registry), are authorized.

§64-5-8. Human rights commission.

1 (a) The legislative rules filed in the state register on
2 the tenth day of August, one thousand nine hundred
3 ninety, modified by the human rights commission to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the twelfth
6 day of December, one thousand nine hundred ninety,
7 relating to the human rights commission (discrimination
8 against the handicapped), are authorized.

9 (b) The legislative rules filed in the state register on
10 the twenty-second day of March, one thousand nine
11 hundred ninety-one, modified by the human rights
12 commission to meet the objections of the legislative rule-
13 making review committee and refiled in the state
14 register on the fourteenth day of August, one thousand
15 nine hundred ninety-one, relating to the human rights
16 commission (sexual harassment), are authorized.

17 (c) The legislative rules filed in the state register on
18 the twenty-second day of March, one thousand nine
19 hundred ninety-one, modified by the human rights
20 commission to meet the objections of the legislative rule-
21 making review committee and refiled in the state
22 register on the eighteenth day of November, one
23 thousand nine hundred ninety-one, relating to the
24 human rights commission (exemption of private clubs),
25 are authorized.

26 (d) The legislative rules filed in the state register on
27 the twenty-second day of March, one thousand nine
28 hundred ninety-one, modified by the human rights
29 commission to meet the objections of the legislative rule-
30 making review committee and refiled in the state
31 register on the eighteenth day of November, one
32 thousand nine hundred ninety-one, relating to the
33 human rights commission (religious discrimination), are

34 authorized.

35 (e) The legislative rules filed in the state register as
36 an emergency rule on the twenty-second day of March,
37 one thousand nine hundred ninety-one, relating to the
38 human rights commission (waiver of rights under the
39 human rights act), are authorized.

40 (f) The legislative rules filed in the state register on
41 the sixteenth day of August, one thousand nine hundred
42 ninety-three, modified by the human rights commission
43 to meet the objections of the legislative rule-making
44 review committee and refiled in the state register on the
45 twenty-third day of December, one thousand nine
46 hundred ninety-three, relating to the human rights
47 commission (discrimination against individuals with
48 disabilities), are authorized with the amendments set
49 forth below:

50 On page 7, section 4, subsection 4.7, after the words
51 "hazard to" by striking the words "the safety of others"
52 and inserting in lieu thereof the words "his or her health
53 and safety or the health and safety of others";

54 And,

55 On page 7, section 4, subsection 4.8, by striking the
56 first sentence of subsection 4.8, and inserting in lieu
57 thereof the following: "In deciding whether an individ-
58 ual poses a direct threat to health and safety, the
59 employer has the burden of demonstrating that a
60 reasonable probability of a materially enhanced risk of
61 substantial harm to the health or safety of the individual
62 or others cannot be eliminated or reduced by reasonable
63 accommodation."

§64-5-9. Commission on aging.

1 The legislative rules filed in the state register on the
2 seventeenth day of August, one thousand nine hundred
3 ninety-three, modified by the commission on aging to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the
6 fourteenth day of January, one thousand nine hundred
7 ninety-four, relating to the commission on aging (West
8 Virginia long-term care ombudsman program), are
9 authorized.

CHAPTER 29

(H. B. 5007—By Mr. Speaker, Mr. Chambers, and Delegates Staton and Prezioso)

[Passed March 16, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article three, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to charges for use of the Legislature's computer subscriber system; providing that information in the database system in a magnetic or electronic form is not a public record; and providing that the Legislature shall not be required or compelled to allow access to all or a portion of its databases for inspection and copying and shall not be required to make available copies of all or a portion of its databases on magnetic or electronic media.

Be it enacted by the Legislature of West Virginia:

That section five, article three, 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 3. JOINT COMMITTEE ON GOVERNMENT AND FINANCE.

§4-3-5. Charges for use of the Legislature's computer subscriber system.

1 The joint committee on government and finance is
 2 hereby authorized to charge and collect fees from
 3 agencies of state executive and judicial departments and
 4 from private persons, corporations and associations for
 5 access to and use of the Legislature's computer sub-
 6 scriber system databases in accordance with fees,
 7 procedures and restrictions approved by the joint
 8 committee. Fees collected are to be deposited in a special
 9 revolving fund of the joint committee on government
 10 and finance and may be expended for expansion,
 11 maintenance and support of the Legislature's computer
 12 system as authorized by the joint committee. No part of
 13 the information contained in the Legislature's computer
 14 system databases in its magnetic or electronic form is
 15 a public record as that term is defined in section two,

16 article one, chapter twenty-nine-b of this code. Notwith-
17 standing any provisions of section three, article one,
18 chapter twenty-nine-b of this code to the contrary, the
19 Legislature shall not be required or compelled to allow
20 access to all or a portion of its databases for inspection
21 and copying and shall not be required to make available
22 copies of all or a portion of its databases on magnetic
23 or electronic media.

CHAPTER 30

(H. B. 5008—By Delegates P. White, Douglas, Brown, Compton,
Rutledge, Yeager and Leach)

[Passed March 17, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend article four-a, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-b; to amend and reenact section two, article four-b of said chapter; and to amend and reenact sections two, three, four and five, article four-c of said chapter, all relating to the state medicaid program; relating to acceleration and expansion of medicaid coverage for children and expansion of medicaid coverage for the terminally ill; initiating the option of hospice care to terminally ill and initiating the option of medicaid coverage for all children whose family income is below one hundred percent of federal poverty level; authorizing the expansion of medicaid coverage for children whose family income is below one hundred thirty-three percent of federal poverty level within funding limits; providing for the further expansion of medicaid coverage to children whose family income is below one hundred fifty percent of the federal poverty level; requiring a report from the department of health and human resources to the governor and the Legislature regarding the feasibility of the expansion, number of children participating in the accelerated program, the average annual cost of coverage, the number of

children expected to participate in the expansion program, the medical trust fund balance and the expected future deposits to said fund; requiring periodic reports to the legislative task force on uncompensated health care and medicaid expenditures; designating funding from the medical services trust fund for the specified programs, and requiring termination of expanded coverage if the funding source is insufficient; requiring annual reports from the health care cost review authority to the governor and Legislature regarding the number of children and elderly covered by the expanded program, the cost of services by type and service provided and a cost-benefit analysis of the effect of expansion on other insurers and the reduction of uncompensated care in hospitals due to the expansion; requiring consideration of the reduction of uncompensated care and charity care in the rate review process for hospitals; requiring annual reports from the health care cost review authority to the governor and the Legislature concerning the reduction in cost shift created by the expansion of medicaid coverage; requiring a review period to study additional utilization by behavioral health centers and initiating a moratorium on the issuance of additional behavioral health licenses during the study period, providing exceptions for health care facilities with a license, approved certificate of need or application pending; providing an exception for agreements for state owned psychiatric hospitals; continuing medicaid enhancement boards; changing the composition of the general medicaid enhancement board.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 9. HUMAN SERVICES.

Article

4A. Medicaid Uncompensated Care Fund.

4B. Physician/Medical Practitioner Provider Medicaid Act.

4C. Health Care Provider Medicaid Enhancement Act.

ARTICLE 4A. MEDICAID UNCOMPENSATED CARE FUND.

§9-4A-2b. Expansion of coverage to children and terminally ill.

1 (a) It is the intent of the Legislature that steps be
2 taken to expand coverage to children and the terminally
3 ill and to pay for this coverage by fully utilizing federal
4 funds. To achieve this intention, the department of
5 health and human resources shall undertake the
6 following:

7 (1) Effective the first day of July, one thousand nine
8 hundred ninety-four, the department shall initiate a
9 streamlined application form, which shall be no longer
10 than two pages, for all families applying only for
11 medicaid coverage for children.

12 (2) Effective the first day of July, one thousand nine
13 hundred ninety-four, the department shall initiate the
14 option of hospice care to terminally ill West Virginians
15 who otherwise qualify for medicaid. On or before the
16 first day of January, one thousand nine hundred ninety-
17 five, and periodically thereafter, the department shall
18 report to the legislative task force on uncompensated
19 health care and medicaid expenditures created pursuant
20 to section four, article twenty-nine-c, chapter sixteen of
21 this code regarding the program initiation provided for
22 in this subdivision. The report shall include, but not be
23 limited to, the total number, by age, of newly eligible
24 clients served as a result of the initiation of the program
25 pursuant to this subdivision, the average annual cost of
26 coverage per client, and the total cost, by provider type,
27 to serve all clients.

28 (3) Effective the first day of July, one thousand nine
29 hundred ninety-four, the department shall accelerate
30 the medicaid option for coverage of medicaid to all West
31 Virginia children whose family income is below one
32 hundred percent of the federal poverty level. On or
33 before the first day of January, one thousand nine
34 hundred ninety-five, and periodically thereafter, the
35 department shall report to the legislative task force on

36 uncompensated health care and medicaid expenditures
37 regarding the program acceleration provided for in this
38 subdivision. The report shall include, but not be limited
39 to, the number of newly eligible clients, by age, served
40 as a result of the acceleration, the average annual cost
41 of coverage per client and the total cost of all clients
42 served by provider type.

43 (4) Effective the first day of July, one thousand nine
44 hundred ninety-five, the department may initiate the
45 medicaid option to expand coverage of medicaid to all
46 West Virginia children whose family income is below
47 one hundred thirty-three percent of the federal poverty
48 level. To prepare for program expansion the department
49 shall submit a report to the governor and the Legisla-
50 ture on the first day of January, one thousand nine
51 hundred ninety-five, regarding the feasibility of the
52 expansion. The report is to include, but not be limited
53 to, the number of newly eligible clients participating in
54 the programs specified in this section, the average
55 annual cost of coverage per client, the percentage of
56 expected participation for the expansion, the projected
57 cost of the expansion, the medical services trust fund
58 balance and the future disproportionate share moneys
59 expected to be deposited in the medical services trust
60 fund pursuant to section two-a of this article. The
61 department shall continually update the additional
62 information required to be provided to the governor and
63 the Legislature regarding this expansion and periodi-
64 cally report the information to the legislative task force
65 on uncompensated health care and medicaid expendi-
66 tures created pursuant to section four, article twenty-
67 nine-c, chapter sixteen of this code.

68 (5) Effective the first day of July, one thousand nine
69 hundred ninety-six, the department may initiate the
70 medicaid option to expand coverage of medicaid to all
71 West Virginia children whose family income is below
72 one hundred fifty percent of the federal poverty level.
73 To prepare for program expansion, the department shall
74 submit a report to the governor and the Legislature on
75 the first day of January, one thousand nine hundred
76 ninety-six, regarding the feasibility of the expansion.

77 Additionally, the report is to include, but not be limited
78 to, the number of clients who would be newly eligible
79 to participate in the program, the average annual cost
80 of coverage per client, by age, the percentage of
81 expected participation for the expansion and the
82 projected cost of the expansion, the balance of the
83 medical services trust fund and the future dispro-
84 portionate share moneys expected to be deposited in the
85 medical services trust fund pursuant to section two-a of
86 this article. The department shall periodically update
87 and report to the legislative task force on uncompen-
88 sated health care and medicaid expenditures created
89 pursuant to section four, article twenty-nine-c, chapter
90 sixteen of this code regarding the additional information
91 required to be submitted to the governor and the
92 Legislature.

93 (b) Notwithstanding the provisions of section two-a of
94 this article, the accruing interest in the medical services
95 trust fund may be utilized to pay for the programs
96 specified in subsection (a) of this section: *Provided*, That
97 to the extent the accrued interest is not sufficient to fully
98 fund the specified programs, the disproportionate share
99 hospital funds paid into the medical services trust fund
100 after the thirtieth day of June, one thousand nine
101 hundred ninety-four, may be applied to cover the cost
102 of the specified programs: *Provided, however*, That in
103 fiscal year one thousand nine hundred ninety-five, the
104 amount of funds applied from the disproportionate share
105 funds, not including accrued interest, shall not exceed
106 ten million dollars: *Provided further*, That in the interest
107 of fiscal responsibility, the department shall terminate
108 the program specified in subdivisions (4) and (5) of
109 subsection (a) of this section, if the future moneys
110 deposited from disproportionate share payments in the
111 medical services trust fund are insufficient to cover the
112 cost of the expanded program.

113 (c) On the first day of January, one thousand nine
114 hundred ninety-five and annually thereafter, the
115 department shall report to the governor and to the
116 Legislature information regarding the number of
117 children and elderly covered by the program, the cost

118 of services by type of service provided, a cost-benefit
119 analysis of the acceleration and expansion on other
120 insurers and the reduction of uncompensated care in
121 hospitals as a result of the programs.

122 (d) The health care cost review authority established
123 by section five, article twenty-nine-b of this chapter
124 shall consider in its rate review that uncompensated
125 care and charity care are reduced by the programs
126 specified in subsection (a) of this section and shall take
127 the reduction into account when determining rates. This
128 determination shall be undertaken in each hospital's
129 next rate review and shall be determined prospectively.

130 (e) On the first day of January, one thousand nine
131 hundred ninety-five, and annually thereafter, the health
132 care cost review authority shall present to the governor
133 and to the Legislature a report concerning the reduction
134 in cost shift created by the operation of the provisions
135 of this article.

136 (f) The department shall review the additional
137 utilization by behavioral health centers as a result of the
138 acceleration and expansion for a period of eighteen
139 months from the enactment of this article: *Provided*,
140 That during the eighteen-month study period the
141 department shall not issue additional behavioral health
142 licenses: *Provided, however*, That this license provision
143 does not apply to facilities filing for renewal applica-
144 tions or to any health care facility which has a certif-
145 icate of need in effect or an application pending on the
146 first day of March, one thousand nine hundred ninety-
147 four: *Provided further*, That this licensure prohibition
148 shall not apply to behavioral health services provided
149 pursuant to any agreement for state owned psychiatric
150 hospitals which are approved by the federal health care
151 finance administration.

**ARTICLE 4B. PHYSICIAN/MEDICAL PRACTITIONER PRO-
VIDER MEDICAID ACT.**

**§9-4B-2. Physician/medical practitioner provider medi-
caid enhancement board; continuation and
composition.**

1 There is hereby continued 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, and one physician assistant
10 and one lay person. The governor shall select four
11 allopathic physician board members from a list of eight
12 recommendations 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 six. The board shall select a member to act as chairper-
38 son. The chairperson shall be the chief administrative
39 officer and shall preside over official transactions of the
40 board.

**ARTICLE 4C. HEALTH CARE PROVIDER MEDICAID ENHANCE-
MENT ACT.**

§9-4C-2. General medicaid enhancement board.

§9-4C-3. Dentist provider medicaid enhancement board.

§9-4C-4. Ambulance service provider medicaid enhancement board.

§9-4C-5. Facility providers' medicaid enhancement board.

§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
7 governor shall appoint new members to the board to
8 represent groups not previously represented on the
9 board within thirty days after the effective date of this
10 article.

11 (b) This board shall consist of members appointed by
12 the governor, including one representative from each of
13 the following sixteen groups: Audiologists, behavioral
14 health centers, chiropractors, community care centers,
15 independent laboratory services, independent x-ray
16 services, occupational therapists, opticians, optometrists,
17 physical therapists, podiatrists, private duty nurses,
18 psychologists, rehabilitative specialists, respiratory
19 therapists and speech therapists. In addition to the
20 members appointed by the governor, the secretary, or
21 his or her designee, shall serve as an ex officio,
22 nonvoting member 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. The terms of the lay persons who
27 are members of the board as of the seventeenth day of
28 March, one thousand nine hundred ninety-four, shall
29 expire on the first day of July, one thousand nine
30 hundred ninety-four.

31 (d) The terms of all members expire on the first day
32 of July, one thousand nine hundred ninety-six.

§9-4C-3. Dentist provider medicaid enhancement board.

1 There is hereby continued the dentist provider
2 medicaid enhancement board to consist of five members.

3 In order to carry out the purposes of this article, the
4 dentist provider medicaid enhancement board shall
5 represent dentist providers. The board shall consist of
6 three dentists, one lay person and the secretary, or his
7 or her designee, who shall serve as an ex officio,
8 nonvoting member. The governor shall select the dentist
9 members from six recommendations submitted to the
10 governor by the state dental association and the lay
11 board member at his or her discretion. The state dental
12 association shall submit all recommendations to the
13 governor within five days of the effective date of this
14 article. The governor shall make all appointments
15 within fifteen days of receipt of all recommendations.
16 After the initial appointment of the board, any appoint-
17 ment to fill a vacancy shall be for the unexpired term
18 only, shall be made in the same manner as the initial
19 appointment, and the terms of all members shall expire
20 on the first day of July, one thousand nine hundred
21 ninety-six.

**§9-4C-4. Ambulance service provider medicaid enhance-
ment board.**

1 There is hereby continued the ambulance service
2 provider medicaid enhancement board to consist of
3 seven members. In order to carry out the purpose of this
4 article, this board shall represent ambulance service
5 providers. The board shall consist of five ambulance
6 service providers, one lay person and the secretary, or
7 his or her designee, as an ex officio, nonvoting member.
8 The governor shall make all appointments within
9 twenty days of the effective date of this article. After
10 the initial appointment of the board, any appointment
11 to fill a vacancy shall be for the unexpired term only,
12 and the terms of all members shall expire on the first
13 day of July, one thousand nine hundred ninety-six.

**§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 continued 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-six.

CHAPTER 31

(S. B. 1021—By Senators Burdette, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 18, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-six, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two and eight, article five-f, chapter twenty of said code; to further amend said article by adding thereto a new section, designated section twelve; to amend and reenact sections five and seven, article five-n of said chapter; to amend and reenact sections five and eight, article eleven of said chapter; and to amend and reenact section one-i, article two, chapter twenty-four of said code, all relating to solid waste; adding definitions; authorizing a special extension of the landfill closure deadline up to the

thirty-first day of December, one thousand nine hundred ninety-four; allowing certain permittees who satisfy certain requirements to satisfy repayment obligation of the solid waste assessment fee; authorizing the solid waste management board to pledge revenues paid to the closure cost assistance fund to meet the requirements of certain bond issues; authorizing the director of the division of environmental protection to assist certain solid waste facilities by allowing the pledge of certain funds to satisfy loan requirements; authorizing an implementation date for certain recyclable materials of the first day of July, one thousand nine hundred ninety-five; extending the yard waste prohibition until the first day of January, one thousand nine hundred ninety-six; and exempting the public service commission from being required to make certain determinations regarding existing commercial solid waste disposal facilities.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 16. Public Health.
- 20. Natural Resources.
- 24. Public Service Commission.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 26. WEST VIRGINIA SOLID WASTE MANAGEMENT BOARD.

§16-26-3. Definitions.

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

3 (1) "Board" means the solid waste management board
4 provided for in section four of this article, the duties,
5 powers, responsibilities and functions of which are
6 specified in this article.

7 (2) "Bond" or "solid waste disposal revenue bond"
8 means a revenue bond or note issued by the solid waste
9 management board, previously known as the West
10 Virginia resource recovery — solid waste disposal
11 authority, to effect the intents and purposes of this
12 article.

13 (3) "Construction" includes reconstruction, enlarge-
14 ment, improvement and providing furnishings or
15 equipment for a solid waste disposal project.

16 (4) "Cost" means, as applied to solid waste disposal
17 projects, the cost of their acquisition and construction;
18 the cost of acquisition of all land, rights-of-way,
19 property, rights, easements, franchise rights and
20 interests required by the board for such acquisition and
21 construction; the cost of demolishing or removing any
22 buildings or structures on land so acquired, including
23 the cost of acquiring any land to which such buildings
24 or structures may be moved; the cost of diverting
25 highways, interchange of highways and access roads to
26 private property, including the cost of land or easements
27 therefor; the cost of all machinery, furnishings and
28 equipment; all financing charges and interest prior to
29 and during construction and for no more than eighteen
30 months after completion of construction; the cost of all
31 engineering services and all expenses of research and
32 development with respect to solid waste facilities; the
33 cost of all legal services and expenses; the cost of all
34 plans, specifications, surveys and estimates of cost and
35 revenues; all working capital and other expenses
36 necessary or incident to determining the feasibility or
37 practicability of acquiring or constructing any such
38 project; all administrative expenses and such other
39 expenses as may be necessary or incident to the
40 acquisition or construction of the project; the financing
41 of such acquisition or construction, including the
42 amount authorized in the resolution of the board
43 providing for the issuance of solid waste disposal

44 revenue bonds to be paid into any special funds from the
45 proceeds of such bonds; and the financing of the placing
46 of any such project in operation. Any obligation or
47 expenses incurred by any governmental agency, with
48 the approval of the board, for surveys, borings, prepa-
49 ration of plans and specifications and other engineering
50 services in connection with the acquisition or construc-
51 tion of a project are a part of the cost of such project
52 and shall be reimbursed out of the proceeds of loans or
53 solid waste disposal revenue bonds as authorized by the
54 provisions of this article.

55 (5) "Governmental agency" means the state govern-
56 ment or any agency, department, division or unit
57 thereof; counties; municipalities; watershed improve-
58 ment districts; soil conservation districts; sanitary
59 districts; public service districts; drainage districts;
60 regional governmental authorities and any other
61 governmental agency, entity, political subdivision,
62 public corporation or agency having the authority to
63 acquire, construct or operate solid waste facilities; the
64 United States government or any agency, department,
65 division or unit thereof; and any agency, commission or
66 authority established pursuant to an interstate compact
67 or agreement.

68 (6) "Industrial waste" means any solid waste sub-
69 stance resulting from or incidental to any process of
70 industry, manufacturing, trade or business, or from or
71 incidental to the development, processing or recovery of
72 any natural resource.

73 (7) "Owner" includes all persons, partnerships or
74 governmental agencies having any title or interest in
75 any property rights, easements and interests authorized
76 to be acquired by this article.

77 (8) "Person" means any public or private corporation,
78 institution, association, firm or company organized or
79 existing under the laws of this or any other state or
80 country; the United States or the state of West Virginia;
81 governmental agency; political subdivision; county
82 commission; municipality; industry; sanitary district;
83 public service district; drainage district; soil conserva-

84 tion district; solid waste disposal shed district; partner-
85 ship; trust; estate; individual; group of individuals
86 acting individually or as a group; or any other legal
87 entity.

88 (9) "Pollution" means the discharge, release, escape or
89 deposit, directly or indirectly, of solid waste of whatever
90 kind or character, on lands or in waters in the state in
91 an uncontrolled, unregulated or unapproved manner.

92 (10) "Revenue" means any money or thing of value
93 collected by, or paid to, the solid waste management
94 board as rent, use fee, service charge or other charge
95 for use of, or in connection with, any solid waste disposal
96 project, or as principal of or interest, charges or other
97 fees on loans, or any other collections on loans made by
98 the solid waste management board to governmental
99 agencies to finance, in whole or in part, the acquisition
100 or construction of any solid waste development project
101 or projects, or other money or property which is received
102 and may be expended for or pledged as revenues
103 pursuant to this article.

104 (11) "Solid waste" means any garbage, paper, litter,
105 refuse, cans, bottles, waste processed for the express
106 purpose of incineration, sludge from a waste treatment
107 plant, water supply treatment plant or air pollution
108 control facility, other discarded material, including
109 offensive or unsightly matter, solid, liquid, semisolid or
110 contained liquid or gaseous material resulting from
111 industrial, commercial, mining or community activities
112 but does not include solid or dissolved material in
113 sewage, or solid or dissolved materials in irrigation
114 return flows or industrial discharges which are point
115 sources and have permits under article five-a, chapter
116 twenty of this code, or source, special nuclear or by-
117 product material as defined by the Atomic Energy Act
118 of 1954, as amended, including any nuclear or by-
119 product material considered by federal standards to be
120 below regulatory concern, or a hazardous waste either
121 identified or listed under article five-e, chapter twenty
122 of this code, or refuse, slurry, overburden or other waste
123 or material resulting from coal-fired electric power or
124 steam generation, the exploration, development, produc-

125 tion, storage and recovery of coal, oil and gas, and other
126 mineral resources placed or disposed of at a facility
127 which is regulated under chapter twenty-two, twenty-
128 two-a or twenty-two-b of this code, so long as such
129 placement or disposal is in conformance with a permit
130 issued pursuant to said chapters. "Solid waste" does not
131 include materials which are recycled by being used or
132 reused in an industrial process to make a product, as
133 effective substitutes for commercial products, or are
134 returned to the original process as a substitute for raw
135 material feedstock.

136 (12) "Solid waste facility" means any system, facility,
137 land, contiguous land, improvements on land, structures
138 or other appurtenances or methods used for processing,
139 recycling or disposing of solid waste, including landfills,
140 transfer stations, materials recovery facilities and other
141 such facilities not herein specified. Such facility is
142 situated, for purposes of this article, in the county where
143 the majority of the spatial area of such facility is located.

144 (13) "Solid waste disposal project" or "project" means
145 any solid waste facility, wastewater treatment plants,
146 sewer treatment plants, water and sewer systems and
147 connecting pipelines the acquisition or construction of
148 which is authorized by the solid waste management
149 board or any acquisition or construction which is
150 financed, in whole or in part, from funds made available
151 by grant or loan by, or through, the board as provided
152 in this article, including all buildings and facilities
153 which the board deems necessary for the operation of
154 the project, together with all property, rights, easements
155 and interests which may be required for the operation
156 of the project.

157 (14) "Solid waste disposal shed" or "shed" means a
158 geographical area which the solid waste management
159 board designates as provided in section eight of this
160 article for solid waste management.

161 (15) "Solid waste facility operator" means any person
162 or persons possessing or exercising operational, manage-
163 rial or financial control over a commercial solid waste
164 facility, whether or not such person holds a certificate

165 of convenience and necessity or a permit for such
166 facility.

CHAPTER 20. NATURAL RESOURCES.

Article

5F. Solid Waste Management Act.

5N. Solid Waste Landfill Closure Assistance Program.

11. West Virginia Recycling Plan.

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

§20-5F-2. Definitions.

§20-5F-8. Limited extension of solid waste facility closure deadline.

§20-5F-12. Effect of reenactment; manner of codification.

§20-5F-2. Definitions.

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

3 (1) "Agronomic rate" means the whole sewage sludge
4 application rate, by dry weight, designed:

5 (A) To provide the amount of nitrogen needed by the
6 food crop, feed crop, fiber crop, cover crop or vegetation
7 on the land; and

8 (B) To minimize the amount of nitrogen in the sewage
9 sludge that passes below the root zone of the crop or
10 vegetation grown on the land to the groundwater.

11 (2) "Applicant" means the person applying for a
12 commercial solid waste facility permit or similar
13 renewal permit and any person related to such person
14 by virtue of common ownership, common management
15 or family relationships as the director may specify,
16 including the following: Spouses, parents and children
17 and siblings.

18 (3) "Approved solid waste facility" means a solid
19 waste facility or practice which has a valid permit
20 under this article.

21 (4) "Backhauling" means the practice of using the
22 same container to transport solid waste and to transport
23 any substance or material used as food by humans,
24 animals raised for human consumption or reusable item
25 which may be refilled with any substance or material

26 used as food by humans.

27 (5) "Bulking agent" means any material mixed and
28 composted with sewage sludge.

29 (6) "Class A facility" means a commercial solid waste
30 facility which handles an aggregate of between ten
31 thousand and thirty thousand tons of solid waste per
32 month. Class A facility includes two or more Class B
33 solid waste landfills owned or operated by the same
34 person in the same county, if the aggregate tons of solid
35 waste handled per month by such landfills exceeds nine
36 thousand nine hundred ninety-nine tons of solid waste
37 per month.

38 (7) "Commercial recycler" means any person, corpo-
39 ration or business entity whose operation involves the
40 mechanical separation of materials for the purpose of
41 reselling or recycling at least seventy percent by weight
42 of the materials coming into the commercial recycling
43 facility.

44 (8) "Commercial solid waste facility" means any solid
45 waste facility which accepts solid waste generated by
46 sources other than the owner or operator of the facility
47 and does not include an approved solid waste facility
48 owned and operated by a person for the sole purpose of
49 disposing of solid wastes created by that person or such
50 person and other persons on a cost-sharing or nonprofit
51 basis and does not include land upon which reused or
52 recycled materials are legitimately applied for structur-
53 al fill, road base, mine reclamation and similar
54 applications.

55 (9) "Composting" means the aerobic, thermophilic
56 decomposition of natural constituents of solid waste to
57 produce a stable, humus-like material.

58 (10) "Composting facility" means any solid waste
59 facility processing solid waste by composting, including
60 sludge composting, organic waste or yard waste com-
61 posting, but does not include a facility for composting
62 solid waste that is located at the site where the waste
63 was generated.

64 (11) "Director" means the director of the division of

65 environmental protection or such other person to whom
66 the director has delegated authority or duties pursuant
67 to article one, chapter twenty-two of this code.

68 (12) "Division" means the division of environmental
69 protection.

70 (13) "Energy recovery incinerator" means any solid
71 waste facility at which solid wastes are incinerated with
72 the intention of using the resulting energy for the
73 generation of steam, electricity or any other use not
74 specified herein.

75 (14) "Incineration technologies" means any technology
76 that uses controlled flame combustion to thermally
77 break down solid waste, including refuse-derived fuel,
78 to an ash residue that contains little or no combustible
79 materials, regardless of whether the purpose is process-
80 ing, disposal, electric or steam generation or any other
81 method by which solid waste is incinerated.

82 (15) "Incinerator" means an enclosed device using
83 controlled flame combustion to thermally break down
84 solid waste, including refuse-derived fuel, to an ash
85 residue that contains little or no combustible materials.

86 (16) "Landfill" means any solid waste facility for the
87 disposal of solid waste on land. Such facility is situated,
88 for purposes of this article, in the county where the
89 majority of the spatial area of such facility is located.

90 (17) "Materials recovery facility" means any solid
91 waste facility at which source-separated materials or
92 materials recovered through a mixed waste processing
93 facility are manually or mechanically shredded or
94 separated for purposes of reuse and recycling, but does
95 not include a composting facility.

96 (18) "Mixed solid waste" means solid waste from
97 which materials sought to be reused or recycled have not
98 been source-separated from general solid waste.

99 (19) "Mixed waste processing facility" means any solid
100 waste facility at which materials are recovered from
101 mixed solid waste through manual or mechanical means
102 for purposes of reuse, recycling or composting.

103 (20) "Municipal solid waste incineration" means the
104 burning of any solid waste collected by any municipal
105 or residential solid waste disposal company.

106 (21) "Open dump" means any solid waste disposal
107 which does not have a permit under this article, or is
108 in violation of state law, or where solid waste is disposed
109 in a manner that does not protect the environment.

110 (22) "Person" or "persons" mean any industrial user,
111 public or private corporation, institution, association,
112 firm or company organized or existing under the laws
113 of this or any other state or country; state of West
114 Virginia; governmental agency, including federal
115 facilities; political subdivision; county commission;
116 municipal corporation; industry; sanitary district;
117 public service district; drainage district; soil conserva-
118 tion district; watershed improvement district; partner-
119 ship; trust; estate; person or individual; group of persons
120 or individuals acting individually or as a group; or any
121 legal entity whatever.

122 (23) "Recycling facility" means any solid waste facility
123 for the purpose of recycling at which neither land
124 disposal nor biological, chemical or thermal transforma-
125 tion of solid waste occurs: *Provided*, That mixed waste
126 recovery facilities, sludge processing facilities and
127 composting facilities are not considered recycling
128 facilities nor considered to be reusing or recycling solid
129 waste within the meaning of this article, and articles
130 nine and eleven of this chapter.

131 (24) "Sewage sludge" means solid, semisolid or liquid
132 residue generated during the treatment of domestic
133 sewage in a treatment works. Sewage sludge includes,
134 but is not limited to, domestic septage, scum or solids
135 removed in primary, secondary or advanced wastewater
136 treatment processes and a material derived from sewage
137 sludge. "Sewage sludge" does not include ash generated
138 during the firing of sewage sludge in a sewage sludge
139 incinerator.

140 (25) "Sewage sludge processing facility" is a solid
141 waste facility that processes sewage sludge for land
142 application, incineration or disposal at an approved

143 landfill. Such processes include, but are not limited to,
144 composting, lime stabilization, thermophilic digestion
145 and anaerobic digestion.

146 (26) "Sludge" means any solid, semisolid, residue or
147 precipitate, separated from or created by a municipal,
148 commercial or industrial waste treatment plant, water
149 supply treatment plant or air pollution control facility
150 or any other such waste having similar origin.

151 (27) "Solid waste" means any garbage, paper, litter,
152 refuse, cans, bottles, waste processed for the express
153 purpose of incineration; sludge from a waste treatment
154 plant; water supply treatment plant or air pollution
155 control facility; and other discarded materials, including
156 offensive or unsightly matter, solid, liquid, semisolid or
157 contained liquid or gaseous material resulting from
158 industrial, commercial, mining or community activities
159 but does not include solid or dissolved material in
160 sewage or solid or dissolved materials in irrigation
161 return flows or industrial discharges which are point
162 sources and have permits under article five-a of this
163 chapter, or source, special nuclear or byproduct mate-
164 rial as defined by the Atomic Energy Act of 1954, as
165 amended, including any nuclear or byproduct material
166 considered by federal standards to be below regulatory
167 concern, or a hazardous waste either identified or listed
168 under article five-e of this chapter or refuse, slurry,
169 overburden or other wastes or material resulting from
170 coal-fired electric power or steam generation, the
171 exploration, development, production, storage and
172 recovery of coal, oil and gas and other mineral resources
173 placed or disposed of at a facility which is regulated
174 under chapter twenty-two, twenty-two-a or twenty-two-
175 b of this code, so long as such placement or disposal is
176 in conformance with a permit issued pursuant to such
177 chapters.

178 (28) "Solid waste disposal" means the practice of
179 disposing of solid waste including placing, depositing,
180 dumping or throwing or causing any solid waste to be
181 placed, deposited, dumped or thrown.

182 (29) "Solid waste disposal shed" means the geographi-

183 cal area which the solid waste management board
184 designates and files in the state register pursuant to
185 section eight, article twenty-six, chapter sixteen of this
186 code.

187 (30) "Solid waste facility" means any system, facility,
188 land, contiguous land, improvements on the land,
189 structures or other appurtenances or methods used for
190 processing, recycling or disposing of solid waste,
191 including landfills, transfer stations, materials recovery
192 facilities, mixed waste processing facilities, sewage
193 sludge processing facilities, composting facilities and
194 other such facilities not herein specified, but not
195 including land upon which sewage sludge is applied in
196 accordance with subsection (b), section two-b of this
197 article. Such facility shall be deemed to be situated, for
198 purposes of this article, in the county where the majority
199 of the spatial area of such facility is located: *Provided,*
200 That a salvage yard, licensed and regulated pursuant to
201 the terms of article twenty-three, chapter seventeen of
202 this code, is not a solid waste facility.

203 (31) "Solid waste facility operator" means any person
204 or persons possessing or exercising operational, manage-
205 rial or financial control over a commercial solid waste
206 facility, whether or not such person holds a certificate
207 of convenience and necessity or a permit for such
208 facility.

209 (32) "Source-separated materials" means materials
210 separated from general solid waste at the point of origin
211 for the purpose of reuse and recycling but does not mean
212 sewage sludge.

**§20-5F-8. Limited extension of solid waste facility closure
deadline.**

1 (a) The director may grant an extension of the closure
2 deadline up to the thirtieth day of September, one
3 thousand nine hundred ninety-four, to a solid waste
4 facility required under the terms of an extension
5 granted pursuant to this subsection to close by the
6 thirtieth day of June, one thousand nine hundred ninety-
7 three, or required by solid waste management rules to
8 close by the thirtieth day of September, one thousand

9 nine hundred ninety-three, provided that the solid waste
10 facility:

11 (1) Has a solid waste facility permit, or by the first
12 day of March, one thousand nine hundred ninety-three,
13 had an application to obtain a permit pending before the
14 division for the construction of a landfill in accordance
15 with title forty-seven, series thirty-eight, solid waste
16 management rules; and

17 (2) Has a certificate of need or had an application
18 pending therefor, from the public service commission;
19 and

20 (3) Has been determined by the director to pose no
21 significant hazard to public health, safety or the
22 environment; and

23 (4) Has entered into a compliance schedule with the
24 division of environmental protection to be in full
25 compliance, no later than the thirtieth day of Sep-
26 tember, one thousand nine hundred ninety-four, with
27 title forty-seven, series thirty-eight, solid waste manage-
28 ment rules or to be in full compliance, no later than the
29 thirtieth day of September, one thousand nine hundred
30 ninety-four, with preclosure provisions of title forty-
31 seven, series thirty-eight, solid waste management rules:
32 *Provided*, That no such extension of closure deadline
33 shall extend beyond the thirty-first day of March, one
34 thousand nine hundred ninety-four, or such date as any
35 landfill installs a composite liner system, for any landfill
36 in a county in which there is also located a commercial
37 solid waste landfill which has installed a composite liner
38 system in accordance with the requirements of the solid
39 waste management rules.

40 (b) Any solid waste facility seeking to extend its
41 closure deadline until the thirtieth day of September,
42 one thousand nine hundred ninety-four, shall submit to
43 the director, no later than the thirtieth day of April, one
44 thousand nine hundred ninety-three, an application
45 sufficient to demonstrate compliance with the require-
46 ments of subsection (a) of this section. The director shall
47 grant or deny any application within thirty days of
48 receipt thereof: *Provided*, That as a condition precedent

49 for granting such closure extension, a solid waste
50 facility must enter into an agreement with the director
51 that the solid waste facility shall, no later than the
52 thirtieth day of September, one thousand nine hundred
53 ninety-three, complete and submit to the director an
54 analysis of the facility's specific requirements and cost
55 to comply with the applicable design criteria, ground-
56 water monitoring provisions of title forty-seven, series
57 thirty-eight, solid waste management rules and the
58 corrective action, financial assurance and closure and
59 post-closure care provisions of Subtitle (d) of the federal
60 Resource Conservation and Recovery Act, 42 U.S.C.
61 6941-6949.

62 (c) Any party who is aggrieved by an order of the
63 director regarding the grant or denial of an extension
64 of the closure deadline for a solid waste facility pursuant
65 to this section may obtain judicial review thereof in the
66 same manner as provided in section four, article five,
67 chapter twenty-nine-a of this code, which provisions
68 shall apply to and govern such review with like effect
69 as if the provisions of said section were set forth in
70 extenso in this section, except that the petition shall be
71 filed, within the time specified in section four, article
72 five, chapter twenty-nine-a of this code, in the circuit
73 court of the county where such facility exists: *Provided,*
74 That the court shall not in any manner permit the
75 continued acceptance of solid waste at the facility
76 pending review of the decision of the director of the
77 division.

78 (d) The judgment of the circuit court shall be final
79 unless reversed, vacated or modified on appeal to the
80 supreme court of appeals, in accordance with the
81 provisions of section one, article six, chapter twenty-
82 nine-a of this code, except that notwithstanding the
83 provisions of said section, the petition seeking such
84 review must be filed with said supreme court of appeals
85 within thirty days from the date of entry of the
86 judgment of the circuit court.

87 (e) Notwithstanding any other provision of this article,
88 the director, upon receipt of a request for an extension,
89 shall grant an extension of the closure deadline up to

90 the thirtieth day of September, one thousand nine
91 hundred ninety-four, to any solid waste facility required
92 to close on the thirty-first day of March, one thousand
93 nine hundred ninety-three, or the thirtieth day of
94 September, one thousand nine hundred ninety-three,
95 which is owned by a solid waste authority or owned by
96 a municipality and which accepts at least thirty percent
97 of its waste from within the county in which it is located
98 and which has not been determined by the director to
99 pose a significant risk to human health and safety or
100 cause substantial harm to the environment and which
101 could not be granted an extension up to the thirtieth day
102 of September, one thousand nine hundred ninety-four,
103 pursuant to the terms of subsections (a) and (b) of this
104 section if:

105 (1) The cost of transporting the waste is prohibitive;
106 or

107 (2) The cost of disposing of waste in other solid waste
108 facilities within the watershed would increase.

109 (f) Notwithstanding any other provision of this article,
110 the director shall grant an extension of the closure
111 deadline up to the thirtieth day of September, one
112 thousand nine hundred ninety-four, to any solid waste
113 landfill which, on or before the first day of March, one
114 thousand nine hundred ninety-three, has entered into a
115 compliance schedule with the director for the construc-
116 tion of a transfer station or to any solid waste landfill
117 which on the first day of March, one thousand nine
118 hundred ninety-three, is already in the process of
119 constructing a solid waste transfer station and applies
120 by the first day of April, one thousand nine hundred
121 ninety-three, to enter into with the director, a com-
122 pliance schedule for the completion of the transfer
123 station: *Provided*, That upon the completion of the
124 transfer station and commencement of operations of the
125 transfer station, such landfill shall cease accepting solid
126 waste for disposal.

127 (g) Notwithstanding any other provision of this
128 article, any commercial solid waste facility which has
129 demonstrated and continues to be in compliance with

130 the requirements of subsections (a) and (b) of the prior
131 enactment of this section in chapter one hundred
132 twenty-five, acts of the Legislature, regular session, one
133 thousand nine hundred ninety-three, may make applica-
134 tion by the first day of August, one thousand nine
135 hundred ninety-four, to the director for a special
136 extension of the closure deadline up to the thirty-first
137 day of December, one thousand nine hundred ninety-
138 four. Such application shall set forth all reasons why the
139 applicant should receive a special extension. The
140 director shall grant or deny an application within thirty
141 days of receipt thereof. As a condition for being granted
142 a special extension, the solid waste facility permittee
143 must meet one of the following conditions:

144 (1) Have started construction of an approved compo-
145 site liner system; or

146 (2) Have obtained financing for such construction; or

147 (3) Have demonstrated good faith efforts to obtain
148 such financing and the director has made a finding, in
149 writing, that such financing and construction is likely
150 to occur within the extension period and that the facility
151 is necessary to the waste management plan of the
152 watershed or the geographic area served.

**§20-5F-12. Effect of reenactment; manner of codifica-
tion.**

1 It is the intent of the Legislature that the provisions
2 of Enrolled Senate Bill No. 1021, enacted during the
3 first extraordinary session of the Legislature in the year
4 one thousand nine hundred ninety-four, shall be deemed
5 to amend and reenact the provisions of Enrolled House
6 Bill No. 4065, enacted during the regular session of the
7 Legislature in the year one thousand nine hundred
8 ninety-four, as follows: Section three, article three of
9 chapter twenty-two-c; sections two and seventeen, article
10 fifteen, sections ten and twelve, article sixteen of
11 chapter twenty-two; and section one-i, article two of
12 chapter twenty-four, are intended to be amended and
13 reenacted by the provisions of the following sections,
14 respectively, of Enrolled Senate Bill No. 1021: Section

15 three, article twenty-six of chapter sixteen; sections two
16 and eight, article five-f, sections five and seven, article
17 five-n of chapter twenty; and section one-i, article two,
18 chapter twenty-four. Further, the provisions of Enrolled
19 House Bill No. 4065 shall be codified as though the
20 provisions of Enrolled Senate Bill No. 1021, including
21 sections five and eight, article eleven, chapter twenty,
22 were set forth in extenso in Enrolled House Bill No.
23 4065, and appropriate chapter, article or section
24 numbers and headings shall be inserted by the clerk of
25 the House of Delegates in editing, compiling and
26 publishing the acts of the Legislature. The clerk is
27 further directed to correct any citations or references in
28 the text of Enrolled Senate Bill No. 1021 as may be
29 required by its codification as a part of Enrolled House
30 Bill No. 4065. The provisions of Enrolled Senate Bill No.
31 1021 set forth above, and the provisions of this section,
32 as printed and presented to the governor, shall not
33 otherwise be codified.

ARTICLE 5N. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§20-5N-5. Limitation on assistance.

§20-5N-7. Solid waste facility closure cost assistance fund.

§20-5N-5. Limitation on assistance.

1 The director may provide closure assistance only to
2 permittees who meet the following requirements:

3 (1) The permittee of a landfill that does not have a
4 liner and ceases accepting solid waste on or before the
5 thirtieth day of November, one thousand nine hundred
6 ninety-one, except for those landfills allowed to accept
7 solid waste pursuant to the provisions of section eight,
8 article five-f of this chapter and ceases accepting solid
9 waste on or before the extension deadline as determined
10 by the director; or the permittee of a landfill that has
11 only a single liner and ceases accepting solid waste on
12 or before the thirtieth day of September, one thousand
13 nine hundred ninety-three;

14 (2) The permittee of the landfill must demonstrate to
15 the satisfaction of the director that it does not have the
16 financial resources on hand or the ability to generate the

17 amounts needed to comply, in a timely manner, with the
18 closure requirements provided in article five-f of this
19 chapter and any rules promulgated pursuant thereto:
20 *Provided*, That any permittee which is a municipality,
21 county, county solid waste authority or regional solid
22 waste authority and which has been required to close a
23 landfill, or any portion thereof, due to the lack of an
24 approved composite liner system, shall be eligible for
25 closure assistance for any closure costs related to such
26 closure that exceed the amount that permittee has set
27 aside for closure expenses pursuant to subsection (a),
28 section four of this article. If any such permittee
29 continues to accept solid waste after receiving such
30 closure assistance, the payment of the "solid waste
31 assessment fee" by that permittee as required in section
32 four of this article shall satisfy both the repayment of
33 any such closure assistance and the payment of said
34 solid waste assessment fee; and

35 (3) The permittee must maintain a permit for the
36 landfill pursuant to the provisions of section five, article
37 five-f of this chapter and maintain the full amount of
38 the bond required to be submitted pursuant to section
39 five-b of said article.

§20-5N-7. Solid waste facility closure cost assistance fund.

1 (a) The "closure cost assistance fund" is continued as
2 a special revenue account in the state treasury. The fund
3 shall operate as a special fund whereby all deposits and
4 payments thereto do not expire to the general revenue
5 fund, but shall remain in such account and be available
6 for expenditure in the succeeding fiscal year. Separate
7 sub-accounts may be established within the special
8 account for the purpose of identification of various
9 revenue resources and payment of specific obligations.

10 (b) Interest earned on any money in the fund shall be
11 deposited to the credit of the fund.

12 (c) The fund consists of the following:

13 (1) Moneys collected and deposited in the state
14 treasury which are specifically designated by acts of the

15 Legislature for inclusion in the fund, including moneys
16 collected and deposited into the fund pursuant to section
17 four of this article;

18 (2) Contributions, grants and gifts from any source,
19 both public and private, which may be used by the
20 director for any project or projects;

21 (3) Amounts repaid by permittees pursuant to section
22 nine, article five-f of this chapter; and

23 (4) All interest earned on investments made by the
24 state from moneys deposited in this fund.

25 (d) The solid waste management board, upon written
26 approval of the director, has the authority to pledge all
27 or such part of the revenues paid into the closure cost
28 assistance fund as may be needed to meet the require-
29 ments of any revenue bond issue or issues of the solid
30 waste management board authorized by this article,
31 including the payment of principal of, interest and
32 redemption premium, if any, on such revenue bonds and
33 the establishing and maintaining of a reserve fund or
34 funds for the payment of the principal of, interest and
35 redemption premium, if any, on such revenue bond issue
36 or issues when other moneys pledged may be insufficient
37 therefor. Any pledge of moneys in the closure cost
38 assistance fund for revenue bonds shall be a prior and
39 superior charge on such fund over the use of any of the
40 moneys in such fund to pay for the cost of any project
41 on a cash basis. Expenditures from the fund, other than
42 for the retirement of revenue bonds, may only be made
43 in accordance with the provisions of this article.

44 (e) The amounts deposited in the fund may be
45 expended only on the cost of projects as provided for in
46 sections three and ten of this article, as provided in
47 subsection (f) of this section and for payment of bonds
48 and notes issued pursuant to section four-a of this
49 article: *Provided*, That no more than one percent of the
50 annual deposits to such fund may be used for adminis-
51 trative purposes.

52 (f) Notwithstanding any provision of this article, upon
53 request of the solid waste management board, and with

54 the approval of the projects by the director of the
55 division of environmental protection, the director may
56 pledge and place into escrow accounts up to an aggre-
57 gate of two million dollars of the fund to satisfy two
58 years debt service requirement that permittees of
59 publicly owned landfills and transfer stations are
60 required to meet in order to obtain loans. Pledges shall
61 be made on a project-by-project basis, may not exceed
62 five hundred thousand dollars for a project and shall be
63 made available after loan commitments are received.
64 The director may pledge funds for a loan only when the
65 following conditions are met:

66 (1) The proceeds of the loan are used only to perform
67 construction of a transfer station or a composite liner
68 system that is required to meet the provisions of title
69 forty-seven, series thirty-eight, solid waste management
70 rules;

71 (2) The permittee dedicates all yearly debt service
72 revenue, as determined by the public service commis-
73 sion, to meet the repayment schedule of the loan, before
74 it uses available revenue for any other purpose; and

75 (3) That any funds pledged may only be paid to the
76 lender if the permittee is in default on the loan.

ARTICLE 11. WEST VIRGINIA RECYCLING PLAN.

§20-11-5. Establishment of county recycling programs for solid waste;
petition for referendum; ballot contents; election procedure;
effect of such election.

§20-11-8. Prohibition on the disposal of certain items; plans for the proper
handling of said items required.

**§20-11-5. Establishment of county recycling programs
for solid waste; petition for referendum;
ballot contents; election procedure; effect of
such election.**

1 (a) On or before the eighteenth day of October, one
2 thousand nine hundred ninety-two, each municipality
3 described in subsection (b) of this section shall submit
4 a proposal to the solid waste management board,
5 consistent with the provisions of this section, describing
6 the establishment and implementation of the mandatory
7 recycling program. The solid waste management board

8 shall review the submitted plans for consistency with
9 the criteria provided in this section, the county or
10 regional solid waste management plan and the statewide
11 management plan. The solid waste management board
12 may make suggested changes to the plan and shall
13 provide technical assistance to the municipalities in the
14 development of the plans.

15 (b) On or before the eighteenth day of October, one
16 thousand nine hundred ninety-three, each municipality
17 with a population of ten thousand or more people, as
18 determined by the most recent decennial census by the
19 bureau of the census of the United States department
20 of commerce, shall establish and commence implemen-
21 tation of a source separation and curbside collection
22 program for recyclable materials. Implementation shall
23 be phased in by the first day of July, one thousand nine
24 hundred ninety-five. Such program shall include, at a
25 minimum, the following:

26 (1) An ordinance adopted by the governing body of the
27 municipality requiring that each person, partnership,
28 corporation or other entity in the municipality shall
29 separate at least three recyclable materials, as deemed
30 appropriate by the municipality, from other solid waste:
31 *Provided*, That the list of recyclables to be separated
32 may be adjusted according to whether the generator is
33 residential, commercial or other type of establishment.

34 (2) A scheduled day, at least one per month, during
35 which separated materials are to be placed at the
36 curbside, or similar location, for collection.

37 (3) A system that collects recyclable materials from
38 the curbside, or similar location, at least once per
39 month: *Provided*, That to encourage full participation,
40 the program shall, to the maximum extent possible,
41 provide for the collection of recyclables at the same rate
42 of frequency, and simultaneous with, the regular
43 collection of solid waste.

44 (4) Provisions to ensure compliance with the ordi-
45 nance, including incentives and penalties.

46 (5) A comprehensive public information and education

47 program covering the importance and benefits of
48 recycling, as well as the specific features and require-
49 ments of the recycling program. As part of the educa-
50 tion program, each municipality shall, at a minimum,
51 notify all persons occupying residential, commercial,
52 institutional or other premises within its boundaries of
53 the requirements of the program, including how the
54 system will operate, the dates of collection, the respon-
55 sibilities of persons within the municipality and
56 incentives and penalties.

57 (6) Consultation with the county or regional solid
58 waste authority in which the municipality is located to
59 avoid duplication, ensure coordination of solid waste
60 programs and maximize the market for recyclables.

61 (c) Notwithstanding the provisions of subsection (b) of
62 this section, a comprehensive recycling program for
63 solid waste may be established in any county of this state
64 by action of a county commission in accordance with the
65 provisions of this section. Such program shall require:

66 (1) That, prior to collection at its source, all solid
67 waste shall be segregated into separate identifiable
68 recyclable materials by each person, partnership,
69 corporation and governmental agency subscribing to a
70 solid waste collection service in the county or transport-
71 ing solid waste to a commercial solid waste facility in
72 the county;

73 (2) Each person engaged in the commercial collection,
74 transportation, processing or disposal of solid waste
75 within the county shall accept only such solid waste
76 from which recyclable materials in accordance with said
77 county's comprehensive recycling program have been
78 segregated; and

79 (3) That the provisions of the recycling plan prepared
80 pursuant to section four of this article shall, to the extent
81 practicable, be incorporated in said county's comprehen-
82 sive recycling program.

83 (d) For the purposes of this article, recyclable
84 materials shall include, but not be limited to, steel and
85 bi-metallic cans, aluminum, glass, paper and such other

86 solid waste materials as may be specified by either the
87 municipality or county commission with the advice of
88 the county or regional solid waste authority.

89 (e) A comprehensive recycling program for solid
90 waste may be established in any county of this state by:
91 (1) A petition filed with the county commission bearing
92 the signatures of registered voters of the county equal
93 to not less than five percent of the number of votes cast
94 within the county for governor at the preceding
95 gubernatorial election; and (2) approval by a majority
96 of the voters in a subsequent referendum on the issue.
97 A referendum to determine whether it is the will of the
98 voters of a county that a comprehensive recycling
99 program for solid waste be established in the county
100 may be held at any regular primary or general election
101 or in conjunction with any other countywide election.
102 Any election at which the question of establishing a
103 policy of comprehensive recycling for solid waste is
104 voted upon shall be held at the voting precincts
105 established for holding primary or general elections. All
106 of the provisions of the general election laws, when not
107 in conflict with the provisions of this article, shall apply
108 to voting and elections hereunder, insofar as practicable.
109 The secretary of state shall prescribe the form of the
110 petition which shall include the printed name, address
111 and date of birth of each person whose signature
112 appears on the petition. Upon verification of the
113 required number of signatures on the petition, the
114 county commission shall, not less than seventy days
115 before the election, order that the issue be placed on the
116 ballot and referendum held at the next primary, general
117 or special election to determine whether it is the will of
118 the voters of said county that a policy of comprehensive
119 recycling of solid waste be established in the county:
120 *Provided*, That the petition bearing the necessary
121 signatures has been filed with the county commission at
122 least one hundred days prior to the election.

123 The ballot, or the ballot labels where voting machines
124 are used, shall have printed thereon substantially the
125 following:

126 "Shall the County Commission be required to estab-

127 lish a comprehensive recycling program for solid waste
128 in _____ County, West Virginia?

129 For Recycling

130 Against Recycling

131 (Place a cross mark in the square opposite your
132 choice.)”

133 If a majority of legal votes cast upon the question be
134 for the establishment of a policy of comprehensive
135 recycling of solid waste, the county commission shall,
136 after the certification of the results of the referendum,
137 thereafter adopt an ordinance, within one hundred
138 eighty days of said certification, establishing a compre-
139 hensive recycling program for solid waste in the county:
140 *Provided*, That such program shall be implemented and
141 operational no later than twelve months following said
142 certification. If a majority of the legal votes cast upon
143 the question be against the establishment of a policy of
144 comprehensive recycling of solid waste, said policy shall
145 not take effect, but the question may again be submitted
146 to a vote at any subsequent election in the manner
147 herein provided.

148 (f) A comprehensive recycling program for solid
149 waste established by petition and referendum may be
150 rescinded only pursuant to the procedures set out herein
151 to establish the program.

152 To rescind the program, the ballot, or the ballot labels
153 where voting machines are used, shall have printed
154 thereon substantially the following:

155 “Shall the County Commission be required to termi-
156 nate the comprehensive recycling program for solid
157 waste in _____ County, West Virginia?

158 Continue Recycling

159 End Recycling

160 (Place a cross mark in the square opposite your
161 choice.)”

162 (g) If a majority of legal votes cast upon the question
163 be for the termination of a policy of comprehensive

164 recycling of solid waste previously established in the
165 county, the county commission shall, after the certifica-
166 tion of the results of the referendum, thereafter rescind
167 by ordinance the comprehensive recycling program for
168 solid waste in the county within ninety days of said
169 certification. If a majority of the legal votes cast upon
170 the question be for the continuation of the policy of
171 comprehensive recycling of solid waste, said ordinance
172 shall not be rescinded, but the question may again be
173 submitted to a vote at any subsequent election in the
174 manner herein provided.

175 (h) In the case of any municipality having a popula-
176 tion greater than thirty thousand persons, as indicated
177 by the most recent decennial census conducted by the
178 United States, the governing body of such municipality
179 may by ordinance establish a materials recovery facility
180 in lieu of or in addition to the mandatory recycling
181 program required under the provisions of this section:
182 *Provided*, That such materials recovery facility shall be
183 subject to approval by both the public service commis-
184 sion and the solid waste management board upon a
185 finding by both the public service commission and the
186 solid waste management board that the establishment
187 of such materials recovery facility will not hinder, and
188 will be consistent with, the purposes of this article.

**§20-11-8. Prohibition on the disposal of certain items;
plans for the proper handling of said items
required.**

1 (a) Effective the first day of June, one thousand nine
2 hundred ninety-four, it shall be unlawful to deposit lead-
3 acid batteries in a solid waste facility in West Virginia;
4 effective the first day of June, one thousand nine
5 hundred ninety-five, it shall be unlawful to deposit tires
6 in a solid waste facility in West Virginia; and effective
7 the first day of January, one thousand nine hundred
8 ninety-six, it shall be unlawful to deposit yard waste,
9 including grass clippings and leaves, in a solid waste
10 facility in West Virginia: *Provided*, That such prohibi-
11 tions do not apply to a facility designed specifically to
12 compost such yard waste or otherwise recycle or reuse
13 such items: *Provided, however*, That reasonable and

14 necessary exceptions to such prohibitions may be
15 included as part of the rules promulgated pursuant to
16 subsection (c) of this section.

17 (b) No later than the first day of May, one thousand
18 nine hundred ninety-three, the solid waste management
19 board shall design a comprehensive program to provide
20 for the proper handling of yard waste and lead-acid
21 batteries. No later than the first day of May, one
22 thousand nine hundred ninety-four, a comprehensive
23 plan shall be designed in the same manner to provide
24 for the proper handling of tires.

25 (c) No later than the first day of August, one thousand
26 nine hundred ninety-three, the division of environmental
27 protection shall promulgate rules, in accordance with
28 chapter twenty-nine-a of this code, as amended, to
29 implement and enforce the program for yard waste and
30 lead-acid batteries designed pursuant to subsection (b)
31 of this section. No later than the first day of August, one
32 thousand nine hundred ninety-four, the division of
33 environmental protection shall promulgate rules, in
34 accordance with chapter twenty-nine-a of said code, as
35 amended, to implement and enforce the program for
36 tires designed pursuant to subsection (b) of this section.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1i. Commission authorized to issue emergency certificate of need to certain commercial solid waste facilities; division of environmental protection to modify facility permit; criteria for emergency certificates.

1 (a) Notwithstanding any provision of this article, or
2 any provision of article five-f or nine, chapter twenty,
3 or any other provision of this code, upon the application
4 of any commercial solid waste facility, the commission
5 may grant to a commercial solid waste facility an
6 emergency certificate of need to increase the maximum
7 monthly solid waste disposal tonnage for a period not to
8 exceed one year, to the extent deemed necessary to
9 prevent any disruption of solid waste disposal services

10 in any county or watershed of the state resulting from
11 the closure of an existing landfill in said county or
12 watershed: *Provided*, That the commission is not
13 required to make any determination of need, necessity
14 or reasonableness when acting on any application filed
15 pursuant to this article regarding an existing commercial
16 solid waste disposal facility, which is owned or
17 operated by a county government or by an agency, board
18 or entity thereof, and which has previously been denied
19 a certificate of need prior to the effective date of this
20 section. The authority granted to the commission under
21 this section shall expire after the thirtieth day of
22 September, one thousand nine hundred ninety-three. No
23 temporary certificate issued pursuant to this section
24 shall extend beyond the thirtieth day of September, one
25 thousand nine hundred ninety-four. The director of the
26 division of environmental protection shall modify any
27 commercial solid waste facility permit, issued under
28 article five-f, chapter twenty of this code, to conform
29 with the maximum monthly solid waste disposal
30 tonnage and any other terms and conditions set forth in
31 a temporary certificate issued under this section.

32 (b) If the net tonnage increase under a temporary
33 certificate application made pursuant to subsection (a)
34 of this section would cause the gross monthly solid waste
35 disposal tonnage of such facility to exceed ten thousand
36 tons, a temporary certificate shall be issued only if the
37 solid waste facility has: (1) Obtained from the county or
38 regional solid waste authority for the county or counties
39 in which the facility is located a certificate of site
40 approval or approval for conversion from a Class B
41 facility to a Class A facility; and (2) obtained from the
42 county or regional solid waste authority for the county
43 or counties in which the facility is located approval to
44 increase the maximum monthly tonnage disposed at the
45 facility; and (3) obtained from the county commission for
46 the county or counties in which the landfill is located
47 approval to operate as a Class A facility; and (4) has a
48 certificate of need application pending before the public
49 service commission; and (5) has installed a composite
50 liner system in compliance with the requirements set

51 forth in the solid waste management rules promulgated
52 by the division of environmental protection or its
53 predecessor. Such emergency certificate shall not
54 authorize an increase in the maximum monthly solid
55 waste disposal tonnage in an amount greater than that
56 approved by the county or regional solid waste authority
57 for the county or counties in which the landfill is located.

CHAPTER 32

(H. B. 5003—By Delegates Martin, Michael and Love)

[Passed March 16, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact sections four and five, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section eight-f, article twenty-one, chapter eleven of said code, all relating to continuing departments, agencies and boards; scheduling performance audits and preliminary performance reviews by the joint committee on government operations.

Be it enacted by the Legislature of West Virginia:

That sections four and five, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section eight-f, article twenty-one, chapter eleven of said code be amended and reenacted, all to read as follows:

Chapter

4. The Legislature.

11. Taxation.

CHAPTER 4. THE LEGISLATURE.

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

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

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

§4-10-4. **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-five: Division of environmental protec-
8 tion; division of labor; division of tourism; division of
9 corrections; division of natural resources; division of
10 highways.

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

14 (3) On the first day of July, one thousand nine
15 hundred ninety-seven: Department of health and human
16 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: Farm management commission;
8 state structural barriers compliance board; share in
9 your future commission.

10 (2) On the first day of July, one thousand nine
11 hundred ninety-five: Emergency medical services
12 advisory council; commission on charitable organiza-
13 tions; information system advisory commission; West
14 Virginia labor-management council; board of social
15 work examiners; the rural health initiative advisory
16 panel; the marketing and development divisions of the
17 department of agriculture; real estate commission;
18 juvenile facilities review panel; office of water resources;
19 center for professional development; board of architects;
20 state building commission; family law masters system;
21 public employees insurance agency; public employees

22 insurance agency finance board; division of rehabilita-
23 tion services.

24 (3) On the first day of July, one thousand nine
25 hundred ninety-six: U.S. geological survey program and
26 whitewater commission within the division of natural
27 resources; state geological and economic survey;
28 workers' compensation; unemployment compensation;
29 office of judges of workers' compensation; board of
30 investments.

31 (4) On the first day of July, one thousand nine
32 hundred ninety-seven: The driver's licensing advisory
33 board; West Virginia health care cost review authority;
34 governor's cabinet on children and families; oil and gas
35 conservation commission; child advocate office; West
36 Virginia contractors' licensing board.

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

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

55 (7) On the first day of July, two thousand: Family
56 protection services board; environmental quality board;
57 West Virginia's membership in the Ohio river valley
58 water sanitation commission; ethics commission; oil and
59 gas inspectors' examining board; veterans' council; West
60 Virginia's membership in the southern regional educa-
61 tion board.

CHAPTER 11. TAXATION.**ARTICLE 21. PERSONAL INCOME TAX.****§11-21-8f. Termination of credit by law.**

1 The tax credit allowed by this section shall be
2 terminated on the thirty-first day of December, one
3 thousand nine hundred ninety-five, unless review of the
4 tax credit shall be undertaken pursuant to the provi-
5 sions of sections nine, ten and eleven, article ten, chapter
6 four of this code: *Provided*, That for those rehabilitation
7 projects for which a completed Part 2 (Description of
8 Rehabilitation) of the historic preservation certification
9 application was filed with the West Virginia division of
10 culture and history prior to that date and subsequently
11 approved in accordance with section eight-c of this
12 article, the credit shall continue to be allowed pursuant
13 to this article.

14 The West Virginia division of culture and history
15 shall provide a full disclosure of applications for credit
16 made and of credits granted pursuant to this section to
17 the joint committee on government and finance and to
18 the governor annually. The first report shall be pres-
19 ented on or before the first day of January, one thousand
20 nine hundred ninety-five.

CHAPTER 33**(H. B. 5000—By Delegates Kiss, Rowe, Fragale and Petersen)**

[Passed March 16, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to creating a revolving valuation fund in each county; funding of valuation and training programs; conditions for transfer of funds; repayment of valuation commission; continuing funding of on-going extra costs associated with the valuation and training; additional funds for assessors' offices; requiring assessors to submit a

request to the valuation commission regarding the percentage; allowing the valuation commission to recommend a lower percentage; certification of the percentage to the chief inspector's office; distribution of funds provided by the valuation commission; and deposit of moneys due to the valuation fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-8. Additional funding for assessors' offices; maintenance funding.

1 (a) In order to finance the extra costs associated with
2 the valuation and training mandated by this article,
3 there is hereby created a revolving valuation fund in
4 each county which shall be used exclusively to fund the
5 assessor's office. The valuation and training programs,
6 for the fiscal year commencing on the first day of July,
7 one thousand nine hundred ninety, shall be funded
8 through the valuation commission and funds shall be
9 distributed in accordance with need on a county by
10 county basis and the county's approved plan. The
11 necessary funds shall be transferred to each county's
12 valuation fund following approval of the plans submit-
13 ted by the respective assessors. The funds shall be
14 transferred by the valuation commission on condition
15 that no persons shall be hired under this section without
16 the approval of the valuation commission, the hirings
17 shall be without regard to political favor or affiliation,
18 and the persons hired under this section are subject to
19 the provisions of the ethics act in chapter six-b of this
20 code, including, but not limited to, the conflict of
21 interest provisions under chapter six-b of this code.
22 Notwithstanding any other provisions of this code to the
23 contrary, assessors may employ citizens of any West
24 Virginia county for the purpose of performing, assessing
25 and appraising duties under this chapter upon approval
26 of the employment by the valuation commission.

27 During the fiscal year commencing the first day of
28 July, one thousand nine hundred ninety-four, and
29 thereafter as necessary, any county receiving moneys
30 provided by the valuation commission under this section
31 shall use the county's valuation fund receipts which
32 exceed the total amount received in the fiscal year
33 ending the thirtieth day of June, one thousand nine
34 hundred ninety-four, to repay the valuation commission
35 the money received plus accrued interest: *Provided,*
36 That the fund should not drop below one percent of the
37 total municipal, county commission and county school
38 board revenues generated by application of the respec-
39 tive regular levy rates.

40 (b) To finance the ongoing extra costs associated with
41 the valuation and training mandated by this article,
42 beginning with the fiscal year commencing on the first
43 day of July, one thousand nine hundred ninety-one, and
44 for a period of at least three consecutive years, an
45 amount equal to two percent of the previous year's
46 projected tax collections, or whatever percent is
47 approved by the valuation commission, from the regular
48 levy set by, or for, the county commission, the county
49 school board and any municipality in the county shall
50 be prorated as to each levying body, set aside and placed
51 in the valuation fund. In May of each year the sheriff
52 of each county shall make a final transfer to the
53 assessor's valuation fund which will reflect any differ-
54 ence in the amount of actual collections in the previous
55 fiscal year as opposed to those previously projected by
56 the chief inspector's office as the basis for the contribu-
57 tions to the valuation fund, to bring the total transfers
58 for that year to two percent of the previous year's actual
59 collections. The two percent payment shall continue in
60 any county where funds borrowed from the state
61 pursuant to subsection (a) of this section have not been
62 fully repaid until such moneys, together with accrued
63 interest thereon, have been fully repaid or until the first
64 day of July, one thousand nine hundred ninety-four,
65 whichever comes last. Each year thereafter, for counties
66 with loans, and each fiscal year after the thirtieth day
67 of June, one thousand nine hundred ninety-four, for
68 those counties without loans, the valuation fund shall be

69 continued at an annual amount of two percent of the
70 previous year's projected tax collections from such
71 regular levies: *Provided*, That for the fiscal year
72 beginning on the first day of July, one thousand nine
73 hundred ninety-five, and any fiscal year thereafter, the
74 assessors, in order to receive two percent or any percent
75 of the previous year's projected tax collections for their
76 valuation funds, must submit a request to the valuation
77 commission no later than the fifteenth day of December,
78 one thousand nine hundred ninety-four, and by the same
79 date in December each year thereafter. The submission
80 shall include a projected expenditure budget, including
81 any balances expected to be carried forward, with
82 justification for the percent requested for their valuation
83 fund for the ensuing fiscal year. A copy of the projected
84 budget and justifications shall also be sent to the
85 assessor's county commission, municipalities and school
86 board. The valuation commission shall meet after the
87 fifteenth day of January but prior to the first day of
88 February each year beginning in the year one thousand
89 nine hundred ninety-five, and has authority to accept
90 and confirm two percent as a justifiable amount, or to
91 establish whatever lower percent of the previous year's
92 projected tax collections each assessor shall receive
93 based upon the evidence at hand, and the particular
94 reevaluation needs of the county. Absent a proper
95 application by any assessor, the valuation commission
96 may, after consultation with the tax commissioner's
97 office, set whatever allowable percent it considers
98 proper. Following its decisions, the valuation commis-
99 sion shall certify to the chief inspector's office of the
100 department of tax and revenue, the percent approved
101 for each assessor's valuation fund, and the chief
102 inspector's office shall notify each affected sheriff and
103 levying body of the moneys due from their levies to their
104 respective valuation funds. County commissions, boards
105 of education and municipalities may present written
106 evidence, prior to the fifteenth day of January, one
107 thousand nine hundred ninety-five, and by the same date
108 of each year thereafter, acceptable to the valuation
109 commission showing that a lesser amount than that
110 requested by the assessor would be adequate to fund the

111 extra costs associated with the valuation mandated by
112 section seven of this article: *Provided, however,* That the
113 county commissions, in addition, shall fund the county
114 assessor's office at least the level of funding provided
115 during the fiscal year in which this section was initially
116 enacted.

117 These additional funds are intended to enable asses-
118 sors to maintain current valuations and to perform the
119 periodic reevaluation required under section nine of this
120 article.

121 (c) Any funds provided by the valuation commission
122 shall be distributed among the counties by the property
123 valuation training and procedures commission based
124 upon workload, need and other relevant factors as shown
125 by the valuation plans developed under section seven of
126 this article.

127 (d) Moneys due the valuation fund shall be deposited
128 by the sheriff of the county on a monthly basis as
129 directed by the chief inspector's office for the benefit of
130 the assessor and shall be available to and may be spent
131 by the assessor without prior approval of the county
132 commission, which shall not exercise any control over
133 the fund. Clerical functions related to the fund shall be
134 performed in the same manner as done with other
135 normal funding provided to the assessor.

CHAPTER 34

(S. B. 1023—Originating in the Committee on Finance.)

[Passed March 18, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia corporation net income tax act by bringing them into conformity with their meanings for federal income tax purposes for taxable years beginning after the thirty-first day of December, one thousand nine

hundred ninety-two; preserving prior law; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

1 (a) Any term used in this article shall have the same
2 meaning as when used in a comparable context in the
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-four, shall
13 be given effect in determining the taxes imposed by this
14 article for any taxable year beginning the first day of
15 January, one thousand nine hundred ninety-three, and
16 thereafter, but no amendment to the laws of the United
17 States effective on or after the first day of January, one
18 thousand nine hundred ninety-four, shall be given any
19 effect.

20 (b) The term "Internal Revenue Code of 1986" means
21 the Internal Revenue Code of the United States enacted
22 by the "Federal Tax Reform Act of 1986" and includes
23 the provisions of law formerly known as the Internal
24 Revenue Code of 1954, as amended, and in effect when
25 the "Federal Tax Reform Act of 1986" was enacted, that
26 were not amended or repealed by the "Federal Tax
27 Reform Act of 1986". Except when inappropriate, any
28 references in any law, executive order or other
29 document:

30 (1) To the Internal Revenue Code of 1954 shall include
31 reference to the Internal Revenue Code of 1986; and

32 (2) To the Internal Revenue Code of 1986 shall include
33 a reference to the provisions of law formerly known as
34 the Internal Revenue Code of 1954.

35 (c) *Effective date.* — The amendments to this section
36 enacted in the year one thousand nine hundred ninety-
37 four shall be retroactive and shall apply to taxable years
38 beginning on or after the first day of January, one
39 thousand nine hundred ninety-three, 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-three, the
43 law in effect for each of those years shall be fully
44 preserved as to each such year.

CHAPTER 35

(H. B. 5016—By Delegates Pettit and Love)

[Passed March 17, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine; to amend and reenact section twelve-b, article twenty-three, chapter nineteen of said code; to amend and reenact section nine, article twenty-two, chapter twenty-nine of said code; and to amend chapter twenty-nine of said code by adding thereto a new article, designated article twenty-two-a, all relating to the operation of video lottery games at licensed horse and dog racetracks; creating a tourism promotion fund; earmarking one fourth of one percent of a televised racing day's pari-mutuel pool for the racetrack employee's pension trust; removing a prohibition against including the handle from televised simulcast racing in the calculation of average daily handle; authorizing a lottery game which uses an electronic computer and a video screen to operate a game and communicate the results thereof, and restricting its availability to private clubs, retail liquor licenses and class A nonintoxicating

beer licensees; creating the racetrack video lottery act; providing legislative findings and declarations and legislative purpose; providing definitions of terms; authorizing the implementation and operation of video lottery games; providing for the application of article twenty-two, chapter twenty-nine; specifying video lottery terminal requirements and specifications; relating to applications for approval of video lottery terminals, testing of video lottery terminals and report of test results, modifications to approved video lottery terminals, seizure and destruction of nonconforming video lottery terminals; prescribing hardware specifications, software specifications for randomness testing, percentage payout, continuation of game play after malfunction and play transaction records; establishing license and permit qualifications for manufacturers, racetracks, service technicians and validation managers; relating to information to be furnished by applicants for license or permit and waiver of liability; requiring oath or affirmation of applications; requiring applicants to provide accurate and material information; relating to forms of application; providing for local option elections; relating to form of petition for local option elections, legal publications related to local option elections, certification of results of local option elections, issuance of video lottery license, notice of incomplete application and notice of license or permit denial, suspension or revocation; providing procedures for review of license or permit denial, suspension or revocation; relating to license and permit fees, renewal fees and renewal dates, bonding, renewal of license or permit and notice of change affecting license or permit; providing that license or permit is not transferrable or assignable; relating to general duties of all video lottery license and permit holders, specific duties of permitted manufacturers, permitted service technicians, permitted validation managers and licensed racetracks; specifying video lottery game accounting and reporting requirements; relating to communications protocol data, distribution of net terminal income, remittance through electronic transfer of funds, commission control of accounting for terminal income, optional manual reporting and pay-

ment, request for reports, examination of accounts and records and video lottery terminal maintenance; requiring manufacturers to provide training; relating to availability of training, reports and certificates of training programs, requirements of service technicians, requirement for maintenance logs, keys to video lottery terminals, notification of repairs to the logic area, notification of broken seals on logic boards, number and location of terminals, security requirements and payment of credits, method of payments and restrictions on payment of credits; requiring defacing of redeemed tickets; relating to liability for video lottery terminal malfunction and transportation and registration of video lottery terminals; providing hearing and appeal procedures; defining certain misdemeanor and felony offenses related to the operation of video lottery games and establishing penalties therefor; providing for civil penalties for certain violations; providing for a resolution of any disagreement between the racing commission and the lottery commission; providing for severability; and providing an effective date and termination date.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 5B. Economic Development Act of 1985.**
- 19. Agriculture.**
- 29. Miscellaneous Boards and Officers.**

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 1. DIVISION OF TOURISM AND PARKS.

§5B-1-9. Tourism promotion fund created; use of funds; and establishment of tourism promotion fund commission.

1 There is hereby created in the state treasury, a special
2 revenue fund to be known as the "tourism promotion
3 fund". It shall be expended by the commissioner of the
4 division of tourism and parks in the following manner:

5 (a) A minimum of five percent of the moneys depos-
6 ited in the fund each year shall be used solely for direct
7 advertising for West Virginia travel and tourism. Direct
8 advertising means advertising which is limited to
9 television, radio, newspaper, magazines and outdoor
10 billboards, or any combination thereof;

11 (b) The balance of the moneys deposited in the fund
12 shall be used for direct advertising within the state's
13 eight regional development districts. The funds shall be
14 made available to these districts beginning the first day
15 of July, one thousand nine hundred ninety-four, accord-
16 ing to rules promulgated by the division of tourism and
17 parks; and

18 (c) (1) There is hereby established an eight-member
19 tourism promotion fund commission which shall be
20 composed of one member each from the House and
21 Senate, each to be appointed by the speaker and the
22 president, respectively, the commissioner of the depart-
23 ment of tourism and parks and his or her designee, the
24 state travel director for the division of tourism and
25 parks, and four representatives of the private sector
26 tourism industry appointed by the governor from a list
27 submitted by the West Virginia hospitality and travel
28 association. Members of the commission who are not
29 employees of the state of West Virginia shall be
30 reimbursed for traveling expenses.

31 (2) The commission shall meet upon call by the
32 commissioner, but shall meet at least four times each
33 fiscal year beginning the first day of July, one thousand
34 nine hundred ninety-four. All advertising expenditures
35 over twenty-five thousand dollars from the tourism
36 promotion fund require prior approval from the com-
37 mission.

74 (d) The commission may assign televised racing days
75 at any time. When a televised racing day is assigned,
76 the commission shall assign either a steward or an
77 auditor to preside over the televised races at the licensee
78 racetrack.

79 (e) (1) From the licensee commissions authorized by
80 subsection (c) of this section, the licensee shall pay one
81 tenth of one percent of each commission into the general
82 fund of the county, in which the racetrack is located and
83 at which the wagering occurred and there is imposed
84 and the licensee shall pay, for each televised racing day
85 on which the total pari-mutuel pool exceeds one hundred
86 thousand dollars, the greater of either: (i) The total of
87 the daily license tax and the pari-mutuel pools tax
88 required by section ten of this article; or (ii) a daily
89 license tax of one thousand two hundred fifty dollars.
90 For each televised racing day on which the total pari-
91 mutuel pool is one hundred thousand dollars or less, the
92 licensee shall pay a daily license tax of five hundred
93 dollars plus an additional license tax of one hundred
94 dollars for each ten thousand dollars, or part thereof,
95 that the pari-mutuel pool exceeds fifty thousand dollars,
96 but does not exceed one hundred thousand dollars.
97 Payments of the tax imposed by this section are subject
98 to the requirements of subsection (e), section ten of this
99 article.

100 (2) From the licensee commissions authorized by
101 subsection (c) of this section, after payments are made
102 in accordance with the provisions of subdivision (1) of
103 this subsection, the licensee shall pay, for each televised
104 racing day, one fourth of one percent of the total pari-
105 mutuel pools for and on behalf of all employees of the
106 licensed racing association by making a deposit into a
107 special fund to be established by the racing commission
108 and to be used for payments into the pension plan for
109 all employees of the licensed racing association.

110 (f) After deducting the tax required by subsection (e)
111 of this section, the amount required to be paid under the
112 terms of the contract with the legal wagering entity of
113 another state and the cost of transmission, the horse
114 racing association shall make a deposit equal to fifty

115 percent of the remainder into the purse fund established
116 under the provisions of subdivision (1), subsection (b),
117 section nine of this article.

118 (g) The provisions of the "Federal Interstate Horse-
119 racing Act of 1978", also known as Public Law 95-515,
120 Section 3001-3007 of Title 15, U.S. Code, as amended,
121 controls in determining the intent of this section.

122 (h) On and after the first day of January, one thousand
123 nine hundred ninety-five, the handle from televised
124 simulcast racing shall be included in the calculation of
125 "average daily handle" as it is calculated in section ten
126 of this article to determine the alternative daily pari-
127 mutuel pool tax.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

Article

22. State Lottery Act.

22A. Racetrack Video Lottery.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-9. Initiation and operation of lottery; restrictions; prohibited themes, games, machines or devices; distinguishing numbers; winner selection; public drawings; witnessing of results; testing and inspection of equipment; price of tickets; claim for and payment of prizes; invalid, counterfeit tickets; estimated prizes and odds of winning; participant bound by lottery rules and validation procedures; security procedures; additional games; electronic and computer systems.

1 (a) The commission shall initiate operation of the state
2 lottery on a continuous basis at the earliest feasible and
3 practical time, first initiating operation of the pre-
4 printed instant winner type lottery. The lottery shall be
5 initiated and shall continue to be operated so as to
6 produce the maximum amount of net revenues to benefit
7 the public purpose described in this article consonant
8 with the public good. Other state government depart-
9 ments, boards, commissions, agencies and their officers

10 shall cooperate with the lottery commission so as to aid
11 the lottery commission in fulfilling these objectives.

12 (b) The commission shall promulgate rules and
13 regulations specifying the types of lottery games to be
14 conducted by the lottery: *Provided, That:*

15 (1) No lottery may use the results of any amateur or
16 professional sporting event, dog race or horse race to
17 determine the winner.

18 (2) Electronic video lottery systems must include a
19 central site system of monitoring the lottery terminals
20 utilizing an on-line or dial-up inquiry.

21 (3) In a lottery utilizing a ticket, each ticket shall bear
22 a unique number distinguishing it from each other
23 ticket.

24 (4) No lottery utilizing a machine may use machines
25 which dispense coins or currency.

26 (5) A lottery game which utilizes an electronic
27 computer and a video screen to operate a lottery game
28 and communicate the results thereof, such as the game
29 "Travel", and which does not utilize an interactive
30 electronic terminal device allowing input by an individ-
31 ual player, may only be made available by the commis-
32 sion in (A) private clubs licensed in accordance with the
33 provisions of article seven, chapter sixty of this code, (B)
34 retail licensees licensed in accordance with the provi-
35 sions of article three-a of said chapter sixty, and (C) in
36 the facilities of class A licensees which are licensed in
37 accordance with the provisions of section nine, article
38 sixteen, chapter eleven of this code, in which facility at
39 least seventy-five percent of the nonintoxicating beer
40 sold by the class A licensee in the preceding year was
41 sold for consumption on the premises: *Provided, That if*
42 *sales information is not available for the preceding year,*
43 *the commission in its discretion may base any issuance*
44 *or denial of an annual license upon a reasonable*
45 *projection of the volume of sales of nonintoxicating beer*
46 *for consumption on the premises as a percentage of the*
47 *total sales of nonintoxicating beer.*

48 (6) Selection of the winner must be predicted totally

49 on chance.

50 (7) Any drawings or winner selections shall be held
51 in public and witnessed by an independent accountant
52 designated by the director for such purposes.

53 (8) All lottery equipment and materials shall be
54 regularly inspected and tested, before and after any
55 drawings or winner selections, by independent qualified
56 technicians.

57 (9) The director shall establish the price for each
58 lottery and determine the method of selecting winners
59 and the manner of payment of prizes, including
60 providing for payment by the purchase of annuities for
61 prizes payable in installments.

62 (10) All claims for prizes shall be examined and no
63 prize shall be paid as a result of altered, stolen or
64 counterfeit tickets or materials, or which fail to meet
65 validation rules or regulations established for a lottery.
66 No prize shall be paid more than once, and, in the event
67 of a binding determination by the commission that more
68 than one person is entitled to a particular prize, the sole
69 remedy of the claimants shall be the award to each of
70 them of an equal share in the single prize.

71 (11) A detailed tabulation of the estimated number of
72 prizes of each particular prize denomination that are
73 expected to be awarded in each lottery, or the estimated
74 odds of winning such prizes shall be printed on any
75 lottery ticket, where feasible, or in descriptive mate-
76 rials, and shall be available at the offices of the
77 commission.

78 (12) No prizes shall be paid which are invalid and not
79 contemplated by the prize structure of the lottery
80 involved.

81 (13) By purchasing a ticket or participation in a
82 lottery, a participant agrees to abide by, and be bound
83 by, the lottery rules which apply to the lottery or game
84 play involved. An abbreviated form of such rules may
85 appear on tickets and shall appear on descriptive
86 materials and shall be available at the offices of the
87 commission. A participant in a lottery agrees that the

88 determination of whether the participant is a valid
89 winner is subject to the lottery or game play rules and
90 the winner validation tests established by the commis-
91 sion. The determination of the winner by the commission
92 shall be final and binding upon all participants in a
93 lottery and shall not be subject to review or appeal.

94 (14) The commission shall institute such security
95 procedures as it deems necessary to ensure the honesty
96 and integrity of the winner selection process for each
97 lottery. All such security and validation procedures and
98 techniques shall be, and remain, confidential, and shall
99 not be subject to any discovery procedure in any civil,
100 judicial, administrative or other proceeding, nor subject
101 to the provisions of article one, chapter twenty-nine-b of
102 the code of West Virginia, one thousand nine hundred
103 thirty-one, as amended.

104 (c) The commission shall proceed with operation of
105 such additional lottery games, including the implemen-
106 tation of games utilizing a variety of existing or future
107 technological advances at the earliest feasible date. The
108 commission may operate lottery games utilizing elec-
109 tronic computers and electronic computer terminal
110 devices and systems, which systems must include a
111 central site system of monitoring the lottery terminals
112 utilizing direct communication systems, or other
113 technological advances and procedures, ensuring hon-
114 esty and integrity in the operation of the lottery.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

- §29-22A-1. Short title.
- §29-22A-2. Legislative findings and declarations.
- §29-22A-3. Definitions.
- §29-22A-4. Video lottery games authorized.
- §29-22A-5. Video lottery terminal requirements; filing of specific game rules with the secretary of state; application for approval of a video lottery terminal; testing of video lottery terminals; report of test results; modifications to previously approved models; conformity to prototype; seizure and destruction of terminals.
- §29-22A-6. Video lottery terminal hardware and software requirements; hardware specifications; software requirements for randomness testing; software requirements for percentage payout; software requirements for continuation of video lottery game after malfunction; software requirements for play transaction records.

- §29-22A-7. License and permit qualifications; individual qualifications; applicant required to furnish information; waiver of liability; oath or affirmation; duty to provide accurate and material information.
- §29-22A-8. Form of application; local option elections; issuance of license; notice of incomplete application; notice of license or permit denial, suspension or revocation; procedure for review of license or permit denial, suspension or revocation; fees, renewal fees and renewal dates; bonding; renewal of licenses and permits; notice of change affecting license or permit; license or permit not transferrable or assignable.
- §29-22A-9. General duties of all video lottery license and permit holders; duties of permitted manufacturers; duties of permitted service technicians; duties of permitted validation managers; duties of licensed racetracks.
- §29-22A-10. Accounting and reporting commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.
- §29-22A-11. Maintenance of video lottery terminals; manufacturers required to provide training; notice of availability of training; reports and certificates of training programs; terminals to be maintained in the condition approved; maintenance log required; keys to video lottery terminals; notice of repairs to the logic area; notice of broken seals on logic board.
- §29-22A-12. Number and location of video lottery terminals; security.
- §29-22A-13. Payment of credits; no state liability; method of payment; restrictions on payment of credits; redeemed tickets required to be defaced; liability for video lottery terminal malfunction.
- §29-22A-14. Transportation and registration of video lottery.
- §29-22A-15. Hearing and appeal procedure; order refusing license or permit or suspending or revoking same; petition for hearing; petition requirements; cost of hearings; subpoenas and subpoenas duces tecum; no stay of suspension or revocation order; hearing date; place of hearing; continuances; absence of petitioner; hearing; argument and briefs; evidence admissible at hearing; record of proceedings; commission's decision; appeal to circuit court.
- §29-22A-16. Offenses and penalties.
- §29-22A-17. Disagreement as to duties of racing commission and lottery commission.
- §29-22A-18. Severability.
- §29-22A-19. Termination.
- §29-22A-1. Short title.**

1 This article shall be known and may be cited as the
2 "Racetrack Video Lottery Act."

§29-22A-2. Legislative findings and declarations.

1 (a) The Legislature finds and declares that the limited
2 video lottery games authorized by this article are
3 "lotteries" as that term is commonly understood and as
4 that term is used in West Virginia Constitution, article
5 VI, section thirty-six, the video lottery games authorized
6 by this article being lottery games which utilize
7 advanced computer technology; and that the Constitu-
8 tion grants to the Legislature the authority to establish,
9 by general law, the manner of regulation, control,
10 ownership and operation of lottery games in the state
11 of West Virginia.

12 (b) The Legislature further finds and declares that the
13 state can control, own and operate a video lottery by
14 possessing a proprietary interest in the main logic
15 boards, all erasable, programmable read-only memory
16 chips used in any video lottery equipment or games, and
17 software consisting of computer programs, documenta-
18 tion and other related materials necessary for the video
19 lottery system to be operated. The state may acquire a
20 proprietary interest in video lottery game software, for
21 purposes of this article, through outright ownership or
22 through an exclusive product license agreement with a
23 manufacturer whereby the manufacturer retains copy-
24 righted ownership of the software but the license
25 granted to the state is nontransferable and authorizes
26 the state to run the software program, solely for its own
27 use, on the state's central equipment unit and electronic
28 video terminals networked to the central equipment
29 unit.

30 (c) The Legislature further finds and declares that the
31 state can control and regulate a video lottery if the state
32 limits licensure to a limited number of video lottery
33 facilities located at qualified horse or dog racetracks,
34 extends strict and exclusive state regulation to all
35 persons, locations, practices and associations related to
36 the operation of licensed video lottery facilities, and
37 provides comprehensive law enforcement supervision of
38 video lottery activities.

39 (d) The Legislature further finds and declares that

40 since the public has an interest in video lottery
41 operations and since lottery operations conducted
42 pursuant to West Virginia Constitution, article VI,
43 section thirty-six, and under this article represent an
44 exception to the general statutory policy of the state
45 concerning wagering for private gain, participation in
46 a video lottery by a licensee or permittee under this
47 article shall be deemed a privilege conditioned upon the
48 proper and continued qualification of the licensee or
49 permittee and upon the discharge of the affirmative
50 responsibility of each licensee to provide to the regula-
51 tory and investigatory authorities established by this
52 article any assistance and information necessary to
53 assure that the policies declared by this article are
54 achieved. Consistent with this policy, it is the intent of
55 this article to preclude the creation of any property
56 right in any license or permit issued by the state under
57 this article, the accrual of any value to the privilege of
58 participation in any video lottery operation, or the
59 transfer of any license or permit, and to require that
60 participation in video lottery operations be solely
61 conditioned upon the individual qualifications of persons
62 seeking such privilege.

63 (e) The purpose of this article is to define and provide
64 specific standards for the operation of video lottery
65 games at pari-mutuel racing facilities licensed by the
66 state racing commission pursuant to article twenty-
67 three, chapter nineteen of this code. The Legislature
68 finds and declares that the existing pari-mutuel racing
69 facilities in West Virginia provide a valuable tourism
70 resource for this state and provide significant economic
71 benefits to the citizens of this state through the provision
72 of jobs and the generation of state revenues; that this
73 valuable tourism resource is threatened because of a
74 general decline in the racing industry and because of
75 increasing competition from racing facilities and lottery
76 products offered by neighboring states; and that the
77 survival of West Virginia's pari-mutuel racing industry
78 is in jeopardy unless modern lottery games are autho-
79 rized at the racetracks.

§29-22A-3. Definitions.

1 As used in this article:

2 (a) "Applicant" means any person applying for any
3 video lottery license or permit.

4 (b) "Associated equipment" means any hardware
5 located on the licensed racetrack's premises which is
6 connected to the video lottery system for the purpose of
7 performing communication, validation or other func-
8 tions, but not including the video lottery terminals or the
9 communication facilities of a regulated public utility.

10 (c) "Background investigation" means a security,
11 criminal and credit investigation of a person, as defined
12 in this section, who has applied for a video lottery license
13 or permit, or who has been granted a video lottery
14 license or permit.

15 (d) "Central computer", "central control computer" or
16 "central site system" means any central site computer
17 provided to and controlled by the commission to which
18 video lottery terminals communicate for purposes of
19 information retrieval and terminal activation and
20 disable programs;

21 (e) "Commission" or "state lottery commission" means
22 the West Virginia lottery commission created by article
23 twenty-two of this chapter.

24 (f) "Control" means the authority to direct the
25 management and policies of an applicant or a license or
26 permit holder.

27 (g) "Costs" means the expenses incurred by the
28 commission in the testing and examination of video
29 lottery terminals and the performance of background
30 investigations and other related activities which are
31 charged to and collected from applicants or license or
32 permit holders.

33 (h) "Director" means the individual appointed by the
34 governor to provide management and administration
35 necessary to direct the state lottery office.

36 (i) "Disable" or "terminal disable" means the process
37 of executing a shutdown command from the central
38 control computer which causes video lottery terminals

39 to cease functioning.

40 (j) "Display" means the visual presentation of video
41 lottery game features on the video display monitor or
42 screen of a video lottery terminal.

43 (k) "Gross terminal income" means the total amount
44 of cash inserted into the video lottery terminals operated
45 by a licensee, minus the total value of game credits
46 which are cleared from the video lottery terminals in
47 exchange for winning redemption tickets.

48 (l) "License", or "video lottery license" means author-
49 ization granted by the commission to a racetrack which
50 is licensed by the West Virginia racing commission to
51 conduct thoroughbred or greyhound racing meetings
52 pursuant to article twenty-three, chapter nineteen of
53 this code permitting the racetrack to operate video
54 lottery terminals authorized by the commission.

55 (m) "Lottery" means the public gaming systems or
56 games established and operated by the state lottery
57 commission.

58 (n) "Manufacturer" means any person holding a
59 permit granted by the commission to engage in the
60 business of designing, building, constructing, assem-
61 bling or manufacturing video lottery terminals, the
62 electronic computer components thereof, the random
63 number generator thereof, or the cabinet in which it is
64 housed, and whose product is intended for sale, lease or
65 other assignment to a licensed racetrack in West
66 Virginia, and who contracts directly with the licensee
67 for the sale, lease or other assignment to a licensed
68 racetrack in West Virginia.

69 (o) "Net terminal income" means gross terminal
70 income minus an amount deducted by the commission
71 to reimburse the commission for its actual costs of
72 administering racetrack video lottery at the licensed
73 racetrack. No deduction for any or all costs and
74 expenses of a licensee related to the operation of video
75 lottery games shall be deducted from gross terminal
76 income.

77 (p) "Own" means any beneficial or proprietary

78 interest in any property or business of an applicant or
79 licensed racetrack.

80 (q) "Pari-mutuel racing facility", "licensed racetrack",
81 "racetrack" or "track" means a facility where horse or
82 dog race meetings are held and the pari-mutuel system
83 of wagering is authorized pursuant to the provisions of
84 article twenty-three, chapter nineteen of this code:
85 *Provided*, That, for the purposes of this article, "pari-
86 mutuel racing facility", "licensed racetrack", "race-
87 track" or "track" includes only a facility which was
88 licensed prior to the first day of January, one thousand
89 nine hundred ninety-four, to hold horse or dog race
90 meetings, and which conducts not less than two hundred
91 twenty live racing dates for each horse or dog race
92 meeting or such other number of live racing dates as
93 may be approved by the racing commission in accord-
94 dance with the provisions of section twelve-b, article
95 twenty-three, chapter nineteen of this code.

96 (r) "Permit" means authorization granted by the
97 commission to a person to function as either a video
98 lottery manufacturer, service technician or validation
99 manager.

100 (s) "Person" means any natural person, corporation,
101 association, partnership, limited partnership or other
102 entity, regardless of its form, structure or nature.

103 (t) "Player" means a person who plays a video lottery
104 game on a video lottery terminal at a racetrack licensed
105 by the commission to conduct video lottery games.

106 (u) "Service technician" means a person, employed by
107 a licensed racetrack, who holds a permit issued by the
108 commission and who performs service, maintenance and
109 repair on licensed video lottery terminals in this state.

110 (v) "Video lottery game" means a commission ap-
111 proved, owned and controlled electronically simulated
112 game of chance which is displayed on the screen or video
113 monitor of a video lottery terminal and which:

114 (1) Is connected to the commission's central control
115 computer by an on-line or dial-up communication
116 system;

117 (2) Is initiated by a player's insertion of coins or
118 currency into a video lottery terminal, which causes
119 game play credits to be displayed on the video lottery
120 terminal and, with respect to which, each game play
121 credit entitles a player to choose one or more symbols
122 or numbers or to cause the video lottery terminal to
123 randomly select symbols or numbers;

124 (3) Allows the player to win additional game play
125 credits based upon game rules which establish the
126 random selection of winning combinations of symbols or
127 numbers or both and the number of free play credits to
128 be awarded for each winning combination of symbols or
129 numbers or both;

130 (4) Is based upon a computer-generated random
131 selection of winning combinations based totally or
132 predominantly on chance;

133 (5) In the case of a video lottery game which allows
134 the player an option to select replacement symbols or
135 numbers or additional symbols or numbers after the
136 game is initiated and in the course of play, either (A)
137 signals the player, prior to any optional selection by the
138 player of randomly generated replacement symbols or
139 numbers, as to which symbols or numbers should be
140 retained by the player to present the best chance, based
141 upon probabilities, that the player may select a winning
142 combination, (B) signals the player, prior to any optional
143 selection by the player of randomly generated additional
144 symbols or numbers, as to whether such additional
145 selection presents the best chance, based upon probab-
146 ities, that the player may select a winning combination,
147 or (C) randomly generates additional or replacement
148 symbols and numbers for the player after automatically
149 selecting the symbols and numbers which should be
150 retained to present the best chance, based upon proba-
151 bilities, for a winning combination, so that in any event,
152 the player is not permitted to benefit from any personal
153 skill, based upon a knowledge of probabilities, before
154 deciding which optional numbers or symbols to choose
155 in the course of video lottery game play;

156 (6) Allows a player at any time to simultaneously clear

157 all game play credits and print a redemption ticket
158 entitling the player to receive the cash value of the free
159 plays cleared from the video lottery terminal; and

160 (7) Does not use the following game themes commonly
161 associated with casino gambling: roulette, dice, baccarat
162 card games, or games having a video display depicting
163 symbols which appear to roll on drums to simulate a
164 classic casino slot machine: *Provided*, That game themes
165 of other card games and keno may be used.

166 (w) "Validation manager" means a person who holds
167 a permit issued by the commission and who performs
168 video lottery ticket redemption services.

169 (x) "Video lottery" means a lottery which allows a
170 game to be played utilizing an electronic computer and
171 an interactive computer terminal device, equipped with
172 a video screen and keys, a keyboard or other equipment
173 allowing input by an individual player, into which
174 terminal device the player inserts coins or currency as
175 consideration in order for play to be available, and
176 through which terminal device the player may receive
177 free games or credit that can be redeemed for cash, or
178 nothing, as may be determined wholly or predominantly
179 by chance. "Video lottery" does not include a lottery
180 game which merely utilizes an electronic computer and
181 a video screen to operate a lottery game and commun-
182 icate the results thereof, such as the game "Travel", and
183 which does not utilize an interactive electronic terminal
184 device allowing input by an individual player.

185 (y) "Video lottery terminal" means a commission-
186 approved interactive electronic terminal device which is
187 connected with the commission's central computer
188 system, and which is used for the purpose of playing
189 video lottery games authorized by the commission. A
190 video lottery terminal may simulate the play of one or
191 more video lottery games.

192 (z) "Wager" means a sum of money or thing of value
193 risked on an uncertain occurrence.

§29-22A-4. Video lottery games authorized.

1 The state lottery commission is authorized to imple-

2 ment and operate video lottery games at pari-mutuel
3 racing facilities in this state in accordance with the
4 provisions of this article and the applicable provisions
5 of article twenty-two of this chapter. The provisions of
6 article twenty-two of this chapter apply to this article,
7 except in the event of conflict or inconsistency between
8 any of the provisions of this article and the provisions
9 of article twenty-two of this chapter. In that event, the
10 provisions of this article shall supersede any conflicting
11 or inconsistent provisions contained in article twenty-
12 two of this chapter.

§29-22A-5. Video lottery terminal requirements; filing of specific game rules with the secretary of state; application for approval of a video lottery terminal; testing of video lottery terminals; report of test results; modifications to previously approved models; conformity to prototype; seizure and destruction of terminals.

1 (a) Video lottery terminals registered with and
2 approved by the commission for use at licensed race-
3 tracks may offer video lottery games regulated, con-
4 trolled, owned and operated by the commission in
5 accordance with the provisions of this section, and
6 utilizing specific game rules separately filed from time
7 to time by the commission with the secretary of state.

8 (b) A manufacturer may not sell or lease a video
9 lottery terminal for placement at a licensed racetrack
10 in this state unless the terminal has been approved by
11 the commission. Only manufacturers with permits may
12 apply for approval of a video lottery terminal or
13 associated equipment. The manufacturer shall submit
14 two copies of terminal illustrations, schematics, block
15 diagrams, circuit analysis, technical and operation
16 manuals and any other information requested by the
17 commission for the purpose of analyzing and testing the
18 video lottery terminal or associated equipment.

19 (c) The commission may require that two working
20 models of a video lottery terminal be transported to the
21 location designated by the commission for testing,

22 examination and analysis.

23 (1) The manufacturer shall pay all costs of testing,
24 examination, analysis and transportation of such video
25 lottery terminal models. The testing, examination and
26 analysis of any video lottery terminal model may require
27 dismantling of the terminal and some tests may result
28 in damage or destruction to one or more electronic
29 components of such terminal model. The commission
30 may require that the manufacturer provide specialized
31 equipment or pay for the services of an independent
32 technical expert to test the terminal.

33 (2) The manufacturer shall pay the cost of transpor-
34 tation of two video lottery terminals to lottery headquar-
35 ters. The commission shall conduct an acceptance test
36 to determine terminal functions and central system
37 compatibility. If the video lottery terminal fails the
38 acceptance test conducted by the commission, the
39 manufacturer shall make all modifications required by
40 the commission.

41 (d) After each test has been completed, the commis-
42 sion shall provide the terminal manufacturer with a
43 report containing findings, conclusions and pass/fail
44 results. The report may contain recommendations for
45 video lottery terminal modification to bring the terminal
46 into compliance with the provisions of this article. Prior
47 to approving a particular terminal model, the commis-
48 sion may require a trial period not in excess of sixty
49 days for a licensed racetrack to test the terminal.
50 During the trial period, the manufacturer may not make
51 any modifications to the terminal model unless such
52 modifications are approved by the commission.

53 (e) The video lottery terminal manufacturer and
54 licensed racetrack are jointly responsible for the
55 assembly and installation of all video lottery terminals
56 and associated equipment. The manufacturer and
57 licensed racetrack shall not change the assembly or
58 operational functions of a terminal licensed for place-
59 ment in West Virginia unless a request for modification
60 of an existing video terminal prototype is approved by
61 the commission. The request must contain a detailed

62 description of the type of change, the reasons for the
63 change and technical documentation of the change.

64 (f) Each video lottery terminal approved for place-
65 ment at a licensed racetrack must conform to the exact
66 specifications of the video lottery terminal prototype
67 tested and approved by the commission. If any video
68 lottery terminal or any video lottery terminal modifica-
69 tion, which has not been approved by the commission,
70 is supplied by a manufacturer and operated by a
71 licensed racetrack, the commission shall seize and
72 destroy all of that licensed racetrack's and manufactur-
73 er's noncomplying video lottery terminals and shall
74 suspend the license and permit of the licensed racetrack
75 and manufacturer.

**§29-22A-6. Video lottery terminal hardware and soft-
ware requirements; hardware specifica-
tions; software requirements for random-
ness testing; software requirements for
percentage payout; software requirements
for continuation of video lottery game after
malfunction; software requirements for
play transaction records.**

1 (a) Video lottery terminals licensed for placement in
2 this state shall meet the following hardware
3 specifications:

4 (1) Electrical and mechanical parts and design
5 principles may not subject a player to physical hazards
6 or injury.

7 (2) A surge protector shall be installed on the
8 electrical power supply line to each video lottery
9 terminal. A battery or equivalent power back-up for the
10 electronic meters shall be capable of maintaining
11 accuracy of all accounting records and terminal status
12 reports for a period of one hundred eighty days after
13 power is disconnected from the terminal. The power
14 back-up device shall be located within the locked logic
15 board compartment of the video lottery terminal.

16 (3) An on/off switch which controls the electrical
17 current used in the operation of the terminal shall be
18 located in an accessible place within the interior of the
19 video lottery terminal.

20 (4) The operation of each video lottery terminal may
21 not be adversely affected by any static discharge or
22 other electromagnetic interference.

23 (5) A minimum of one electronic or mechanical coin
24 acceptor or other means accurately and efficiently to
25 establish credits shall be installed on each video lottery
26 terminal. Each video lottery terminal may also contain
27 bill acceptors for one or more of the following: One
28 dollar bills, five dollar bills, ten dollar bills and twenty
29 dollar bills. All coin and bill acceptors must be approved
30 by the commission prior to use on any video lottery
31 terminal in this state.

32 (6) Access to the interior of video lottery terminal
33 shall be controlled through a series of locks and seals.

34 (7) The main logic boards and all erasable program-
35 mable read-only memory chips (Eproms) are deemed to
36 be owned by the commission and shall be located in a
37 separate locked and sealed area within the video lottery
38 terminal.

39 (8) The cash compartment shall be located in a
40 separate locked area within or attached to the video
41 lottery terminal.

42 (9) No hardware switches, jumpers, wire posts or any
43 other means of manipulation may be installed which
44 alter the pay tables or payout percentages in the
45 operation of a game. Hardware switches on a video
46 lottery terminal to control the terminal's graphic
47 routines, speed of play, sound and other purely cosmetic
48 features may be approved by the commission.

49 (10) Each video lottery terminal shall contain a single
50 printing mechanism capable of printing an original
51 ticket and retaining an exact legible copy within the
52 video lottery terminal or other means of capturing and
53 retaining an electronic copy of the ticket data as
54 approved by the commission. The following information

55 shall be recorded on the ticket when credits accrued on
56 a video lottery terminal are redeemed for cash:

57 (i) The number of credits accrued;

58 (ii) Value of the credits in dollars and cents displayed
59 in both numeric and written form;

60 (iii) Time of day and date;

61 (iv) Validation number; and

62 (v) Any other information required by the
63 commission.

64 (11) A permanently installed and affixed identifica-
65 tion plate shall appear on the exterior of each video
66 lottery terminal and the following information shall be
67 on the plate:

68 (i) Manufacturer of the video lottery terminal;

69 (ii) Serial number of the terminal; and

70 (iii) Model number of the terminal.

71 (12) The rules of play for each game shall be displayed
72 on the video lottery terminal face or screen. The
73 commission may reject any rules of play which are
74 incomplete, confusing, misleading or inconsistent with
75 game rules approved by the commission. For each video
76 lottery game, there shall be a display detailing the
77 credits awarded for the occurrence of each possible
78 winning combination of numbers or symbols. A video
79 lottery terminal may not allow more than two dollars
80 to be wagered on a single game. All information
81 required by this subdivision shall be displayed under
82 glass or another transparent substance. No stickers or
83 other removable devices may be placed on the video
84 lottery terminal screen or face without the prior
85 approval of the commission.

86 (13) Communication equipment and devices shall be
87 installed to enable each video lottery terminal to
88 communicate with the commission's central computer
89 system by use of a communications protocol provided by
90 the commission to each permitted manufacturer, which
91 protocol shall include information retrieval and termi-

92 nal activation and disable programs, and the commis-
93 sion may require each licensed racetrack to pay the cost
94 of a central site computer as a part of the licensing
95 requirement.

96 (14) All video lottery terminals shall have a security
97 system which temporarily disables the gaming function
98 of the terminal while opened.

99 (b) Each video lottery terminal shall have a random
100 number generator to determine randomly the occur-
101 rence of each specific symbol or number used in video
102 lottery games. A selection process is random if it meets
103 the following statistical criteria:

104 (1) Chi-square test. Each symbol or number shall
105 satisfy the ninety-nine percent confidence limit using
106 the standard chi-square statistical analysis of the
107 difference between the expected result and the observed
108 result.

109 (2) Runs test. Each symbol or number may not
110 produce a significant statistic with regard to producing
111 patterns of occurrences. Each symbol or number is
112 random if it meets the ninety-nine percent confidence
113 level with regard to the "runs test" for the existence of
114 recurring patterns within a set of data.

115 (3) Correlation test. Each pair of symbols or numbers
116 is random if it meets the ninety-nine percent confidence
117 level using standard correlation analysis to determine
118 whether each symbol or number is independently chosen
119 without regard to another symbol or number within a
120 single game play.

121 (4) Serial correlation test. Each symbol or number is
122 random if it meets the ninety-nine percent confidence
123 level using standard serial correlation analysis to
124 determine whether each symbol or number is independ-
125 ently chosen without reference to the same symbol or
126 number in a previous game.

127 (c) Each video lottery terminal shall meet the
128 following maximum and minimum theoretical percent-
129 tage payout during the expected lifetime of said
130 terminal:

131 (1) Video lottery games shall pay out no less than
132 eighty percent and no more than ninety-five percent of
133 the amount wagered. The theoretical payout percentage
134 will be determined using standard methods of probabilit-
135 ity theory.

136 (2) Manufacturers must file a request and receive
137 approval from the commission prior to manufacturing
138 for placement in this state video lottery terminals
139 programmed for a payout greater than ninety-two
140 percent of the amount wagered. Commission approval
141 must be obtained prior to applying for testing of such
142 high payout terminals.

143 (3) Each terminal shall have a probability greater
144 than one in seventeen million of obtaining the maximum
145 payout for each play.

146 (d) Each video lottery terminal shall be capable of
147 continuing the current game with all current game
148 features after a video lottery terminal malfunction is
149 cleared. If a video lottery terminal is rendered totally
150 inoperable during game play, the current wager and all
151 credits appearing on the video lottery terminal screen
152 prior to the malfunction shall be returned to the player.

153 (e) Each video lottery terminal shall at all times
154 maintain electronic accounting regardless of whether
155 the terminal is being supplied with electrical power.
156 Each meter shall be capable of maintaining a total of
157 no less than eight digits in length for each type of data
158 required. The electronic meters shall record the
159 following information:

160 (1) Number of coins inserted by players or the coin
161 equivalent if a bill acceptor is being used;

162 (2) Number of credits wagered;

163 (3) Number of credits won;

164 (4) Number of credits paid out by a printed ticket;

165 (5) Number of times the logic area was accessed;

166 (6) Number of times the cash door was accessed;

167 (7) Number of credits wagered in the current game;

168 (8) Number of credits won in the last complete video
169 lottery game; and

170 (9) Number of cumulative credits representing money
171 inserted by a player and credits for video lottery games
172 won but not collected.

173 (f) No video lottery terminal may have any mecha-
174 nism which allows the electronic accounting meters to
175 clear automatically. Electronic accounting meters may
176 not be cleared without the prior approval of the
177 commission. Both before and after any electronic
178 accounting meter is cleared, all meter readings shall be
179 recorded in the presence of a commission employee.

180 (g) The primary responsibility for the control and
181 regulation of any video lottery games and video lottery
182 terminals operated pursuant to this article rests with
183 the commission.

184 (h) The commission shall directly or through a
185 contract with a third party vendor other than the video
186 lottery licensee, maintain a central site system of
187 monitoring the lottery terminals, utilizing an on-line or
188 dial-up inquiry. The central site system shall be capable
189 of monitoring the operation of each video lottery game
190 or video lottery terminal operating pursuant to this
191 article and, at the direction of the director, immediately
192 disable and cause not to operate, any video lottery game
193 and video lottery terminal. As provided in this section,
194 the commission may require the licensed racetrack to
195 pay the cost of a central site computer as part of the
196 licensing requirement.

§29-22A-7. License and permit qualifications; individual qualifications; applicant required to furnish information; waiver of liability; oath or affirmation; duty to provide accurate and material information.

1 (a) No video lottery license or permit may be granted
2 unless the commission has determined that the applicant
3 satisfies all of the following qualifications:

4 (1) An applicant for a video lottery license must hold
5 a valid racing license granted by the West Virginia

6 racing commission under provisions of article twenty-
7 three, chapter nineteen of this code.

8 (2) An applicant must be a person of good character
9 and integrity.

10 (3) An applicant must be a person whose background,
11 including criminal record, reputation and associations,
12 does not pose a threat to the security and integrity of
13 the lottery or to the public interest of the state. A person
14 who has been convicted of any violation of article
15 twenty-two of this chapter or of this article or of any
16 crime related to theft, bribery, gambling or involving
17 moral turpitude is not eligible for any license or permit.
18 The commission shall revoke the license or permit of any
19 person who is convicted of any such crime after a license
20 or permit is granted.

21 (4) An applicant must be a person who demonstrates
22 the business ability and experience necessary to estab-
23 lish, operate and maintain the business for which a video
24 lottery license or permit application is made.

25 (5) An applicant must be a person who has secured
26 adequate financing for the business for which a video
27 lottery license or permit application is made. The
28 commission shall determine whether financing is from
29 a source which meets the qualifications of this section,
30 and is adequate to support the successful performance
31 of the duties and responsibilities of the licensed
32 racetrack or permit holder. An applicant for a video
33 lottery license shall disclose all financing or refinancing
34 arrangements for the purchase, lease or other acquisi-
35 tion of video lottery terminals and associated equipment
36 in the degree of detail requested by the commission. A
37 licensed racetrack shall request commission approval of
38 any change in financing or lease arrangements at least
39 thirty days before the effective date of the change.

40 (6) A racetrack applying for a video lottery license or
41 a license renewal must present to the commission
42 evidence of the existence of an agreement, regarding the
43 proceeds from video lottery terminals, between the
44 applicant and the representative of a majority of the
45 horse owners and trainers, the representative of a

46 majority of the pari-mutuel clerks and the representa-
47 tive of a majority of the breeders or the representative
48 of a majority of the kennel owners for the applicable
49 racetrack who hold permits required by section two,
50 article twenty-three, chapter nineteen of this code.

51 (7) A racetrack applying for a video lottery license or
52 a license renewal must file with the commission a copy
53 of any current or proposed agreement between the
54 applicant and any manufacturer for the sale, lease or
55 other assignment to the racetrack of video lottery
56 terminals, the electronic computer components thereof,
57 the random number generator thereof, or the cabinet in
58 which it is housed. Once filed with the commission, such
59 agreement shall be a public document subject to the
60 provisions of article one, chapter twenty-nine-b of this
61 code.

62 (b) No video lottery license or permit may be granted
63 to an applicant until the commission determines that
64 each person who has control of the applicant meets all
65 applicable qualifications of subsection (a) of this section.
66 The following persons are deemed to have control of an
67 applicant:

68 (1) Each person associated with a corporate applicant,
69 including any corporate holding company, parent
70 company or subsidiary company of the applicant (but
71 not including a bank or other licensed lending institu-
72 tion which holds a mortgage or other lien acquired in
73 the ordinary course of business) who has the ability to
74 control the activities of the corporate applicant or elect
75 a majority of the board of directors of that corporation.

76 (2) Each person associated with a noncorporate
77 applicant who directly or indirectly holds any beneficial
78 or proprietary interest in the applicant or who the
79 commission determines to have the ability to control the
80 applicant.

81 (3) Key personnel of an applicant, including any
82 executive, employee or agent, having the power to
83 exercise significant influence over decisions concerning
84 any part of the applicant's business operation.

85 (c) Applicants must furnish all information, including

86 financial data and documents, certifications, consents,
87 waivers, individual history forms and other materials
88 requested by the commission for purposes of determin-
89 ing qualifications for a license or permit. No video
90 lottery license or permit may be granted to an applicant
91 who fails to provide information and documentation
92 requested by the commission. The burden of proving
93 qualification for any video lottery license or permit shall
94 be on the applicant.

95 (d) Each applicant shall bear all risks of adverse
96 public notice, embarrassment, criticism, damages or
97 financial loss which may result from any disclosure or
98 publication of any material or information obtained by
99 the commission pursuant to action on an application.
100 The applicant shall, as a part of its application,
101 expressly waive any and all claims against the commis-
102 sion, the state of West Virginia and the employees of
103 either for damages as a result of any background
104 investigation, disclosure or publication relating to an
105 application for a video lottery license or permit.

106 (e) All application, registration and disclosure forms
107 and other documents submitted to the commission by or
108 on behalf of the applicant for purposes of determining
109 qualification for a video lottery license or permit shall
110 be sworn to or affirmed before an officer qualified to
111 administer oaths.

112 (f) An applicant who knowingly fails to reveal any fact
113 material to qualification or who knowingly submits false
114 or misleading material information is ineligible for a
115 video lottery license or permit.

§29-22A-8. Form of application; local option elections; issuance of license; notice of incomplete application; notice of license or permit denial, suspension or revocation; procedure for review of license or permit denial, suspension or revocation; fees, renewal fees and renewal dates; bonding; renewal of licenses and permits; notice of change affecting license or permit; license or permit not transferrable or assignable.

1 (a) The commission shall determine the form of
2 applications to be used and shall not consider incomplete
3 applications. The commission may consider an applica-
4 tion when the applicant has completed and executed all
5 forms and documents required by the commission and
6 all application fees and costs have been paid.

7 (b) The question of whether video lottery games shall
8 be permitted at pari-mutuel racetracks shall be deter-
9 mined by local option election in each county in which
10 a pari-mutuel racetrack is located. The local option
11 election on this question may be placed on the ballot in
12 each county at the primary election to be held on the
13 tenth day of May, one thousand nine hundred ninety-
14 four, or at any primary, general or special election to
15 be held thereafter. The county commission of the county
16 in which the racetrack is located shall give notice to the
17 public of such election by publication thereof as a Class
18 II-0 legal advertisement in compliance with the provi-
19 sions of article three, chapter fifty-nine of this code, and
20 the publication area for the publication shall be the
21 county in which the election is to be held. The date of
22 the last publication of the notice shall fall on a date
23 within the period of the fourteen consecutive days next
24 preceding the election.

25 On the local option election ballot shall be printed the
26 following:

27 Shall West Virginia lottery commission video lottery
28 games be permitted within an area at the [name of
29 racetrack] in which pari-mutuel betting is authorized by
30 law?

31 Yes No

32 (Place a cross mark in the square opposite your
33 choice.)

34 The ballots shall be counted, returns made and
35 canvassed as in general elections, and the results
36 certified by the commissioners of election to the county
37 commission. The county commission shall, without
38 delay, certify the result of the election to the
39 commission.

40 (c) Upon receipt of the results of the election from the
41 county commission, and if a majority has voted "yes", the
42 commission shall issue the requested license if the
43 applicant is otherwise qualified for the license. If a
44 majority has voted "no", the commission shall so notify
45 the applicant, the application shall be denied, and
46 another election on the issue shall not be held for a
47 period of two years. If a majority has voted "yes",
48 another local option election on the issue shall not be
49 held for a period of five years. A local option election
50 may thereafter be held if a written petition of qualified
51 voters residing within the county equal to at least five
52 percent of the number of persons who were registered
53 to vote in the next preceding general election is received
54 by the county commission of the county in which the
55 horse or dog racetrack is located. The petition may be
56 in any number of counterparts.

57 The petition shall be in the following form:

58 Petition For Local Option Election

59 We, the undersigned legally qualified voters, resident
60 within the county of _____, do hereby petition
61 that a special election be held within the county of
62 _____ upon the following question: Shall West
63 Virginia lottery commission video lottery games be
64 permitted within an area at the [name of racetrack] in
65 which pari-mutuel betting is authorized by law?

66 Name Address Date

67 (Post office or street address)

68 (d) If the commission, prior to the first day of
69 November, one thousand nine hundred ninety-three, has
70 authorized any racetrack to conduct video lottery games
71 at its pari-mutuel facility, the games may continue to
72 operate until the first day of January, one thousand nine
73 hundred ninety-five, pending the results of any local
74 option election held pursuant to the provisions of this
75 section.

76 (e) The commission may not issue any license or
77 permit until background investigations are concluded.
78 The commission must make an affirmative determina-

79 tion that the applicant is qualified and the applicable
80 license or permit fees have been paid prior to issuing
81 any license or permit.

82 (f) The commission shall notify the applicant if an
83 application is incomplete and the notification shall state
84 the deficiencies in the application.

85 (g) The commission shall notify applicants in writing
86 of the denial, suspension or revocation of a permit or
87 license and the reasons for the denial, suspension or
88 revocation in accordance with the provisions of section
89 fifteen of this article.

90 (h) An applicant may request a hearing to review a
91 license or permit denial, suspension or revocation in
92 accordance with section fifteen of this article.

93 (i) The following license or permit fees shall be paid
94 annually by each licensed racetrack, or permitted
95 manufacturer, service technician or validation manager:

- 96 (1) Racetrack: \$ 1,000.
97 (2) Manufacturer: \$10,000.
98 (3) Service technician: \$ 100.
99 (4) Validation manager: \$ 50.

100 The fees shall be paid to the commission at the time
101 of license or permit application and on or before the first
102 day of July of each year thereafter, at which time the
103 license or permit may be renewed.

104 (j) An applicant for a video lottery license shall, prior
105 to the issuance of the license, post a bond or irrevocable
106 letter of credit in a manner and in an amount estab-
107 lished by the commission. The bond shall be issued by
108 a surety company authorized to transact business in
109 West Virginia and the company shall be approved by
110 the insurance commissioner of this state as to solvency
111 and responsibility.

112 (k) The commission shall renew video lottery licenses
113 and permits annually as of the first day of July of each
114 year, if each person seeking license or permit renewal
115 submits the applicable renewal fee, completes all

116 renewal forms provided by the commission, and con-
117 tinues to meet all qualifications for a license or permit.

118 (l) License and permit holders shall notify the
119 commission of any proposed change of ownership or
120 control of the license or permit holder and of all other
121 transactions or occurrences relevant to license or permit
122 qualification. In order for a license or permit to remain
123 in effect, commission approval is required prior to
124 completion of any proposed change of ownership or
125 control of a license or permit holder.

126 (m) A license or permit is a privilege personal to the
127 license or permit holder and is not a legal right. A
128 license or permit granted or renewed pursuant to this
129 article may not be transferred or assigned to another
130 person, nor may a license or a permit be pledged as
131 collateral. The purchaser or successor of any license or
132 permit holder must independently qualify for a license
133 or permit. The sale of more than five percent of a license
134 or permit holder's voting stock, or more than five
135 percent of the voting stock of a corporation which
136 controls the license or permit holder or the sale of a
137 license or permit holder's assets, other than those bought
138 and sold in the ordinary course of business, or any
139 interest therein, to any person not already determined
140 to have met the qualifications of section seven of this
141 article voids the license unless the sale has been
142 approved in advance by the commission.

**§29-22A-9. General duties of all video lottery license and
permit holders; duties of permitted manu-
facturers; duties of permitted service
technicians; duties of permitted validation
managers; duties of licensed racetracks.**

1 (a) The general duties required of all video lottery
2 license and permit holders are as follows:

3 (1) Promptly report to the commission any facts or
4 circumstances related to video lottery operations which
5 constitute a violation of state or federal law.

6 (2) Conduct all video lottery activities and functions
7 in a manner which does not pose a threat to the public

8 health, safety or welfare of the citizens of this state, and
9 which does not adversely affect the security or integrity
10 of the lottery.

11 (3) Hold the commission and this state harmless from
12 and defend and pay for the defense of any and all claims
13 which may be asserted against a license or permit
14 holder, the commission, the state or the employees
15 thereof, arising from the license or permit holder's
16 participation in the video lottery system authorized by
17 this article.

18 (4) Assist the commission in maximizing video lottery
19 revenues.

20 (5) Maintain all records required by the commission.

21 (6) Upon request by the commission, provide the
22 commission access to all records and the physical
23 premises of the business or businesses where the license
24 or permit holder's video lottery activities occur, for the
25 purpose of monitoring or inspecting the license or
26 permit holder's activities and the video lottery games,
27 video lottery terminals and associated equipment.

28 (7) Keep current in all payments and obligations to
29 the commission.

30 (b) The specific duties required of manufacturers are
31 as follows:

32 (1) Manufacture terminals and associated equipment
33 for placement in this state in accordance with the
34 specifications and procedures specified in sections five
35 and six of this article.

36 (2) Manufacture terminals and associated equipment
37 to ensure timely delivery to licensed racetracks.

38 (3) Maintain and provide an inventory of spare parts
39 to assure the timely repair and continuous operation of
40 licensed video lottery terminals intended for placement
41 in this state.

42 (4) Provide to licensed racetracks and permitted
43 service technicians technical assistance and training in
44 the service and repair of video lottery terminals and

45 associated equipment so as to assure the continuous
46 authorized operation and play of such video lottery
47 terminals.

48 (5) Obtain certification of compliance under the
49 provisions of part fifteen of the federal communication
50 commission rules for all video lottery terminals placed
51 in this state.

52 (c) The specific duties required of service technicians
53 are as follows:

54 (1) Maintain all skills necessary for the timely repair
55 and service of licensed video lottery terminals and
56 associated equipment so as to ensure the continued,
57 approved operation of those terminals.

58 (2) Attend all commission mandated meetings, semin-
59 ars and training sessions concerning the repair and
60 maintenance of licensed video lottery terminals and
61 associated equipment.

62 (3) Promptly notify the commission of any electronic
63 or mechanical video lottery terminal malfunctions.

64 (d) The specific duties required of validation manag-
65 ers are as follows:

66 (1) Attend all commission mandated meetings, semin-
67 ars and training sessions concerning the validation and
68 redemption of video lottery winning tickets and the
69 operation of all ticket validation terminals and
70 equipment.

71 (2) Maintain all skills necessary for the accurate
72 validation of video lottery tickets.

73 (3) Supervise video lottery ticket validation proce-
74 dures at the applicable licensed racetrack.

75 (e) The specific duties required of all licensed
76 racetracks are as follows:

77 (1) Acquire video lottery terminals by purchase, lease
78 or other assignment and provide a secure location for
79 the placement, operation and play of the video lottery
80 terminals.

- 81 (2) Pay for the installation and operation of commis-
82 sion approved telephone lines to provide direct dial-up
83 or on-line communication between each video lottery
84 terminal and the commission's central control computer.
- 85 (3) Permit no person to tamper with or interfere with
86 the operation of any video lottery terminal.
- 87 (4) Ensure that telephone lines from the commission's
88 central control computer to the video lottery terminals
89 located at the licensed racetrack are at all times
90 connected and prevent any person from tampering or
91 interfering with the operation of the telephone lines.
- 92 (5) Ensure that video lottery terminals are within the
93 sight and control of designated employees of the licensed
94 racetrack.
- 95 (6) Ensure that video lottery terminals are placed and
96 remain placed in the specific locations within the
97 licensed racetrack which have been approved by the
98 commission. No video lottery terminal or terminals at
99 a racetrack shall be relocated without the prior approval
100 of the commission.
- 101 (7) Monitor video lottery terminals to prevent access
102 to or play by persons who are under the age of eighteen
103 years or who are visibly intoxicated.
- 104 (8) Maintain at all times sufficient change and cash
105 in the denominations accepted by the video lottery
106 terminals.
- 107 (9) Provide no access by a player to an automated
108 teller machine (ATM) in the area of the racetrack where
109 video lottery games are played, accept no credit card or
110 debit card from a player for the exchange or purchase
111 of video lottery game credits or for an advance of coins
112 or currency to be utilized by a player to play video
113 lottery games, and extend no credit, in any manner, to
114 a player so as to enable the player to play a video lottery
115 game.
- 116 (10) Pay for all credits won upon presentment of a
117 valid winning video lottery ticket.
- 118 (11) Report promptly to the manufacturer and the

119 commission all video lottery terminal malfunctions and
120 notify the commission of the failure of a manufacturer
121 or service technician to provide prompt service and
122 repair of such terminals and associated equipment.

123 (12) Conduct no video lottery advertising and promo-
124 tional activities without the prior written approval of
125 the director.

126 (13) Install, post and display prominently at locations
127 within or about the licensed racetrack, signs, redemp-
128 tion information and other promotional material as
129 required by the commission.

130 (14) Permit video lottery to be played only during
131 those hours established and approved by the
132 commission.

133 (15) Maintain general liability insurance coverage for
134 all video lottery terminals in an amount of at least two
135 million dollars per claim.

136 (16) Promptly notify the commission in writing of any
137 breaks or tears to any logic unit seals.

138 (17) Assume liability for lost or stolen money from any
139 video lottery terminal.

140 (18) Submit an audited financial statement, which has
141 been approved by the commission, to the commission
142 when applying for a license or permit and annually
143 thereafter prior to the time a license or permit may be
144 renewed.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

1 (a) The commission shall provide to manufacturers, or

2 applicants applying for a manufacturer's permit, the
3 protocol documentation data necessary to enable the
4 respective manufacturer's video lottery terminals to
5 communicate with the commission's central computer
6 for transmitting auditing program information and for
7 activation and disabling of video lottery terminals.

8 (b) The gross terminal income of a licensed racetrack
9 shall be remitted to the commission through the
10 electronic transfer of funds. Licensed racetracks shall
11 furnish to the commission all information and bank
12 authorizations required to facilitate the timely transfer
13 of moneys to the commission. Licensed racetracks must
14 provide the commission thirty days' advance notice of
15 any proposed account changes in order to assure the
16 uninterrupted electronic transfer of funds. From the
17 gross terminal income remitted by the licensee to the
18 commission, the commission shall deduct an amount
19 sufficient to reimburse the commission for its actual
20 costs and expenses incurred in administering racetrack
21 video lottery at the licensed racetrack, and the resulting
22 amount after such deduction shall be the net terminal
23 income. The amount deducted for administrative costs
24 and expenses of the commission may not exceed four
25 percent of gross terminal income.

26 (c) Net terminal income shall be divided as set out in
27 this subsection. The licensed racetrack's share shall be
28 in lieu of all lottery agent commissions and is considered
29 to cover all costs and expenses required to be expended
30 by the licensed racetrack in connection with video
31 lottery operations. The division shall be made as follows:

32 (1) The commission shall receive thirty percent of net
33 terminal income, which shall be paid into the general
34 revenue fund of the state to be appropriated by the
35 Legislature;

36 (2) Fourteen percent of net terminal income at a
37 licensed racetrack shall be deposited in the special fund
38 established by the licensee, and used for payment of
39 regular purses in addition to other amounts provided for
40 in article twenty-three, chapter nineteen of this code;

41 (3) The county where the video lottery terminals are

42 located shall receive two percent of the net terminal
43 income;

44 (4) One half of one percent of net terminal income
45 shall be paid for and on behalf of all employees of the
46 licensed racing association by making a deposit into a
47 special fund to be established by the racing commission
48 to be used for payment into the pension plan for all
49 employees of the licensed racing association;

50 (5) The West Virginia thoroughbred development
51 fund created under section thirteen-b, article twenty-
52 three, chapter nineteen of this code and the West
53 Virginia greyhound breeding development fund created
54 under section ten, article twenty-three, chapter nineteen
55 of this code shall receive an equal share of a total of not
56 less than one and one-half percent of the net terminal
57 income: *Provided*, That for any racetrack which does not
58 have a breeder's program supported by the tho-
59 roughbred development fund or the greyhound breeding
60 development fund, the one and one-half percent pro-
61 vided for in this subdivision shall be deposited in the
62 special fund established by the licensee and used for
63 payment of regular purses, in addition to other amounts
64 provided for in subdivision (2) of this subsection and
65 article twenty-three, chapter nineteen of this code;

66 (6) The West Virginia thoroughbred breeders classic
67 shall receive one percent of the net terminal income
68 which shall be used for purses. The moneys shall be
69 deposited in the separate account established for the
70 classic under section thirteen, article twenty-three,
71 chapter nineteen of this code;

72 (7) A licensee shall receive forty-seven percent of net
73 terminal income;

74 (8) The tourism promotion fund established in section
75 nine, article one, chapter five-b of this code shall receive
76 three percent of the net terminal income; and

77 (9) The veterans memorial program shall receive one
78 percent of the net terminal income until sufficient
79 moneys have been received to complete the veterans
80 memorial on the grounds of the state capitol complex in

81 Charleston, West Virginia. The money shall be deposited
82 in the state treasury in the special department of culture
83 and history fund created under section three, article
84 one-i, chapter twenty-nine of this code: *Provided*, That
85 after sufficient moneys have been deposited in the fund
86 to complete the veterans memorial, the one percent of
87 net terminal income provided for in this subdivision
88 shall be deposited in the special fund established by the
89 licensee and used for payment of regular purses, in
90 addition to other amounts provided for in subdivision (2)
91 of this subsection and article twenty-three, chapter
92 nineteen of this code.

93 (d) Each licensed racetrack shall maintain in its
94 account an amount equal to or greater than the gross
95 terminal income from its operation of video lottery
96 machines, to be electronically transferred by the
97 commission on dates established by the commission.
98 Upon a licensed racetrack's failure to maintain this
99 balance, the commission may disable all of a licensed
100 racetrack's video lottery terminals until full payment of
101 all amounts due is made. Interest shall accrue on any
102 unpaid balance at a rate consistent with the amount
103 charged for state income tax delinquency under chapter
104 eleven of this code, which interest shall begin to accrue
105 on the date payment is due to the commission.

106 (e) The commission's central control computer shall
107 keep accurate records of all income generated by each
108 video lottery terminal. The commission shall prepare
109 and mail to the licensed racetrack a statement reflecting
110 the gross terminal income generated by the licensee's
111 video lottery terminals. Each licensed racetrack must
112 report to the commission any discrepancies between the
113 commission's statement and each terminal's mechanical
114 and electronic meter readings. The licensed racetrack is
115 solely responsible for resolving income discrepancies
116 between actual money collected and the amount shown
117 on the accounting meters or on the commission's billing
118 statement.

119 (f) Until an accounting discrepancy is resolved in
120 favor of the licensed racetrack, the commission may
121 make no credit adjustments. For any video lottery

122 terminal reflecting a discrepancy, the licensed racetrack
123 shall submit to the commission the maintenance log
124 which includes current mechanical meter readings and
125 the audit ticket which contains electronic meter read-
126 ings generated by the terminal's software. If the meter
127 readings and the commission's records cannot be
128 reconciled, final disposition of the matter shall be
129 determined by the commission. Any accounting discre-
130 pancies which cannot be otherwise resolved shall be
131 resolved in favor of the commission.

132 (g) Licensed racetracks shall remit payment by mail
133 if the electronic transfer of funds is not operational or
134 the commission notifies licensed racetracks that remit-
135 tance by this method is required. The licensed race-
136 tracks shall report an amount equal to the total amount
137 of cash inserted into each video lottery terminal
138 operated by a licensee, minus the total value of game
139 credits which are cleared from the video lottery
140 terminal in exchange for winning redemption tickets,
141 and remit such amount as generated from its terminals
142 during the reporting period. The remittance shall be
143 sealed in a properly addressed and stamped envelope
144 and deposited in the United States mail no later than
145 noon on the day when the payment would otherwise be
146 completed through electronic funds transfer.

147 (h) Licensed racetracks may, upon request, receive
148 additional reports of play transactions for their respec-
149 tive video lottery terminals and other marketing
150 information not considered confidential by the commis-
151 sion. The commission may charge a reasonable fee for
152 the cost of producing and mailing any report other than
153 the billing statements.

154 (i) The commission has the right to examine all
155 accounts, bank accounts, financial statements and
156 records in a licensed racetrack's possession, under its
157 control or in which it has an interest and the licensed
158 racetrack must authorize all third parties in possession
159 or in control of the accounts or records to allow
160 examination of any of those accounts or records by the
161 commission.

§29-22A-11. Maintenance of video lottery terminals; manufacturers required to provide training; notice of availability of training; reports and certificates of training programs; terminals to be maintained in the condition approved; maintenance log required; keys to video lottery terminals; notice of repairs to the logic area; notice of broken seals on logic board.

1 (a) No video lottery terminal may be placed in
2 operation in this state until the manufacturer provides
3 training in the service and repair of each approved video
4 lottery terminal model and service technicians complete
5 such training. Manufacturers must submit to the
6 commission the following information on each training
7 program conducted:

8 (1) An outline of the training curriculum;

9 (2) A list of the instructors and their qualifications;

10 (3) Instructional materials; and

11 (4) The time, dates and location of the training
12 programs.

13 (b) Manufacturers shall notify all licensed racetracks
14 who have purchased or leased that manufacturer's video
15 lottery terminals of all scheduled training programs.
16 Training programs must be scheduled at convenient
17 locations within this state to facilitate attendance by
18 service technicians. Manufacturers must inform li-
19 censed racetracks of any new developments in the
20 service and repair of video lottery terminals and provide
21 appropriate subsequent training programs.

22 (c) The manufacturers shall issue training certificates
23 to each person upon successful completion of a video
24 lottery training program. The certificate shall include
25 the name of the person who completed the training
26 program and the date and the location of the training
27 program. A person who successfully completes training
28 is eligible for a service technician's permit. No person
29 may conduct maintenance on any video lottery terminal
30 or associated equipment unless the commission has

31 issued a service technician permit to that person.

32 (d) Each manufacturer shall file with the commission
33 the following information within two weeks after the
34 completion of a training program:

35 (1) The name of each person who attended and
36 completed the training program;

37 (2) The name of the manufacturer offering the course;

38 (3) The manufacturer's video lottery terminal models
39 on which training for service and repair was provided;

40 (4) The date and location of the training program; and

41 (5) Copies of all certificates of completion.

42 (e) A written maintenance log shall be kept within the
43 main cabinet access area in each video lottery terminal.
44 Every person, including lottery personnel, who gains
45 entry into any internal space of a video lottery terminal
46 must sign the log, record the time and date of entry,
47 record the mechanical meter readings and list the areas
48 inspected or repaired. The maintenance log forms shall
49 be retained by licensed racetracks for a period of three
50 years from the date of the last entry. The maintenance
51 logs shall be available upon request for inspection by the
52 commission.

53 (f) Licensed racetracks shall provide the commission
54 with a master key for access into the main cabinet door
55 of each video lottery terminal placed in operation. A
56 logic box seal shall be provided by the commission. The
57 seal shall be affixed by commission personnel to prevent
58 unauthorized access to the video lottery terminal logic
59 unit.

60 (g) No repairs to, or replacement of, the logic board
61 or circuitry within the logic area may occur unless
62 authorized commission personnel are present and
63 observe the repairs or replacement. The logic area seal
64 shall not be broken by anyone other than authorized
65 commission personnel. Each service technician shall
66 submit a written report within twenty-four hours after
67 the repairs or replacement are completed and the report
68 shall include the serial number of any replacement

69 board and the new logic area seal number.

70 (h) The software eproms on the logic board of each
71 video lottery terminal shall be tested by the commission
72 prior to sealing the logic area. Licensed racetracks or
73 permit holders shall notify the commission in writing of
74 any discovered damage, tears or breaks in the logic area
75 seal and, upon notice, the video lottery terminal shall be
76 disabled. The video lottery terminal shall remain
77 disabled until completion by the commission of an
78 investigation of the seal damage.

§29-22A-12. Number and location of video lottery terminals; security.

1 (a) A racetrack which has been licensed to conduct
2 video lottery games has the right to install and operate
3 up to four hundred video lottery terminals at a licensed
4 racetrack. A licensed racetrack may apply to the
5 commission for authorization to install and operate more
6 than four hundred video lottery terminals. If the
7 commission determines that the installation of addi-
8 tional machines is in the best interest of the licensed
9 racetrack, the lottery commission and the citizens of this
10 state, the commission may grant permission to install
11 and operate additional machines.

12 (b) All video lottery terminals in licensed racetracks
13 shall be physically located as follows:

14 (1) The video lottery location shall be continuously
15 monitored through the use of a closed circuit television
16 system capable of recording activity for a continuous
17 twenty-four hour period. All video tapes shall be
18 retained for a period of at least thirty days;

19 (2) Access to video lottery terminal locations shall be
20 restricted to persons legally entitled by age to play video
21 lottery games;

22 (3) The licensed racetrack shall submit for commis-
23 sion approval a floor plan of the area or areas where
24 video lottery terminals are to be operated showing
25 terminal locations and security camera mount locations;

26 (4) No video lottery terminal may be relocated without

27 prior approval from the commission; and

28 (5) Operational video lottery terminals may only be
29 located in the building or structure in which the
30 grandstand area of the racetrack is located and in the
31 area of such building or structure where pari-mutuel
32 wagering is permitted under the provisions of article
33 twenty-three, chapter nineteen of this code: *Provided,*
34 That if the commission, before the first day of No-
35 vember, one thousand nine hundred ninety-three, has
36 authorized any racetrack to operate video lottery
37 terminals and offer video lottery games in a location
38 which would not conform to the requirements of this
39 subdivision, the racetrack may continue to use video
40 lottery terminals registered with and approved by the
41 commission at that nonconforming location and to offer
42 such games and any variations or composites of such
43 games as may be approved by the commission: *Provided,*
44 *however,* That after the tenth day of May, one thousand
45 nine hundred ninety-four, for each video lottery termi-
46 nal located in a nonconforming location, the racetrack
47 shall locate and operate one video lottery terminal in the
48 building or structure in which the grandstand area of
49 the racetrack is located and in the area of such building
50 or structure where pari-mutuel wagering is permitted.

51 (c) A licensee shall allow video lottery games to be
52 played only on days when live racing is being conducted
53 at the racetrack and/or on televised racing days:
54 *Provided,* That this restriction shall not apply to any
55 racetrack authorized by the commissioner prior to the
56 first day of November, one thousand nine hundred
57 ninety-three, to operate video lottery terminals and
58 conduct video lottery games.

59 (d) Security personnel shall be present during all
60 hours of operation at each video lottery terminal
61 location. Each license holder shall employ such number
62 of security personnel as the commission determines to
63 be necessary to provide for safe and approved operation
64 of the video lottery facilities and the safety and well-
65 being of the players.

§29-22A-13. Payment of credits; no state liability; method of payment; restrictions on payment of credits; redeemed tickets required to be defaced; liability for video lottery terminal malfunction.

1 (a) No payment for credits awarded on a video lottery
2 terminal may be made unless the ticket meets the
3 following requirements:

4 (1) The ticket is fully legible and printed on paper
5 approved by the commission and the ticket contains all
6 information required by this article;

7 (2) The ticket is not mutilated, altered, unreadable or
8 tampered with in any manner;

9 (3) The ticket is not counterfeit, in whole or in part;
10 and

11 (4) The ticket is presented by a person authorized to
12 play video lottery pursuant to this article.

13 (b) Each licensed racetrack shall designate validation
14 managers and employees authorized to redeem tickets
15 during the business hours of operation. Credits shall be
16 immediately paid in cash or by check when a player
17 presents a valid ticket for payment. No credits may be
18 paid in tokens, chips or merchandise.

19 (c) Licensed racetracks shall not redeem tickets for
20 credits awarded on video lottery terminals which are not
21 located on its premises. A ticket must be presented for
22 payment no later than ten days after the date the ticket
23 is printed. The commission is not liable for the payment
24 of any video lottery ticket credits.

25 (d) All tickets redeemed by a licensed racetrack shall
26 be defaced in a manner which prevents any subsequent
27 presentment and payment.

28 (e) The commission is not responsible for any video
29 lottery terminal malfunction which causes a credit to be
30 wrongfully awarded or denied to players. The licensed
31 racetrack is solely responsible for any wrongful award
32 or denial of credits.

§29-22A-14. Transportation and registration of video lottery.

1 (a) Trucking companies or common carriers shipping
2 video lottery terminals shall be bonded and shall ship
3 all terminals in sealed trailers.

4 (b) A manufacturer transporting one or more video
5 lottery terminals into this state shall, prior to shipment,
6 provide the commission with the following information
7 on forms prescribed by the commission:

8 (1) The full name, address and permit number of the
9 person shipping the video lottery terminals;

10 (2) The method of shipment and the name of the
11 carrier;

12 (3) The full name, address and license number of the
13 licensed racetrack to which the video lottery terminals
14 are being sent and the destination of the terminals if
15 different from the address;

16 (4) The number of video lottery terminals in the
17 shipment;

18 (5) The serial number of each video lottery terminal
19 in the shipment;

20 (6) The model number and description of each video
21 lottery terminal in the shipment; and

22 (7) The expected arrival date of the video lottery
23 terminals at their respective destination within this
24 state.

25 (c) A licensed racetrack which purchases or leases a
26 video lottery terminal shall, upon receipt of the termi-
27 nal, provide the commission with the following informa-
28 tion on forms prescribed by the commission:

29 (1) The full name, address and license number of the
30 licensed racetrack receiving the video lottery terminal;

31 (2) The full name, address and permit number of the
32 manufacturer from whom the video lottery terminal was
33 received;

34 (3) The serial number of each video lottery terminal

35 received;

36 (4) The model number and description of each video
37 lottery terminal received;

38 (5) The expected date and time of video lottery
39 terminal arrival; and

40 (6) The expected date and time of video lottery
41 terminal installation, and if a video lottery terminal is
42 not placed in operation, the licensed racetrack must
43 notify the commission of the location where the terminal
44 is stored.

45 (d) Any person transporting a video lottery terminal
46 from one location to another in this state, other than for
47 repair or servicing purposes, shall notify the commission
48 in writing prior to the transportation of the terminal
49 and provide the following information on forms required
50 by the commission:

51 (1) The full name, address and license number of the
52 person or entity transporting the video lottery terminal;

53 (2) The reason for transporting the video lottery
54 terminal;

55 (3) The full name, address and license number of the
56 person or entity to whom the terminal is being sent and
57 the destination of the video lottery terminal if it is
58 different from the address;

59 (4) The serial and model number of the video lottery
60 terminal;

61 (5) The video lottery terminal license number, if
62 affixed;

63 (6) The manufacturer of the video lottery terminal;
64 and

65 (7) The expected date and time of video lottery
66 terminal installation or reinstallation.

67 (e) Any person shipping video lottery terminals to a
68 destination outside of this state shall, prior to the
69 shipment, provide the commission with the following
70 information on forms prescribed by the commission:

- 71 (1) The full name, address and license or permit
72 number of the person shipping the video lottery
73 terminals;
- 74 (2) The method of shipment and the name of the
75 carrier;
- 76 (3) The full name and address of the person to whom
77 the video lottery terminals are being sent and the
78 destination of the video lottery terminals if different
79 from the address;
- 80 (4) The serial number of each video lottery terminal
81 being shipped;
- 82 (5) The model number and description of the video
83 lottery terminal being shipped;
- 84 (6) The video lottery terminal control number, if
85 affixed;
- 86 (7) The manufacturer of the video lottery terminal
87 being shipped; and
- 88 (8) The expected date and time of the shipment.
- 89 (f) Each video lottery terminal placed in operation in
90 this state must have a commission registration decal
91 permanently affixed, with a video lottery terminal
92 registration control number placed thereon. A decal
93 registration fee is hereby imposed. The amount of the
94 fee shall equal six percent of the total consideration paid
95 to the manufacturer for the use, or the ownership of the
96 video lottery terminal. The fee shall be paid by the
97 manufacturer to the commission prior to the receipt of
98 the registration decal. The registration decal fee shall
99 be collected by the commission and deposited to the
100 credit of the general revenue fund of the state. No
101 person other than authorized commission personnel
102 shall affix or remove a registration control number. The
103 affixing of the commission decal on a video lottery
104 terminal evidences that the decal registration fee has
105 been paid and that the terminal has been registered,
106 inspected and approved for operation in this state. No
107 terminal may be transported out of this state until
108 authorized commission personnel have removed the

109 commission registration control number.

§29-22A-15. **Hearing and appeal procedure; order refusing license or permit or suspending or revoking same; petition for hearing; petition requirements; cost of hearings; subpoenas and subpoenas duces tecum; no stay of suspension or revocation order; hearing date; place of hearing; continuances; absence of petitioner; hearing; argument and briefs; evidence admissible at hearing; record of proceedings; commission's decision; appeal to circuit court.**

1 (a) If the commission refuses to issue a licensee or
2 permit, or suspends or revokes a license or permit, it
3 shall make and enter an order to that effect including
4 a statement of the reasons for that action and shall, by
5 certified mail, return receipt requested, mail a copy of
6 the order to the applicant, or the license or permit
7 holder, or serve the same in the manner provided for
8 the service of legal process.

9 (b) Any applicant or licensee or permit holder
10 adversely affected by such order has the right to a
11 hearing thereon before the commission or a person
12 designated as hearing examiner, if a petition in writing
13 requesting a hearing is served upon the commission
14 within ten days following the receipt of the order by
15 such applicant, or license or permit holder.

16 (c) The petition for a hearing shall be in writing and
17 shall include an original and one copy. The petition must
18 contain the following:

19 (1) A clear and concise statement of each error which
20 the petitioner alleges to have been committed by the
21 commission in refusing to issue a license or permit, or
22 suspending or revoking a license or permit, with each
23 assignment of error being shown in separately num-
24 bered paragraphs.

25 (2) A clear and concise statement of fact upon which
26 the petitioner relies as sustaining each assignment of
27 error.

28 (3) A prayer setting forth the relief sought.

29 (4) The signature of the petitioner.

30 (5) Verification by the petitioner.

31 (d) The person demanding a hearing shall give
32 security for the cost of the hearing in the amount of
33 three hundred dollars in the form of certified check,
34 cashier's check or money order, which shall accompany
35 the petition demanding a hearing.

36 (e) In all hearings held under this article, oral and
37 documentary evidence may be required through the use
38 of subpoenas and subpoenas duces tecum. Subpoenas or
39 subpoenas duces tecum may be issued by either the
40 commission or its duly appointed hearing examiner and
41 the following provisions shall govern and control:

42 (1) Every subpoena or subpoena duces tecum must be
43 served at least five days before the return date thereof,
44 either by personal service made by any person eighteen
45 years of age or older, or by registered or certified mail,
46 but a return acknowledgment signed by the person to
47 whom the subpoena or subpoena duces tecum is directed
48 is required to prove service by registered or certified
49 mail.

50 (2) All subpoenas and subpoenas duces tecum shall be
51 issued in the name of the commission. Service of
52 subpoenas and subpoenas duces tecum issued at the
53 insistence of the commission are the responsibility of the
54 commission, but any party requesting issuance of a
55 subpoena or subpoena duces tecum is responsible for
56 service of any such subpoena. Any person who serves a
57 subpoena or subpoena duces tecum is entitled to the
58 same fee as sheriffs who serve witness subpoenas for the
59 circuit courts of this state and fees for the attendance
60 and travel of witnesses shall be the same as for witnesses
61 before the circuit courts of this state.

62 (3) All fees shall be paid by the commission if the
63 subpoena or subpoena duces tecum is issued, without the
64 request of an interested party, at the insistence of the
65 commission.

66 (4) All fees related to any subpoenas or subpoena
67 duces tecum issued at the insistence of an interested
68 party shall be paid by the interested party.

69 (5) All requests by an interested party for a subpoena
70 and subpoena duces tecum shall be in writing and shall
71 contain a statement acknowledging that the requesting
72 party agrees to pay such fees.

73 (6) Any person receiving a subpoena or subpoena
74 duces tecum issued hereunder shall honor the same as
75 though it were issued by a circuit court of this state and
76 shall appear as a witness or produce such books, records
77 or papers as are requested in response to a subpoena or
78 subpoena duces tecum. In case of disobedience or neglect
79 of any subpoena or subpoena duces tecum served on any
80 person or the refusal of any witness to testify to any
81 matter regarding which he or she may be lawfully
82 interrogated, the circuit court of the county in which the
83 hearing is being held, or the judge thereof in vacation,
84 shall, upon application by the commission, compel
85 obedience by contempt proceedings as in the case of
86 disobedience of the requirements of a subpoena or
87 subpoena duces tecum issued from the circuit court or
88 a refusal to testify therein.

89 (f) The service of a petition for hearing upon the
90 commission shall not operate to suspend the execution
91 of any suspension or revocation of a video lottery license
92 or permit with respect to which a hearing is being
93 demanded.

94 (g) The commission shall set a date for any hearing
95 demanded and notify the person demanding a hearing
96 not later than seven days before the hearing date of the
97 date and time of the hearing, which hearing shall be
98 held within thirty days after receipt of the petition.

99 (h) Hearings may not be delayed by a motion for
100 continuance made less than ten days before the date set
101 for the hearing.

102 (i) The commission may designate a hearing examiner
103 to conduct any hearing.

104 (j) The petitioner may appear individually, or by legal

105 counsel.

106 (k) The petitioner, or his duly authorized representa-
107 tive, may, with the approval of the commission, waive
108 the right to a hearing and agree to submit the case for
109 decision upon the petition and record, with or without
110 a written brief. Waivers and agreements must be in
111 writing or upon the record.

112 (l) The petitioner shall be given an opportunity for
113 argument within the time limits fixed by the commis-
114 sion following submission of evidence. The commission,
115 upon request of the petitioner, shall accept briefs in
116 addition to or in lieu of argument. Briefs must be filed
117 within ten days after the hearing date.

118 (m) The commission may admit any relevant evidence,
119 except that it shall observe the rules of privilege
120 recognized by law. A finding is to be supported by the
121 kind of evidence commonly relied upon by reasonably
122 prudent men in the conduct of their affairs, whether or
123 not the evidence would be admissible before a jury. The
124 commission may exclude any evidence which is irrele-
125 vant, unduly repetitious or lacking in substantial
126 probative effect.

127 (n) There shall be a record made of all hearings held
128 pursuant to this article.

129 (o) After the conclusion of the hearing and within ten
130 days of receipt of the transcript thereof and receipt of
131 any briefs, the person designated by the commission as
132 hearing examiner shall prepare a recommended deci-
133 sion, supported by findings of fact and conclusions of
134 law, affirming, modifying or vacating the earlier order
135 of the commission. Thereafter, the commission, within
136 ten days of receipt of the recommended decision, shall
137 either accept or reject the recommended decision, and
138 if it accepts the decision, it shall cause the director to
139 sign and acknowledge the recommended decision as its
140 own, after having reviewed the transcript and all
141 exhibits attached and affixed thereto; and if it shall
142 reject the same, it shall within ten days of receipt of the
143 recommended decision prepare a decision setting forth
144 its own findings of fact and conclusions of law. In either

145 event, the decision shall be final unless vacated or
146 modified upon judicial review thereof. A copy of the
147 decision shall be served upon each party to the hearing
148 and their attorney of record, if any, in person or by
149 registered or certified mail.

150 (p) A petition for appeal by an applicant, licensee or
151 permit holder may be filed with the circuit court of
152 Kanawha County, West Virginia, or with the circuit
153 court of the county in which the racetrack is located, if
154 filed no later than thirty days after the date upon which
155 the petitioner receives notice of the final decision of the
156 commission.

§29-22A-16. Offenses and penalties.

1 (a) A licensee who places a video lottery game or video
2 lottery terminal into play without authority of the
3 commission to do so is guilty of a misdemeanor, and,
4 upon conviction thereof, shall be confined in jail not
5 more than one year and fined not more than five
6 thousand dollars, except that in the case of a person
7 other than a natural person, the amount of the fine
8 imposed may be not more than twenty-five thousand
9 dollars.

10 (b) A person who operates, carries on or exposes for
11 play a video lottery game or video lottery terminal after
12 the person's license has expired and prior to the actual
13 renewal thereof is guilty of a misdemeanor, and, upon
14 conviction thereof, shall be confined in jail not more
15 than one year and fined not more than five thousand
16 dollars, except that in the case of a person other than
17 a natural person, the amount of the fine imposed may
18 be not more than twenty-five thousand dollars.

19 (c) A licensee who possesses any video lottery terminal
20 or other device, equipment or material which the person
21 knows has been manufactured, distributed, sold, tam-
22 pered with or serviced in violation of the provisions of
23 this article is guilty of a misdemeanor, and, upon
24 conviction thereof, shall be confined in jail not more
25 than one year and fined not more than five thousand
26 dollars, except that in the case of a person other than
27 a natural person, the amount of the fine imposed may
28 be not more than twenty-five thousand dollars.

29 (d) A licensee who knowingly conducts, carries on,
30 operates or exposes for play, or allows to be conducted,
31 carried on, operated or exposed for play any video
32 lottery game, video lottery terminal, or other device,
33 equipment or material which has in any manner been
34 tampered with, or placed in a condition, or operated in
35 a manner, the result of which tends to deceive the public
36 or tends to alter the normal random selection of
37 characteristics or the normal chance of the video lottery
38 game which could determine or alter the result of the
39 game is guilty of a misdemeanor, and, upon conviction
40 thereof, shall be confined in jail not more than one year
41 and fined not more than five thousand dollars, except
42 that in the case of a person other than a natural person,
43 the amount of the fine imposed may be not more than
44 fifty thousand dollars.

45 (e) A licensee who employs or continues to employ an
46 individual, not issued a permit under the provisions of
47 this article, in a position with duties which would
48 require a permit under the provisions of this article is
49 guilty of a misdemeanor, and, upon conviction thereof,
50 shall be confined in jail not more than one year and
51 fined not more than five thousand dollars, except that
52 in the case of a person other than a natural person, the
53 amount of the fine imposed may be not more than
54 twenty-five thousand dollars.

55 (f) A person who, without obtaining the requisite
56 permit as provided for in this article, works or is
57 employed in a position with duties which would require
58 a permit under the provisions of this article is guilty of
59 a misdemeanor, and, upon conviction thereof, shall be
60 confined in jail not more than one year and fined not
61 more than ten thousand dollars.

62 (g) A person who, while a video lottery game is being
63 played at a licensed racetrack, uses, or assists another
64 in the use of, an electronic, electrical, or mechanical
65 device which is designed, constructed, or programmed
66 specifically for use in obtaining an advantage at playing
67 any video lottery game is guilty of a misdemeanor, and,
68 upon conviction thereof, shall be confined in jail not
69 more than six months or fined not more than one

70 thousand dollars, or both.

71 (h) A person who knowingly violates a provision of
72 this article, or the rules of play or game rules of a video
73 lottery game and who profits thereby in an amount
74 equal to one thousand dollars or more, is guilty of a
75 felony, and, upon conviction thereof, shall be imprisoned
76 in the penitentiary not less than one nor more than ten
77 years, or, in the discretion of the court, be confined in
78 jail not more than one year and shall be fined not more
79 than two thousand five hundred dollars. If the person
80 profits thereby in an amount less than one thousand
81 dollars, such person is guilty of a misdemeanor, and,
82 upon conviction thereof, shall be confined in jail for a
83 term not to exceed one year or fined not to exceed two
84 thousand five hundred dollars, or both.

85 (i) A person who fails to perform any of the duties or
86 obligations created and imposed upon them by the
87 provisions of this article shall be subject to a civil
88 penalty as may be determined by the commission, not
89 to exceed ten thousand dollars.

**§29-22A-17. Disagreement as to duties of racing commis-
sion and lottery commission.**

1 In the event of a disagreement between the racing
2 commission and the lottery commission with regard to
3 their respective duties or responsibilities in carrying out
4 the purposes of this article, such disagreement shall be
5 resolved by the secretary of the department of tax and
6 revenue in a manner not inconsistent with the provisions
7 of this article, article twenty-two-a of this chapter and
8 article twenty-three, chapter nineteen of this code.

§29-22A-18. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstance is held invalid,
3 such invalidity shall not affect other provisions or
4 applications of this article, and to this end the provisions
5 of this article are declared to be severable.

§29-22A-19. Termination.

1 This article terminates and shall be of no further
2 force and effect on and after the thirtieth day of June,
3 one thousand nine hundred ninety-seven.

RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE JOINT RESOLUTION 500

(By Mr. Speaker, Mr. Chambers, and Delegates Houvouras,
Martin, Kiss, Burk, Michael and Mezzatesta)

[Adopted March 19, 1994]

Proposing an amendment to the Constitution of the State of West Virginia authorizing the issuing and selling of state bonds in an amount not exceeding three hundred million dollars and the distribution of the proceeds thereof for the construction, extension, expansion, rehabilitation, repair and improvement of water supply and sewage treatment systems and for the acquisition, preparation, construction and improvement of sites for economic development in this state; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred ninety-four, which proposed amendment is to read as follows:

INFRASTRUCTURE IMPROVEMENT AMENDMENT.

I. The Legislature shall have power to authorize the issuing and selling of state bonds not exceeding in the aggregate three hundred million dollars, which shall be in addition to all other bonds heretofore authorized. The proceeds of said bonds hereby authorized to be issued and sold shall be used and appropriated solely for the construction, extension, expansion, rehabilitation, repair and improvement of water supply and sewage treatment systems and for the acquisition, preparation,

construction and improvement of sites for economic development in this state in a manner and subject to such conditions, qualifications and requirements as shall be prescribed by general law. Such bonds may be issued and sold at such time or times and in such amount or amounts as the Legislature shall authorize. When a bond issue as aforesaid is authorized, the Legislature shall, at the same time, provide for the irrevocable dedication, prior to the application of such tax proceeds for any other purpose, of an annual portion of any gross receipts tax which is then currently imposed on businesses that sever, extract and, or produce natural resources within this state which will be sufficient to pay, as it may accrue, the interest on such bonds and the principal thereof, within and not exceeding thirty years and all such taxes so levied and the additional tax hereinafter described shall be irrevocably dedicated to such purpose until such principal and interest on such bonds are finally paid and discharged: *Provided*, That when a bond issue as aforesaid is authorized, the Legislature shall at the same time provide for the collection of an additional annual state tax sufficient to pay as it may accrue the interest on such bonds and the principal thereof within and not exceeding thirty years: *Provided, however*, That such additional tax shall be levied in any year only to the extent that the moneys from the tax previously dedicated herein are insufficient therefor. Any of the covenants, agreements or provisions in the acts of the Legislature levying and dedicating such taxes shall be enforceable in any court of competent jurisdiction by any of the holders of the bonds.

II. The Legislature shall have power to enact legislation to implement the provisions of this amendment.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such amendment is hereby numbered "Amendment No. 3" and designated as the "Infrastructure Improvement Amendment" and the purpose of the proposed amendment is summarized as follows: "To allow the issuing and selling of not more than three

hundred million dollars in general obligation bonds of the state, the proceeds of which will be used (1) to finance the construction and improvement of water systems and (2) to finance sewage systems and the acquisition and improvement of economic development sites in this state; to dedicate as the initial source of repayment of the principal of and interest on the bonds, a portion of the existing gross receipts tax on the activity of severing, extracting or producing natural resources, and providing for the levy of additional taxes sufficient to pay such bonds to the extent that the amounts dedicated as aforesaid are insufficient therefor.”

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 1993

CHAPTER 1

(S. B. 102—By Senators Burdette, Mr. President, and Boley)

[By Request of the Executive]

[Passed October 18, 1993; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and expiring items of the existing appropriations of the department of education, state department of education—state aid to schools, “former” account no. 2950, “WVFIMS” account no.: fund no. 0317, fiscal year 1994, organization no. 0402; and the department of military affairs and public safety, regional jail and correctional facility authority, “former” account no. 6010, “WVFIMS” account no.: fund no. 0536, fiscal year 1994, organization no. 0615, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of the state department of education—state aid to schools, “former” account no. 2950, “WVFIMS” account no.: fund no. 0317, fiscal year 1994, organization no. 0402; and the department of military affairs and public safety, regional jail and correctional facility authority, “former” account no. 6010, “WVFIMS” account no.: fund no. 0536, fiscal year 1994, organization no. 0615, chapter one, acts of the Legislature, first extraordinary session, one

thousand nine hundred ninety-three, known as the budget bill, be supplemented, amended, reduced and expired to read as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	DEPARTMENT OF EDUCATION		
4	<i>51—State Department of Education—</i>		
5	<i>State Aid to Schools</i>		
6	(WV Code Chapters 18 and 18A)		
7	“Former” Account No. 2950		
8	“WVFIMS” Account No.		
9	Fund <u>0317</u>	FY <u>1994</u>	Org <u>0402</u>
10			General
11		Acti-	Revenue
12		vi-	Fund
		ty	
13	1	Professional Educators.....	151 \$ 623,515,070
14	2	Service Personnel.....	152 190,442,382
15	3	Fixed Charges.....	153 70,698,024
16	4	Transportation.....	154 25,724,251
17	5	Administration.....	155 6,750,000
18	6	Other Current Expenses.....	022 90,961,343
19	7	Improve Instructional	
20	8	Programs.....	156 32,520,994
21	9	Unclassified.....	099 -0-
22	10	Basic Foundation Allowances	1,040,612,064
23	11	Less Local Share.....	332 (200,429,864)
24	12	Total Basic State Aid.....	840,182,200
25	13	Public Employees	
26	14	Insurance Match.....	012 112,027,065
27	15	School Building Authority ...	453 23,440,493
28	16	Teachers’ Retirement System	019 154,908,752
29	17	Total.....	\$1,130,558,510

1 DEPARTMENT OF MILITARY AFFAIRS
 2 AND PUBLIC SAFETY
 3 *80—Regional Jail and Correctional*
 4 *Facility Authority*
 5 (WV Code Chapter 31)
 6 “Former” Account No. 6010
 7 “WVFIMS” Account No.
 8 Fund 0536 FY 1994 Org 0615
 9 1 Debt Service—Total 310 \$ -0-

10 The purpose of this supplemental appropriation bill
 11 is to amend chapter one, acts of the Legislature, first
 12 extraordinary session, one thousand nine hundred
 13 ninety-three, by reducing or expiring the items of
 14 appropriation in the aforesaid accounts in the fiscal year
 15 of 1993-1994 because the expenditure of funds from a
 16 general revenue appropriation for debt service on
 17 revenue bonds has been declared unconstitutional by the
 18 West Virginia supreme court of appeals.

CHAPTER 2

(Com. Sub. for S. B. 100—By Senators Burdette, Mr. President, and Boley)
 [By Request of the Executive]

[Passed October 18, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section ten, article nine-a, chapter eighteen of said code; to amend and reenact sections two, six, eight, thirteen and fifteen, article nine-d of said chapter; and to further amend said article by adding thereto a new section, designated section seventeen, all relating to dedicating consumers sales tax proceeds for the payment of bonds issued and to be issued by the school building authority; providing for certification of

the amount needed to pay bond principal and interest for each fiscal year; providing for the payment of principal and interest on bonds issued prior to the first day of January, one thousand nine hundred ninety-four, or bonds issued for the refunding of bonds issued prior to that date; creating a special fund for the deposit of dedicated consumers sales tax revenues; providing for the issuance of bonds for which that dedicated revenue is pledged for repayment; limiting the permissible expenditures from the school building capital improvements fund and the school building debt service fund; limiting the total amount of debt which may be issued by the school building authority; and establishing limitations on contracting for the sale of bonds by the authority.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 11. Taxation.
- 18. Education.

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-30. Proceeds of tax; dedication of certain revenues.

- 1 Beginning the first day of November, one thousand
- 2 nine hundred ninety-three, and continuing on the first
- 3 day of each succeeding month thereafter, there shall be
- 4 dedicated monthly from the collections of this tax, prior
- 5 to the payment or commitment of the proceeds or
- 6 collections of this tax for any other purpose whatsoever,
- 7 an amount equal to one eighth of the projected annual
- 8 principal and interest requirements on any and all

9 revenue bonds and refunding bonds issued, or to be
10 issued, on or after the first day of January, one thousand
11 nine hundred ninety-four, for which bond moneys in the
12 school building debt service fund have been pledged, or
13 will be pledged, for repayment pursuant to section six,
14 article nine-d, chapter eighteen of this code, such
15 principal and interest requirements having been
16 certified to the tax commissioner in accordance with the
17 provisions of said section: *Provided*, That in no event
18 shall the total dedicated collections of this tax to be paid
19 into the school building debt service fund, as provided
20 in this section, in any fiscal year exceed the lesser of the
21 principal and interest requirements certified to the tax
22 commissioner as aforesaid, or twelve million dollars.
23 The amount dedicated shall be deposited on a monthly
24 basis into the school building debt service fund created
25 pursuant to section six, article nine-d, chapter eighteen
26 of this code.

CHAPTER 18. EDUCATION.

Article

- 9A. Public School Support.
- 9D. School Building Authority.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§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;

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. Moneys allocated by provision of this section
34 shall be used to improve instructional programs
35 according to a plan for instructional improvement which
36 the affected county board shall file with the state board
37 by the first day of August of each year, to be approved
38 by the state board by the first day of September of that
39 year if such plan substantially complies with standards
40 to be adopted by the state board: *Provided,* That
41 notwithstanding any other provision of this code to the
42 contrary, moneys allocated by provision of this section
43 may also be used in the implementation and mainte-
44 nance of the uniform integrated regional computer
45 information system; and

46 (3) For the school year beginning on the first day of
47 July, one thousand nine hundred ninety-three, up to
48 twenty-five percent of this allocation may be used to
49 employ professional educators and/or service personnel
50 in counties after all applicable provisions of sections four
51 and five of this article have been fully utilized.

52 Prior to the use of any funds from this section for
53 personnel costs, the county board must receive author-
54 ization from the state superintendent of schools. The
55 state superintendent shall require the district board to

56 demonstrate: (1) The need for the allocation; (2)
57 efficiency and fiscal responsibility in staffing; and (3)
58 sharing of services with adjoining counties and the
59 regional educational service agency for that county in
60 the use of the total local district board budget. District
61 boards shall make application for available funds by the
62 first day of May: *Provided*, That for the school year
63 beginning on the first day of July, one thousand nine
64 hundred ninety-three only, district boards shall make
65 application for available funds by the fifteenth day of
66 June, one thousand nine hundred ninety-three. On or
67 before the first day of June, the state superintendent
68 shall review all applications and notify applying district
69 boards of the distribution of the allocation: *Provided*,
70 *however*, That for the school year beginning on the first
71 day of July, one thousand nine hundred ninety-three
72 only, the state superintendent shall review all applica-
73 tions and notify applying district boards of the distri-
74 bution of the allocation on or before the first day of July,
75 one thousand nine hundred ninety-three. Such funds
76 shall be distributed during the fiscal year as approp-
77 riate. The state superintendent shall require the county
78 board to demonstrate the need for an allocation for
79 personnel based upon the county's inability to meet the
80 requirements of state law or state board policy: *Provided*
81 *further*, That the funds available for personnel under
82 this section may not be used to increase the total number
83 of professional noninstructional personnel in the central
84 office beyond four. The instructional improvement plan
85 shall be made available for distribution to the public at
86 the office of each affected county board.

87 (b) Commencing with the school year beginning on the
88 first day of July, one thousand nine hundred ninety-
89 three, an amount not less than the amount required to
90 meet debt service requirements on any revenue bonds
91 issued prior to the first day of January, one thousand
92 nine hundred ninety-four, and the debt service require-
93 ments on any revenue bonds issued for the purpose of
94 refunding revenue bonds issued prior to the first day of
95 January, one thousand nine hundred ninety-four, shall
96 be paid into the school building capital improvements
97 fund created by section six, article nine-d of this

98 chapter, and shall be used solely for the purposes of said
 99 article. The school building capital improvements fund
 100 shall not be utilized to meet the debt services require-
 101 ment on any revenue bonds or revenue refunding bonds
 102 for which moneys contained within the school building
 103 debt services fund have been pledged for repayment
 104 pursuant to said section.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-2. Definitions.

§18-9D-6. School building capital improvements fund in state treasury; school building debt service fund in the state treasury; collections to be paid into special funds; authority to pledge such collections as security for revenue bonds; authority to finance projects on a cash basis.

§18-9D-8. Issuance of revenue bonds; use of proceeds; bonds exempt from taxation.

§18-9D-13. Sinking fund for payment of bonds.

§18-9D-15. Legislative intent; distribution of money.

§18-9D-17. Limitations on contracts for sale of bonds or other securities.

§18-9D-2. Definitions.

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

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

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

11 (3) "Project" or "capital improvement project" means
 12 the new construction, major renovation, repair and
 13 safety upgrading of facilities, buildings and structures
 14 for school purposes including the acquisition of land for
 15 current or future use in connection therewith, equip-
 16 ment, machinery, furnishings, installation of utilities
 17 and other similar items convenient in connection with
 18 placing the foregoing into operation, but may not
 19 include such items as books, fuel, supplies and other
 20 items which are customarily deemed to result in a
 21 current operating charge;

22 (4) "Cost of project" means the cost of construction,
23 renovation, repair and safety upgrading of facilities,
24 buildings and structures for school purposes; the cost of
25 land, equipment, machinery, furnishings, installation of
26 utilities and other similar items convenient in connec-
27 tion with placing the foregoing into operation; and the
28 cost of financing, interest during construction, profes-
29 sional service fees and all other charges or expenses
30 necessary, appurtenant or incidental to the foregoing,
31 including the cost of administration of this article;

32 (5) "Revenue" or "revenues" means moneys deposited
33 in the school building capital improvements fund
34 pursuant to the operation of section ten, article nine-a
35 of this chapter; moneys deposited in the school building
36 debt service fund pursuant to the operation of section
37 thirty, article fifteen, chapter eleven of this code; any
38 moneys received, directly or indirectly, from any source
39 for the use of all or any part of any project completed
40 pursuant to this article; and any other moneys received
41 by the authority for the purposes of this article;

42 (6) "Facilities plan" means the regional plan for school
43 facilities required prior to the distribution of state funds
44 to any county board pursuant to section fifteen of this
45 article; and

46 (7) "Region" means the area encompassed within and
47 serviced by a regional educational service agency
48 established pursuant to section twenty-six, article two of
49 this chapter.

**§18-9D-6. School building capital improvements fund in
state treasury; school building debt service
fund in the state treasury; collections to be
paid into special funds; authority to pledge
such collections as security for revenue
bonds; authority to finance projects on a
cash basis.**

1 (a) There is continued in the state treasury a school
2 building capital improvements fund to be expended by
3 the authority as provided in this article.

4 The school building authority shall have authority to

5 pledge all or such part of the revenues paid into the
6 school building capital improvements fund as may be
7 needed to meet the requirements of any revenue bond
8 issue or issues authorized by this article prior to the first
9 day of January, one thousand nine hundred ninety-four,
10 or revenue bonds issued to refund revenue bonds issued
11 prior to that date, including the payment of principal
12 of, interest and redemption premium, if any, on such
13 revenue bonds and the establishing and maintaining of
14 a reserve fund or funds for the payment of the principal
15 of, interest and redemption premium, if any, on such
16 revenue bond issue or issues when other moneys pledged
17 may be insufficient therefor, including such additional
18 protective pledge of revenues as the authority in its
19 discretion has provided by resolution authorizing the
20 issue of such bonds or in any trust agreement made in
21 connection therewith. The authority may further
22 provide in such resolution and in such trust agreement
23 for such priorities on the revenues paid into such school
24 building capital improvements fund as may be neces-
25 sary for the protection of the prior rights of the holders
26 of bonds issued at different times under the provisions
27 of this article.

28 Any balance remaining in the school building capital
29 improvements fund after the authority has issued bonds
30 authorized by this article, and after the requirements of
31 all funds including reserve funds established in connec-
32 tion with the bonds issued pursuant to this article have
33 been satisfied, may be used for the redemption of any
34 of the outstanding bonds issued hereunder which by
35 their terms are then redeemable, or for the purchase of
36 such bonds at the market price, but not exceeding the
37 price, if any, at which such bonds shall in the same year
38 be redeemable, and all bonds redeemed or purchased
39 shall forthwith be canceled and shall not again be
40 issued.

41 The school building authority, in its discretion, may
42 use the moneys in the school building capital improve-
43 ments fund to finance the cost of projects on a cash basis.
44 Any pledge of moneys in such fund for revenue bonds
45 shall be a prior and superior charge on such fund over

46 the use of any of the moneys in such fund to pay for the
47 cost of any project on a cash basis: *Provided*, That any
48 expenditures from such fund, other than for the
49 retirement of revenue bonds, may only be made by the
50 authority in accordance with the provisions of this
51 article.

52 (b) There is hereby created in the state treasury a
53 special fund named the school building debt service
54 fund into which shall be deposited on and after the first
55 day of November, one thousand nine hundred ninety-
56 three, the amounts specified in section thirty, article
57 fifteen, chapter eleven of this code. All amounts
58 deposited in the fund shall be pledged to the repayment
59 of the principal, interest and redemption premium, if
60 any, on any revenue bonds or refunding revenue bonds
61 authorized by this article: *Provided*, That moneys so
62 deposited shall not be pledged to the repayment of any
63 revenue bonds issued prior to the first day of January,
64 one thousand nine hundred ninety-three, or with respect
65 to revenue bonds issued for the purpose of refunding
66 revenue bonds issued prior to the first day of January,
67 one thousand nine hundred ninety-four. The authority
68 may further provide in the resolution and in the trust
69 agreement for priorities on the revenues paid into the
70 school building debt service fund as may be necessary
71 for the protection of the prior rights of the holders of
72 bonds issued at different times under the provisions of
73 this article. On or prior to the first day of January of
74 each year, commencing the first day of January, one
75 thousand nine hundred ninety-four, the authority shall
76 certify to the state tax commissioner the principal and
77 interest requirements for the following fiscal year on
78 any revenue bonds issued on or after the first day of
79 January, one thousand nine hundred ninety-four, and for
80 which moneys deposited in the school building debt
81 service fund have been pledged, or will be pledged, for
82 repayment pursuant to this section: *Provided, however*,
83 That before the first day of November, one thousand
84 nine hundred ninety-three, the authority shall also
85 certify to the tax commissioner of the state the principal
86 and interest requirements for the fiscal year ending on
87 the thirtieth day of June, one thousand nine hundred

88 ninety-four, on any revenue bonds issued, or to be issued,
89 on or after the first day of January, one thousand nine
90 hundred ninety-four.

91 After the authority has issued bonds authorized by
92 this article, and after the requirements of all funds have
93 been satisfied, including reserve funds established in
94 connection with the bonds issued pursuant to this
95 article, any balance remaining in the school building
96 debt service fund may be used for the redemption of any
97 of the outstanding bonds issued hereunder which, by
98 their terms, are then redeemable or for the purchase of
99 the outstanding bonds at the market price, but not to
100 exceed the price, if any, at which redeemable, and all
101 bonds redeemed or purchased shall be forthwith
102 canceled and shall not again be issued.

103 (c) The Legislature hereby finds and declares that the
104 supreme court of appeals of West Virginia has held that
105 the revenue bonds authorized under the school building
106 authority act, as enacted in this article prior to the
107 twentieth day of July, one thousand nine hundred
108 ninety-three, constituted an indebtedness of the state in
109 violation of section four, article ten of the constitution
110 of West Virginia. The Legislature further finds and
111 declares that the financial capacity of a county to
112 construct facilities depends on the county's bonding
113 capacity (local property wealth) and on voter willingness
114 to pass bond issues instead of criteria related to
115 educational needs, or upon the ability of the school
116 building authority created in this article to issue bonds
117 that comply with said holding of the West Virginia
118 supreme court of appeals. The Legislature hereby
119 further finds and declares that this section, as well as
120 section thirty, article fifteen, chapter eleven of this code,
121 have been reenacted during the second extraordinary
122 session of the West Virginia Legislature in the year one
123 thousand nine hundred ninety-three, in an attempt to
124 comply with said holding of the supreme court of
125 appeals of West Virginia. The Legislature hereby
126 further finds and declares that the continued construc-
127 tion and improvement of school building facilities and
128 the dedication of the consumers sales tax pursuant to

129 said section to finance such construction and improve-
130 ment are for the use and benefit of the state, its counties,
131 its municipalities and its other political subdivisions,
132 and such construction and improvement serves the vital
133 public purpose of providing for a thorough and efficient
134 system of free schools in this state. The Legislature
135 hereby further finds and declares that it intends,
136 through the reenactment of this section and section
137 thirty, article fifteen, chapter eleven of this code, to
138 dedicate a source of state revenue to a special fund for
139 the purpose of paying the debt service on bonds and
140 refunding bonds issued subsequent to the first day of
141 January, one thousand nine hundred ninety-four, the
142 proceeds of which will be utilized for the construction
143 and improvement of school building facilities. The
144 Legislature further finds and declares that the vast
145 majority of free schools in West Virginia are owned by
146 the counties, and that the reenactment of this section
147 and section thirty, article fifteen, chapter eleven of this
148 code meets the requirements of section six-a, article ten
149 of the constitution of West Virginia. The Legislature
150 hereby further finds and declares that it intends,
151 through the reenactment of this section and section
152 thirty, article fifteen, chapter eleven of this code, to
153 comply with the provisions of section four, article ten,
154 section six, article ten, section six-a, article ten, and
155 section one, article twelve of the constitution of West
156 Virginia.

**§18-9D-8. Issuance of revenue bonds; use of proceeds;
bonds exempt from taxation.**

1 The maximum aggregate face value of bonds that
2 may be issued by the authority, for which the moneys
3 in the school building debt service fund are to be
4 pledged, is one hundred eighty-five million dollars. The
5 issuance of revenue bonds under the provisions of this
6 article shall be authorized from time to time by
7 resolution or resolutions of the school building authority,
8 which shall set forth the proposed projects and provide
9 for the issuance of bonds in amounts sufficient, when
10 sold as hereinafter provided, to provide moneys consi-
11 dered sufficient by the authority to pay such costs, less

12 the amounts of any other funds available for said costs
13 or from any appropriation, grant or gift therefor:
14 *Provided*, That bond issues from which bond revenues
15 are to be distributed in accordance with section fifteen
16 of this article shall not be required to set forth the
17 proposed projects in the resolution. Such resolution shall
18 prescribe the rights and duties of the bondholders and
19 the school building authority, and for such purpose may
20 prescribe the form of the trust agreement hereinafter
21 referred to. The bonds may be issued from time to time,
22 in such amounts; shall be of such series; bear such date
23 or dates; mature at such time or times not exceeding
24 forty years from their respective dates; bear interest at
25 such rate or rates; be in such denominations; be in such
26 form, either coupon or registered, carrying such
27 registration, exchangeability and interchangeability
28 privileges; be payable in such medium of payment and
29 at such place or places within or without the state; be
30 subject to such terms of redemption at such prices not
31 exceeding one hundred five percent of the principal
32 amount thereof; and be entitled to such priorities on the
33 revenues paid into the fund pledged for repayment of
34 the bonds as may be provided in the resolution autho-
35 rizing the issuance of the bonds or in any trust
36 agreement made in connection therewith. The bonds
37 shall be signed by the governor, and by the president
38 or vice president of the authority, under the great seal
39 of the state, attested by the secretary of state, and the
40 coupons attached thereto shall bear the facsimile
41 signature of the president or vice president of the
42 authority. In case any of the officers whose signatures
43 appear on the bonds or coupons cease to be such officers
44 before the delivery of such bonds, such signatures shall
45 nevertheless be valid and sufficient for all purposes the
46 same as if such officers had remained in office until such
47 delivery. Such revenue bonds shall be sold in such
48 manner as the authority may determine to be for the
49 best interests of the state.

50 Any pledge of revenues for such revenue bonds made
51 by the school building authority shall be valid and
52 binding between the parties from the time the pledge
53 is made; and the revenues so pledged shall immediately

54 be subject to the lien of such pledge without any further
55 physical delivery thereof or further act. The lien of such
56 pledge shall be valid and binding against all parties
57 having claims of any kind in tort, contract or otherwise,
58 irrespective of whether such parties have notice of the
59 lien of such pledge, and such pledge shall be a prior and
60 superior charge over any other use of such revenues so
61 pledged.

62 The proceeds of such bonds shall be used solely for
63 the purpose or purposes as may be generally or
64 specifically set forth in the resolution authorizing those
65 bonds and shall be disbursed in such manner and with
66 such restrictions, if any, as the authority may provide
67 in the resolution authorizing the issuance of such bonds
68 or in the trust agreement hereinafter referred to
69 securing the same. If the proceeds of such bonds, by
70 error in calculations or otherwise, shall be less than the
71 cost of any projects specifically set forth in the resolu-
72 tion, additional bonds may in like manner be issued to
73 provide the amount of the deficiency; and unless
74 otherwise provided for in the resolution or trust
75 agreement hereinafter mentioned, such additional bonds
76 shall be considered to be of the same issue, and shall be
77 entitled to payment from the same fund, without
78 preference or priority, as the bonds before issued for
79 such projects. If the proceeds of bonds issued for such
80 projects exceed the cost thereof, the surplus may be used
81 for such other projects as the school building authority
82 may determine or in such other manner as the resolution
83 authorizing such bonds may provide. Prior to the
84 preparation of definitive bonds, the authority may,
85 under like restrictions, issue temporary bonds with or
86 without coupons, exchangeable for definitive bonds upon
87 the issuance of such definitive bonds.

88 After the issuance of any of such revenue bonds, the
89 revenues pledged therefor shall not be reduced as long
90 as any of such revenue bonds are outstanding and
91 unpaid except under such terms, provisions and condi-
92 tions as shall be contained in the resolution, trust
93 agreement or other proceedings under which such
94 revenue bonds were issued.

95 Such revenue bonds and the revenue refunding bonds
96 and bonds issued for combined purposes shall, together
97 with the interest thereon, be exempt from all taxation
98 by the state of West Virginia, or by any county, school
99 district, municipality or political subdivision thereof.

100 To meet the operational costs of the school building
101 authority, the school building authority may transfer to
102 a special revenue account in the state treasury interest
103 on any debt service reserve funds created within any
104 resolution authorizing the issue of bonds or any trust
105 agreement made in connection therewith, for expendi-
106 ture in accordance with legislative appropriation or
107 allocation of appropriation.

§18-9D-13. Sinking fund for payment of bonds.

1 (a) From the school building capital improvements
2 fund the school building authority shall make periodic
3 payments in an amount sufficient to meet the require-
4 ments of any issue of bonds sold under the provisions
5 of this article prior to the first day of January, one
6 thousand nine hundred ninety-four, or for refunding
7 bonds issued prior to that date as may be specified in
8 the resolution of the authority authorizing the issue
9 thereof and in any trust agreement entered into in
10 connection therewith. The payments so made shall be
11 placed as specified in such resolution or trust agreement
12 in a special sinking fund which is hereby pledged to and
13 charged with the payment of the principal of the bonds
14 of such issue and the interest thereon, and to the
15 redemption or repurchase of such bonds, such sinking
16 fund to be a fund for all bonds of such issue without
17 distinction or priority of one over another, except as may
18 be provided in the resolution authorizing such issue of
19 bonds. The moneys in the special sinking fund, less such
20 reserve for payment of principal and interest and
21 redemption premium, if any, as may be required by the
22 resolution of the school building authority, authorizing
23 the issue or any trust agreement made in connection
24 therewith, may be used for the redemption of any of the
25 outstanding bonds payable from such fund which by
26 their terms are then redeemable, or for the purchase of
27 bonds at the market price, but at not exceeding the

28 price, if any, at which such bonds shall in the same year
29 be redeemable; and all bonds redeemed or purchased
30 shall forthwith be canceled and shall not again be
31 issued.

32 (b) From the school building debt service fund, the
33 authority shall make periodic payments in an amount
34 sufficient to meet the requirements of any issue of bonds
35 sold under the provisions of this article on or after the
36 first day of January, one thousand nine hundred ninety-
37 four, and for which the authority has pledged revenues
38 in such fund for the payment of such bonds, as may be
39 specified in the resolution of the authority authorizing
40 the issue thereof or in any trust agreement entered into
41 in connection therewith. The payments so made shall be
42 placed as specified in the resolution or trust agreement
43 in a special sinking fund which is hereby pledged to and
44 charged with the payment of the principal of the bonds
45 of the issue and the interest thereon, and to the
46 redemption or repurchase of the bonds, the sinking fund
47 to be a fund for all bonds of the particular issue without
48 distinction or priority of one over another, except as may
49 be provided in the resolution authorizing the issuance
50 of the bonds. The moneys in the special sinking fund,
51 less the reserve for payment of principal and interest
52 and redemption premium, if any, as may be required
53 by the resolution of the school building authority
54 authorizing the issue or any trust agreement made in
55 connection therewith, may be used for redemption of
56 any of the outstanding bonds payable from the fund
57 which by their terms are then redeemable, or for the
58 purchase of bonds at the market price, but not exceed-
59 ing the price, if any, at which such bonds shall in the
60 same year be redeemable; and all bonds redeemed or
61 purchased shall forthwith be canceled and shall not
62 again be issued.

§18-9D-15. Legislative intent; distribution of money.

1 (a) It is the intent of the Legislature to empower the
2 school building authority to facilitate and provide state
3 funds for the construction and maintenance of school
4 facilities so as to meet the educational needs of the
5 people of this state in an efficient and economical

6 manner. The authority shall make funding determina-
7 tions in accordance with the provisions of this article
8 and shall assess existing school facilities and each
9 facilities plan in relation to the needs of the individual
10 student, the general school population, the communities
11 served by the facilities and facility needs statewide.

12 (b) An amount that is no more than three percent of
13 the sum of moneys that are determined by the authority
14 to be available for distribution during the then current
15 fiscal year from: (1) Moneys paid into the school building
16 capital improvements fund pursuant to section ten,
17 article nine-a of this chapter; (2) the issuance of revenue
18 bonds for which moneys in the school building capital
19 improvements fund or the school building debt service
20 fund are pledged as security; and (3) any other moneys
21 received by the authority may be allocated and may be
22 expended by the authority for projects that service the
23 educational community statewide or, upon application
24 by the state board, for educational programs that are
25 under the jurisdiction of the state board.

26 Fifty percent of the remaining available funds shall
27 be allocated and distributed to each county board on the
28 basis of its net enrollment as defined in section two,
29 article nine-a of this chapter: *Provided*, That such
30 moneys shall not be distributed to any county board
31 whose region does not have an approved region-wide
32 facilities plan or to any county board that is not
33 prepared to commence expenditures of such funds
34 during the fiscal year in which the moneys are distrib-
35 uted: *Provided, however*, That any moneys allocated to
36 a county board and not distributed to that county board
37 shall be deposited in an account to the credit of that
38 county board, such principal amount to remain to the
39 credit of and available to the county board for a period
40 of three years. Any moneys which are unexpended after
41 a three-year period shall be redistributed on the basis
42 of net enrollment to those county boards then eligible for
43 the receipt of net enrollment distributions in that fiscal
44 year.

45 The remaining fifty percent of moneys available for
46 distribution shall be allocated and expended on the basis

47 of need and efficient use of resources, such basis to be
48 determined by the authority in accordance with the
49 provisions of section sixteen of this article.

50 No local matching funds shall be required under the
51 provisions of this subsection, and any county board may
52 use the state moneys provided herein in conjunction with
53 local funds derived from bonding or other source. Any
54 county board may dedicate any allocations of state
55 moneys pursuant to this subsection to the payment of
56 local bonds used for purposes encompassed in an
57 approved facilities plan or for the payment of bonds that
58 are issued by the authority for the benefit of that county
59 that are in addition to the bond moneys distributed in
60 accordance with this subsection.

61 Moneys made available pursuant to this subsection
62 that shall be expended on projects that benefit more
63 than one district shall be apportioned among the
64 districts in accordance with the formula encompassed in
65 that portion of the facilities plan that addresses the
66 project designed to benefit more than one district.

67 (c) To encourage regional educational service agencies
68 and county boards to proceed promptly with facilities
69 planning and to prepare for the expenditure of any state
70 moneys derived from the sources described in subsection
71 (b) of this section, any county board failing to expend
72 money within three years of the allocation thereto shall
73 forfeit such allocation and thereafter shall be ineligible
74 for further net enrollment or other allocations pursuant
75 to said subsection until the county board is ready to
76 expend funds in accordance with an approved facilities
77 plan. Any amount so forfeited shall be added to the total
78 funds available for allocation and distribution in the
79 next ensuing fiscal year.

80 (d) Distribution to the county boards may be in a lump
81 sum or in accordance with a schedule of payments
82 adopted by the authority pursuant to such guidelines as
83 it shall adopt.

**§18-9D-17. Limitations on contracts for sale of bonds or
other securities.**

1 (a) When issuing its bonds or other securities pursu-
2 ant to the provisions of this article, the school building
3 authority shall not employ or contract with any person
4 or business entity acting as an investment adviser,
5 underwriter, broker, dealer, government securities
6 broker, government securities dealer, transfer agent,
7 attorney, bond counsel, trustee or accountant, if the
8 authority finds, on the record after notice and opportu-
9 nity for hearing, that employing or contracting with such
10 person or business entity would be contrary to the public
11 interest, and that such person or business entity, or any
12 person associated with such person or entity, whether
13 prior to or subsequent to becoming so associated, has
14 been convicted, within the five years preceding the date
15 when such bonds or other securities are proposed to be
16 issued, of a felony or misdemeanor under the laws of this
17 state, a sister state or the United States of America,
18 involving the sale or purchase of any government
19 security, and if the authority further finds that the
20 offense committed involves:

21 (1) The bribery of a public officer or employee or a
22 member of the immediate family of a public officer or
23 employee;

24 (2) Perjury;

25 (3) Larceny;

26 (4) Any substantially equivalent activity, however
27 denominated by the laws of the relevant jurisdiction; or

28 (5) The conspiracy to commit any such offense.

29 (b) When issuing its bonds or other securities, the
30 school building authority shall not employ or contract
31 with any person or business entity acting as an invest-
32 ment adviser, underwriter, broker, dealer, government
33 securities broker, government securities dealer, transfer
34 agent, attorney, bond counsel, trustee or accountant, if
35 the authority finds, on the record after notice and
36 opportunity for hearing, that employing or contracting
37 with such person or business entity would be contrary
38 to the public interest, and that such person or business
39 entity, or any person associated with such person or

40 entity, whether prior to or subsequent to becoming so
41 associated, has, within the five years preceding the date
42 when such bonds or other securities are proposed to be
43 issued:

44 (1) Directly or indirectly given, offered or promised
45 money, services, or any other thing of value having a
46 value of greater than one hundred dollars to a public
47 officer or employee or a member of the immediate
48 family of a public officer or employee when the money,
49 service or other thing of value constituted a material
50 part of the factual basis upon which the public officer
51 or employee or a member of the immediate family of the
52 public officer or employee was convicted of a felony or
53 misdemeanor under the laws of this state, a sister state
54 or the United States of America, involving the sale or
55 purchase of any government security; or

56 (2) Willfully aided, abetted, counseled, commanded,
57 induced, or procured a violation which constitutes the
58 basis for a misdemeanor or felony conviction as des-
59 cribed in subsection (a) of this section or subdivision (1)
60 of this subsection.

61 (c) When issuing its bonds or other securities pursuant
62 to the provisions of this article, the school building
63 authority shall not employ or contract with any person
64 or business entity acting as an investment adviser,
65 underwriter, broker, dealer, government securities
66 broker, government securities dealer, transfer agent,
67 attorney, bond counsel, trustee or accountant, if the
68 authority finds, on the record after notice and opportu-
69 nity for hearing, that employing or contracting with such
70 person or business entity would be contrary to the public
71 interest, and that such person or business entity, or any
72 person associated with such person or entity, whether
73 prior to or subsequent to becoming so associated, has
74 conducted or is conducting any business or transaction
75 in which a financial interest is held by a public officer
76 or employee, agent or attorney of the government of this
77 state, or a member of the immediate family of such
78 persons, if the public officer or employee, agent or
79 attorney is in a position whereby he or she may
80 personally and substantially influence the discretionary

81 actions of the authority in connection with the issuance
82 of bonds or other securities, through decision, approval,
83 disapproval, recommendation, the rendering of advice,
84 investigation, or otherwise: *Provided*, That the ethics
85 commission shall, on or before the fifteenth day of
86 December, one thousand nine hundred ninety-three,
87 promulgate an emergency rule to establish guidelines
88 and standards for the implementation of this subsection
89 by the authority.

90 (d) For purposes of this section, the term "immediate
91 family" means a spouse and any unemancipated child of
92 a person.

93 (e) The school building authority may declare void
94 and rescind any contract with any person or business
95 entity acting as an investment adviser, underwriter,
96 broker, dealer, government securities broker, govern-
97 ment securities dealer, transfer agent, attorney, bond
98 counsel, trustee or accountant, if the authority finds, on
99 the record after notice and opportunity for hearing, that
100 continuing to employ or contract with such person or
101 business entity would be contrary to the public interest,
102 and that such person or business entity, or any person
103 associated with such person or entity, whether prior to
104 or subsequent to becoming so associated, has engaged in
105 conduct which would prohibit the authority, under the
106 provisions of this section, from entering into a contract
107 with such person or business entity if the contract was
108 yet to be executed.

Parliamentarian's Note: In a mandamus proceeding, the Supreme Court of the State declined to issue a writ of mandamus and held that this act violated Section 4, Article X of the Constitution. (State ex rel. Marockie v. Wagoner (1993), 190 W. Va. 467, 438 S.E. 2d 811).

CHAPTER 3

(Com. Sub. for S. B. 101—By Senators Burdette, Mr. President, and Boley)
[By Request of the Executive]

[Passed October 18, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one,

as amended, by adding thereto a new section, designated section thirty-a; to amend and reenact section ten, article twenty, chapter thirty-one of said code; and to further amend said article by adding thereto a new section, designated section twenty-eight, all relating to dedicating consumers sales tax proceeds for the payment of bonds to be issued by the regional jail and correctional facility authority; providing for the disposition of the balance of collections of said tax; creating a special fund for the deposit of dedicated tax proceeds; providing for the issuance of bonds for which the dedicated revenue is pledged for repayment; providing for the repayment of lease-purchase obligations to be incurred; setting forth legislative findings and intent; limiting the total face value of bonds which may be issued; and providing limitations on contracting for the sale of bonds by the authority.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.

31. Corporations.

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-30a. Proceeds of tax; dedication of certain revenues.

1 After the proceeds of the tax under this article have
2 been dedicated under the provisions of section thirty of
3 this article, the proceeds of the tax imposed by this
4 article shall be distributed as provided in subdivisions
5 (a) and (b) of this section.

6 (a) Beginning the first day of November, one thousand

7 nine hundred ninety-three, and continuing on the first
8 day of each succeeding month thereafter, there shall be
9 dedicated monthly from the collections of this tax, prior
10 to the payment or commitment of the proceeds or
11 collections of this tax for any other purpose, other than
12 the dedication from the collections of this tax for the
13 school building debt service fund as set forth in section
14 thirty of this article, an amount equal to one eighth of
15 the projected annual principal and interest require-
16 ments on any and all revenue bonds or refunding bonds
17 issued, or to be issued, or to be incurred, or lease-
18 purchase obligations entered into by the authority with
19 another state entity on or after the first day of January,
20 one thousand nine hundred ninety-four, for which
21 moneys in the regional jail and correctional facility
22 development fund have been pledged, or will be pledged
23 for repayment pursuant to section ten, article twenty,
24 chapter thirty-one of this code, such principal and
25 interest requirements having been certified to the tax
26 commissioner in accordance with the provisions of said
27 section: *Provided*, That in no event shall the proceeds of
28 this tax, to be paid annually into the regional jail and
29 correctional facility development fund, in any fiscal year
30 exceed the lesser of the principal and interest require-
31 ments certified to the tax commissioner as aforesaid, or
32 four million dollars. The amount dedicated shall be
33 deposited monthly into the regional jail and correctional
34 facility development fund created by said section.

35 (b) The proceeds from the tax imposed by this article
36 remaining after compliance with the provisions of
37 section thirty of this article and subdivision (a) of this
38 section shall be deposited in the general revenue fund
39 of the state.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORREC- TIONAL FACILITY AUTHORITY.

§31-20-10. Regional jail and correctional facility development fund.
§31-20-28. Limitations on contracts for sale of bonds or other securities.

**§31-20-10. Regional jail and correctional facility develop-
ment fund.**

1 (a) The regional jail and correctional facility develop-
2 ment fund is hereby created and shall be a special
3 account in the state treasury. The fund shall operate as
4 a revolving fund whereby all appropriations and
5 payments thereto may be applied and reapplied by the
6 authority for the purposes of this article. Separate
7 accounts may be established within the special account
8 for the purpose of identification of various revenue
9 resources and payment of specific obligations.

10 (b) Revenues deposited into the fund shall be used to
11 make payments of interest and shall be pledged as
12 security for bonds, security interests or notes issued or
13 lease-purchase obligations entered into with another
14 state entity by the authority pursuant to this article.

15 (c) Whenever the authority determines that the
16 balance in the fund is in excess of the immediate
17 requirements of this article, it may request that such
18 excess be invested until needed. In such case such excess
19 shall be invested in a manner consistent with the
20 investment of the temporary state funds. Interest earned
21 on any money invested pursuant to this section shall be
22 credited to the fund.

23 (d) If the authority determines that funds held in the
24 fund are in excess of the amount needed to carry out
25 the purposes of this article, it shall take such action as
26 is necessary to release such excess and transfer it to the
27 general fund of the state treasury.

28 (e) The fund shall consist of the following:

29 (1) Amounts raised by the authority by the sale of
30 bonds or other borrowing authorized by this article;

31 (2) Moneys collected and deposited in the state
32 treasury which are specifically designated by acts of the
33 Legislature for inclusion into the fund;

34 (3) Contributions, grants and gifts from any source,
35 both public and private, which may be used by the
36 authority for any project or projects;

37 (4) All sums paid by the counties pursuant to
38 subsection (h) of this section; and

39 (5) All interest earned on investments made by the
40 state from moneys deposited in this fund.

41 (f) The amounts deposited in the fund shall be
42 accounted for and expended in the following manner:

43 (1) Amounts raised by the sale of bonds or other
44 borrowing authorized by this article shall be deposited
45 in a separate account within the fund and expended for
46 the purpose of construction and renovation of correc-
47 tional facilities and regional jails for which need has
48 been determined by the authority;

49 (2) Amounts deposited from all other sources shall be
50 pledged first to the debt service on any bonded indebted-
51 ness, including lease-purchase obligations entered into
52 by the authority with another state entity or other
53 obligation incurred by borrowing of the authority;

54 (3) After any requirements of debt service have been
55 satisfied, the authority shall requisition from the fund
56 such amounts as are necessary to provide for payment
57 of the administrative expenses of this article;

58 (4) The authority shall requisition from the fund after
59 any requirements of debt service have been satisfied
60 such amounts as are necessary for the maintenance and
61 operation of the correctional facilities or regional jails
62 or both that are constructed pursuant to the plan
63 required by this article and shall expend such amounts
64 for such purpose. The fund shall make an accounting of
65 all amounts received from each county by virtue of any
66 filing fees, court costs or fines required by law to be
67 deposited in the fund and amounts from the jail
68 improvement funds of the various counties. After the
69 expenses of administration have been deducted, the
70 amounts expended in the respective regions from such
71 sources shall be in proportion to the percentage the
72 amount contributed to the fund by the counties in each
73 region bears to the total amount received by the fund
74 from such sources;

75 (5) Notwithstanding any other provisions of this
76 article, sums paid into the fund by each county pursuant
77 to subsection (h) of this section for each inmate shall be

78 placed in a separate account and shall be requisitioned
79 from the fund to pay for the costs specified in that
80 subsection incurred at the regional jail facility at which
81 each such inmate was incarcerated; and

82 (6) Any amounts deposited in the fund from other
83 sources permitted by this article shall be expended in
84 the respective regions based on particular needs to be
85 determined by the authority.

86 (g) After a regional jail facility becomes available
87 pursuant to this article for the incarceration of inmates,
88 each county within the region shall incarcerate all
89 persons whom the county would have incarcerated in
90 any jail prior to the availability of the regional jail
91 facility in the regional jail facility except those whose
92 incarceration in a local jail facility used as a local
93 holding facility is specified as appropriate under the
94 standards and procedures developed pursuant to section
95 nine of this article and who the sheriff or the circuit
96 court elects to incarcerate therein.

97 (h) When inmates are placed in a regional jail facility
98 pursuant to subsection (g) of this section, the county
99 shall pay into the regional jail and correctional facility
100 development fund a cost per day for each inmate so
101 incarcerated to be determined by the regional jail and
102 correctional facility authority according to criteria and
103 by procedures established by regulations pursuant to
104 article three, chapter twenty-nine-a of this code to cover
105 the costs of operating the regional jail facilities of this
106 state to maintain each such inmate which costs shall not
107 include the cost of construction, acquisition or renova-
108 tion of said regional jail facilities: *Provided*, That each
109 regional jail facility operating in this state shall keep a
110 record of the date and time of the incarceration of an
111 inmate, and a county may not be charged for a second
112 day of incarceration for an individual inmate until that
113 inmate has remained incarcerated for more than
114 twenty-four hours. Thereafter, in cases of continuous
115 incarceration, subsequent per diem charges shall be
116 made upon a county only as subsequent intervals of
117 twenty-four hours pass from the original time of
118 incarceration.

119 (i) On and after the first day of November, one
120 thousand nine hundred ninety-three, the amounts as and
121 when specified in section thirty-a, article fifteen,
122 chapter eleven of this code shall be paid into the regional
123 jail and correctional facility development fund. All of
124 the specified amounts deposited in this fund shall be
125 pledged to the repayment of the principal and interest
126 on any revenue bonds or refunding bonds authorized by
127 article twenty, chapter thirty-one of this code, or any
128 lease-purchase obligations entered into with another
129 state entity. On or prior to the first day of January of
130 each year, commencing the first day of January, one
131 thousand nine hundred ninety-four, the authority shall
132 certify to the tax commissioner of the state the principal
133 and interest requirements for the following fiscal year
134 on any revenue bonds or refunding bonds issued or to
135 be issued or lease-purchase obligations entered into or
136 to be entered into with another state entity, on or after
137 the first day of January, one thousand nine hundred
138 ninety-four, and for which moneys contained within the
139 regional jail and correctional facility development fund
140 have been, or will be, pledged for repayment pursuant
141 to this section: *Provided*, That before the first day of
142 November, one thousand nine hundred ninety-three, the
143 authority shall also certify to the state tax commissioner
144 the principal and interest requirements or lease-
145 purchase obligations entered into by the authority with
146 another state entity for the fiscal year ending on the
147 thirtieth day of June, one thousand nine hundred ninety-
148 four, on any revenue bonds or refunding bonds issued
149 or lease-purchase obligations entered into by the
150 authority with another state entity, by the authority on
151 or after the first day of January, one thousand nine
152 hundred ninety-four. The maximum aggregate face
153 value of bonds that may be issued by the authority, for
154 which moneys in the regional jail and correctional
155 facility development fund are to be pledged, is sixty-one
156 million dollars.

157 (j) The Legislature hereby finds and declares that the
158 supreme court of appeals of West Virginia has held that
159 the revenue bonds authorized under the school building
160 authority act, as enacted in article nine-d, chapter

161 eighteen of this code prior to the twentieth day of July,
162 one thousand nine hundred ninety-three, constituted an
163 indebtedness of the state in violation of section four,
164 article ten of the constitution of West Virginia. The
165 Legislature hereby further finds and declares that this
166 section, as well as section thirty, article fifteen, chapter
167 eleven of this code have been reenacted during the
168 second extraordinary session of the West Virginia
169 Legislature in the year one thousand nine hundred
170 ninety-three, and that section thirty-a of said article has
171 been enacted in an attempt to comply with the holding
172 of the supreme court of appeals of West Virginia. The
173 Legislature hereby further finds and declares that the
174 continued construction and improvement of jail and
175 prison facilities and the dedication of the consumers
176 sales tax pursuant to said section to finance such
177 construction and improvement are for the use and
178 benefit of the state, its counties, its municipalities and
179 its other political subdivisions, and such construction
180 and improvement serves the vital public purpose of
181 assuring the physical safety of each citizen and the
182 public at large. The Legislature hereby further finds
183 and declares that it intends, through the reenactment of
184 this section and section thirty, article fifteen, chapter
185 eleven of this code and the enactment of section thirty-
186 a of said article to dedicate a source of state revenue to
187 a special fund for the purpose of paying a portion of the
188 debt service on bonds and refunding bonds issued and
189 lease-purchase obligations entered into by the authority
190 with another state entity, subsequent to the first day of
191 January, one thousand nine hundred ninety-four, the
192 proceeds of which will be utilized for the construction
193 and improvement of jail and prison facilities. The
194 Legislature hereby further finds and declares that it
195 intends, through the reenactment of this section and
196 section thirty, article fifteen, chapter eleven of this code,
197 and the enactment of section thirty-a of said article to
198 comply with the provisions of section four, article ten;
199 section six, article ten; section six-a, article ten; and
200 section one, article twelve of the constitution of West
201 Virginia.

§31-20-28. Limitations on contracts for sale of bonds or other securities.

1 (a) When issuing its bonds or other securities pursu-
2 ant to the provisions of this article, the regional jail and
3 correctional facility authority shall not employ or
4 contract with any person or business entity acting as an
5 investment adviser, underwriter, broker, dealer, govern-
6 ment securities broker, government securities dealer,
7 transfer agent, attorney, bond counsel, trustee or
8 accountant, if the authority finds, on the record after
9 notice and opportunity for hearing, that employing or
10 contracting with such person or business entity would
11 be contrary to the public interest, and that such person
12 or business entity, or any person associated with such
13 person or entity, whether prior to or subsequent to
14 becoming so associated, has been convicted, within the
15 five years preceding the date when such bonds or other
16 securities are proposed to be issued, of a felony or
17 misdemeanor under the laws of this state, a sister state
18 or the United States of America, involving the sale or
19 purchase of any government security, and if the
20 authority further finds that the offense committed
21 involves:

22 (1) The bribery of a public officer or employee or a
23 member of the immediate family of a public officer or
24 employee;

25 (2) Perjury;

26 (3) Larceny;

27 (4) Any substantially equivalent activity, however
28 denominated by the laws of the relevant jurisdiction; or

29 (5) The conspiracy to commit any such offense.

30 (b) When issuing its bonds or other securities, the
31 regional jail and correctional facility authority shall not
32 employ or contract with any person or business entity
33 acting as an investment adviser, underwriter, broker,
34 dealer, government securities broker, government
35 securities dealer, transfer agent, attorney, bond counsel,
36 trustee or accountant, if the authority finds, on the
37 record after notice and opportunity for hearing, that

38 employing or contracting with such person or business
39 entity would be contrary to the public interest, and that
40 such person or business entity, or any person associated
41 with such person or entity, whether prior to or subse-
42 quent to becoming so associated, has, within the five
43 years preceding the date when such bonds or other
44 securities are proposed to be issued:

45 (1) Directly or indirectly given, offered or promised
46 money, services, or any other thing of value having a
47 value of greater than one hundred dollars to a public
48 officer or employee or a member of the immediate
49 family of a public officer or employee when the money,
50 service or other thing of value constituted a material
51 part of the factual basis upon which the public officer
52 or employee or a member of the immediate family of the
53 public officer or employee was convicted of a felony or
54 misdemeanor under the laws of this state, a sister state
55 or the United States of America, involving the sale or
56 purchase of any government security; or

57 (2) Willfully aided, abetted, counseled, commanded,
58 induced, or procured a violation which constitutes the
59 basis for a misdemeanor or felony conviction as des-
60 cribed in subsection (a) of this section or subdivision (1)
61 of this subsection.

62 (c) When issuing its bonds or other securities pursuant
63 to the provisions of this article, the regional jail and
64 correctional facility authority shall not employ or
65 contract with any person or business entity acting as an
66 investment adviser, underwriter, broker, dealer, govern-
67 ment securities broker, government securities dealer,
68 transfer agent, attorney, bond counsel, trustee or
69 accountant, if the authority finds, on the record after
70 notice and opportunity for hearing, that employing or
71 contracting with such person or business entity would
72 be contrary to the public interest, and that such person
73 or business entity, or any person associated with such
74 person or entity, whether prior to or subsequent to
75 becoming so associated, has conducted or is conducting
76 any business or transaction in which a financial interest
77 is held by a public officer or employee, agent or attorney
78 of the government of this state, or a member of the

79 immediate family of such persons, if the public officer
80 or employee, agent or attorney is in a position whereby
81 he or she may personally and substantially influence the
82 discretionary actions of the authority in connection with
83 the issuance of bonds or other securities, through
84 decision, approval, disapproval, recommendation, the
85 rendering of advice, investigation, or otherwise: *Pro-*
86 *vided*, That the ethics commission shall, on or before the
87 fifteenth day of December, one thousand nine hundred
88 ninety-three, promulgate an emergency rule to establish
89 guidelines and standards for the implementation of this
90 subsection by the authority.

91 (d) For purposes of this section, the term "immediate
92 family" means a spouse and any unemancipated child of
93 a person.

94 (e) The regional jail and correctional facility authority
95 may declare void and rescind any contract with any
96 person or business entity acting as an investment
97 adviser, underwriter, broker, dealer, government
98 securities broker, government securities dealer, transfer
99 agent, attorney, bond counsel, trustee or accountant, if
100 the authority finds, on the record after notice and
101 opportunity for hearing, that continuing to employ or
102 contract with such person or business entity would be
103 contrary to the public interest, and that such person or
104 business entity, or any person associated with such
105 person or entity, whether prior to or subsequent to
106 becoming so associated, has engaged in conduct which
107 would prohibit the authority, under the provisions of
108 this section, from entering into a contract with such
109 person or business entity if the contract was yet to be
110 executed.

DISPOSITION OF BILLS ENACTED

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Regular Session, 1994

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<i>Parliamentarian's Note.</i>		
The laws governing environmental protection were completely reorganized, consolidated, recodified and in some cases rewritten.		
The regulatory programs of the Division were consolidated into a single chapter (Chapter 22) containing the following new articles:		

<u>NEW</u>	<u>FORMER</u>
§22-2 — Abandoned Mine Lands and Regulatory Reclamation Act.	§22-3
§22-3 — Surface Coal Mining and Reclamation.	§22A-3
§22-4 — Surface Mining and Reclamation of Minerals Other Than Coal.	§22A-4
§22-5 — Air Pollution Control.	§16-20
§22-6 — Division of Oil and Gas; Oil and Gas Wells; Administration; Enforcement.	§22B-1
§22-7 — Oil and Gas Production Damage Compensation.	§22B-2
§22-8 — Transportation of Oils.	§22B-3
§22-9 — Underground Gas Storage Reservoirs.	§22B-4
§22-10 — Abandoned Well Act.	§22B-5
§22-11 — Water Pollution Control Act.	§20-5; §20-5A
§22-12 — Groundwater Protection Act.	§20-5M
§22-13 — Natural Streams Preservation Act.	§20-5B
§22-14 — Dam Control Act.	§20-5D
§22-15 — Solid Waste Management Act.	§20-5F
§22-16 — Solid Waste Landfill Closure Assistance Program.	§20-5N
§22-17 — Underground Storage Tank Act.	§20-5H
§22-18 — Hazardous Waste Management Act.	§20-5E
§22-19 — Hazardous Waste Emergency Response Fund.	§20-5G

CHAPTER 22A

The several articles relating to the Office of Miners' Health, Safety and Training are moved to Chapter 22A. This chapter contains all of the programs of the Office of Miners' Health, Safety and Training contained in former Chapters 22 and 22A.

CHAPTER 22B

The Act renames: (1) the Air Pollution Control Commission—the Air Quality Board; (2) the Water Resources Board—the Environmental Quality Board; and (3) the Reclamation Board of Review—the Surface Mine Board. It consolidates provisions which are common to all three boards.

CHAPTER 22C

A new Chapter 22C is created for the following miscellaneous boards, authorities, commissions and compacts which are related to the Division of Environmental Protection:

<u>NEW</u>		<u>FORMER</u>
§22C-1	Water Development Authority.	§20-5C
§22C-2	Water Pollution Control Revolving Fund Act.	§20-5I
§22C-3	Solid Waste Management Board	§16-26
§22C-4	County and Regional Solid Waste Authorities.	§20-9
§22C-5	Commercial Hazardous Waste Management Facility Siting Board.	§20-10
§22C-6	Hazardous Waste Facility Siting Approval.	§20-10A
§22C-7	Oil and Gas Inspectors' Examining Board.	§22-13
§22C-8	Shallow Gas Well Review Board.	§22-7
§22C-9	Oil and Gas Conservation Commission.	§22-8
§22C-10	Interstate Mining Compact.	§22-2
§22C-11	Interstate Commission on the Potomac River Basin.	§29-1C
§22C-12	Ohio River Valley Water Sanitation Commission.	§29-1D

Other sections of the Code are amended to correct references to positions, divisions, programs or code cites due to their reorganization pursuant to the Act.

Following is cross reference list showing former code sections and their corresponding citations in the Act. When former code sections have been omitted from the Act but the substance of the sections is included in the Act, the list refers to the new section by using the word "See".

CODE SECTION CROSS REFERENCE LIST

<u>FORMER</u>	<u>NEW</u>	<u>FORMER</u>	<u>NEW</u>
16-20-1	22-5-1	16-26-12	22C-3-12
16-20-2	22-5-2	16-26-13	22C-3-13
16-20-3	22-5-3	16-26-14	22C-3-14
16-20-4	See 22B-2-1	16-26-15	22C-3-15
16-20-5	22-5-4	16-26-16	22C-3-16
16-20-6	22-5-5	16-26-17	22C-3-17
16-20-7	See 22B-1-9 & 22B-2-3	16-26-18	22C-3-18
16-20-8	22-5-6	16-26-19	22C-3-19
16-20-9	22-5-7	16-26-20	22C-3-20
16-20-10	22-5-8	16-26-21	22C-3-21
16-20-11	22-5-9	16-26-22	22C-3-22
16-20-12	22-5-10	16-26-23	22C-3-23
16-20-13	22-5-11	16-26-24	22C-3-24
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16-20-15	22-5-13	20-5-1	Repealed
16-20-1	22-5-14	20-5-1a	See 22-11-1
16-20-17	See 22B-2-3	20-5-2	See 22-11-3
16-20-18	22-5-15	20-5-3	See 22B-1-4 & 22B-3-1
16-20-19	22-5-16		22-11-28
16-20-20	See Current	20-5-4	See 22-11-4
	2-2-10(cc)	20-5-5	Repealed
16-26-1	22C-3-1	20-5-6	Repealed
16-26-2	22C-3-2	20-5-7	Repealed
16-26-3	22C-3-3	20-5-8	Repealed
16-26-4	22C-3-4	20-5-9	Repealed
16-26-5	22C-3-5	20-5-10	Repealed
16-26-6	22C-3-6	20-5-11	Repealed
16-26-6a	22C-3-7	20-5-12	Repealed
16-26-7	22C-3-8	20-5-13	Repealed
16-26-8	22C-3-9	20-5-14	22-11-5
16-26-9	Repealed	20-5-15	20-7-28
16-26-10	22C-3-10	20-5-16	See Current
16-26-11	22C-3-11		2-2-10(cc)

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