

ACTS
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OF
WEST VIRGINIA



Regular Session, 1995

Volume II
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CHAPTER 133

(S. B. 309—Originating in the Committee on Banking and Insurance)

[Passed March 8, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-one, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the determination of the total amount of coverage available to an insured.

Be it enacted by the Legislature of West Virginia:

That section thirty-one, 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.

§33-6-31. Motor vehicle policy; omnibus clause; uninsured and underinsured motorists' coverage; conditions for recovery under endorsement; rights and liabilities of insurer.

1 (a) No policy or contract of bodily injury liability
2 insurance, or of property damage liability insurance, cov-
3 ering liability arising from the ownership, maintenance or
4 use of any motor vehicle, shall be issued or delivered in
5 this state to the owner of such vehicle, or shall be issued or
6 delivered by any insurer licensed in this state upon any
7 motor vehicle for which a certificate of title has been is-
8 sued by the division of motor vehicles of this state, unless
9 it shall contain a provision insuring the named insured and
10 any other person, except a bailee for hire and any persons
11 specifically excluded by any restrictive endorsement at-
12 tached to the policy, responsible for the use of or using
13 the motor vehicle with the consent, expressed or implied,
14 of the named insured or his spouse against liability for
15 death or bodily injury sustained or loss or damage occa-
16 sioned within the coverage of the policy or contract as a
17 result of negligence in the operation or use of such vehicle
18 by the named insured or by such person: *Provided*, That

19 in any such automobile liability insurance policy or con-
20 tract, or endorsement thereto, if coverage resulting from
21 the use of a nonowned automobile is conditioned upon
22 the consent of the owner of such motor vehicle, the word
23 "owner" shall be construed to include the custodian of
24 such nonowned motor vehicles. Notwithstanding any
25 other provision of this code, if the owner of a policy re-
26 ceives a notice of cancellation pursuant to article six-a of
27 this chapter and the reason for the cancellation is a viola-
28 tion of law by a person insured under the policy, said
29 owner may by restrictive endorsement specifically exclude
30 the person who violated the law and the restrictive en-
31 dorsement shall be effective in regard to the total liability
32 coverage provided under the policy, including coverage
33 provided pursuant to the mandatory liability requirements
34 of section two, article four, chapter seventeen-d of this
35 code, but nothing in such restrictive endorsement shall be
36 construed to abrogate the "family purpose doctrine".

37 (b) Nor shall any such policy or contract be so issued
38 or delivered unless it shall contain an endorsement or
39 provisions undertaking to pay the insured all sums which
40 he shall be legally entitled to recover as damages from the
41 owner or operator of an uninsured motor vehicle, within
42 limits which shall be no less than the requirements of sec-
43 tion two, article four, chapter seventeen-d of this code, as
44 amended from time to time: *Provided*, That such policy or
45 contract shall provide an option to the insured with appro-
46 priately adjusted premiums to pay the insured all sums
47 which he shall be legally entitled to recover as damages
48 from the owner or operator of an uninsured motor vehicle
49 up to an amount of one hundred thousand dollars because
50 of bodily injury to or death of one person in any one
51 accident and, subject to said limit for one person, in the
52 amount of three hundred thousand dollars because of
53 bodily injury to or death of two or more persons in any
54 one accident and in the amount of fifty thousand dollars
55 because of injury to or destruction of property of others
56 in any one accident: *Provided, however*, That such en-
57 dorsement or provisions may exclude the first three hun-
58 dred dollars of property damage resulting from the negli-
59 gence of an uninsured motorist: *Provided further*, That

60 such policy or contract shall provide an option to the
61 insured with appropriately adjusted premiums to pay the
62 insured all sums which he shall legally be entitled to re-
63 cover as damages from the owner or operator of an unin-
64 sured or underinsured motor vehicle up to an amount not
65 less than limits of bodily injury liability insurance and
66 property damage liability insurance purchased by the
67 insured without setoff against the insured's policy or any
68 other policy. Regardless of whether motor vehicle cover-
69 age is offered and provided to an insured through a multi-
70 ple vehicle insurance policy or contract, or in separate
71 single vehicle insurance policies or contracts, no insurer or
72 insurance company providing a bargained for discount
73 for multiple motor vehicles with respect to underinsured
74 motor vehicle coverage shall be treated differently from
75 any other insurer or insurance company utilizing a single
76 insurance policy or contract for multiple covered vehicles
77 for purposes of determining the total amount of coverage
78 available to an insured. "Underinsured motor vehicle"
79 means a motor vehicle with respect to the ownership, oper-
80 ation, or use of which there is liability insurance applicable
81 at the time of the accident, but the limits of that insurance
82 are either: (i) Less than limits the insured carried for un-
83 derinsured motorists' coverage; or (ii) has been reduced
84 by payments to others injured in the accident to limits less
85 than limits the insured carried for underinsured motorists'
86 coverage. No sums payable as a result of underinsured
87 motorists' coverage shall be reduced by payments made
88 under the insured's policy or any other policy.

89 (c) As used in this section, the term "bodily injury"
90 shall include death resulting therefrom and the term
91 "named insured" shall mean the person named as such in
92 the declarations of the policy or contract and shall also
93 include such person's spouse if a resident of the same
94 household and the term "insured" shall mean the named
95 insured and, while resident of the same household, the
96 spouse of any such named insured and relatives of either,
97 while in a motor vehicle or otherwise, and any person,
98 except a bailee for hire, who uses, with the consent, ex-
99 pressed or implied, of the named insured, the motor vehi-
100 cle to which the policy applies or the personal representa-

101 tive of any of the above; and the term "uninsured motor
102 vehicle" shall mean a motor vehicle as to which there is no:
103 (i) Bodily injury liability insurance and property damage
104 liability insurance both in the amounts specified by sec-
105 tion two, article four, chapter seventeen-d of this code, as
106 amended from time to time; or (ii) there is such insurance,
107 but the insurance company writing the same denies cover-
108 age thereunder; or (iii) there is no certificate of
109 self-insurance issued in accordance with the provisions of
110 said section. A motor vehicle shall be deemed to be unin-
111 sured if the owner or operator thereof be unknown: *Pro-*
112 *vided*, That recovery under the endorsement or provisions
113 shall be subject to the conditions hereinafter set forth.

114 (d) Any insured intending to rely on the coverage
115 required by subsection (b) of this section shall, if any
116 action be instituted against the owner or operator of an
117 uninsured or underinsured motor vehicle, cause a copy of
118 the summons and a copy of the complaint to be served
119 upon the insurance company issuing the policy, in the
120 manner prescribed by law, as though such insurance com-
121 pany were a named party defendant; such company shall
122 thereafter have the right to file pleadings and to take other
123 action allowable by law in the name of the owner, or oper-
124 ator, or both, of the uninsured or underinsured motor
125 vehicle or in its own name.

126 Nothing in this subsection shall prevent such owner or
127 operator from employing counsel of his own choice and
128 taking any action in his own interest in connection with
129 such proceeding.

130 (e) If the owner or operator of any motor vehicle
131 which causes bodily injury or property damage to the
132 insured be unknown, the insured, or someone in his be-
133 half, in order for the insured to recover under the unin-
134 sured motorist endorsement or provision, shall:

135 (i) Within twenty-four hours after the insured discover,
136 and being physically able to report the occurrence of such
137 accident, the insured, or someone in his behalf, shall report
138 the accident to a police, peace or judicial officer, or to the
139 commissioner of motor vehicles, unless the accident shall
140 already have been investigated by a police officer;

141 (ii) Notify the insurance company, within sixty days
142 after such accident, that the insured or his legal representa-
143 tive has a cause or causes of action arising out of such
144 accident for damages against a person or persons whose
145 identity is unknown and setting forth the facts in support
146 thereof; and, upon written request of the insurance compa-
147 ny communicated to the insured not later than five days
148 after receipt of such statement, shall make available for
149 inspection the motor vehicle which the insured was occu-
150 pying at the time of the accident; and

151 (iii) Upon trial establish that the motor vehicle, which
152 caused the bodily injury or property damage, whose oper-
153 ator is unknown, was a "hit and run" motor vehicle, mean-
154 ing a motor vehicle which causes damage to the property
155 of the insured arising out of physical contact of such mo-
156 tor vehicle therewith, or which causes bodily injury to the
157 insured arising out of physical contact of such motor
158 vehicle with the insured or with a motor vehicle which the
159 insured was occupying at the time of the accident. If the
160 owner or operator of any motor vehicle causing bodily
161 injury or property damage be unknown, an action may be
162 instituted against the unknown defendant as "John Doe", in
163 the county in which the accident took place or in any
164 other county in which such action would be proper under
165 the provisions of article one, chapter fifty-six of this code;
166 service of process may be made by delivery of a copy of
167 the complaint and summons or other pleadings to the
168 clerk of the court in which the action is brought, and ser-
169 vice upon the insurance company issuing the policy shall
170 be made as prescribed by law as though such insurance
171 company were a party defendant. The insurance compa-
172 ny shall have the right to file pleadings and take other
173 action allowable by law in the name of John Doe.

174 (f) An insurer paying a claim under the endorsement
175 or provisions required by subsection (b) of this section
176 shall be subrogated to the rights of the insured to whom
177 such claim was paid against the person causing such inju-
178 ry, death or damage to the extent that payment was made.
179 The bringing of an action against the unknown owner or
180 operator as John Doe or the conclusion of such an action
181 shall not constitute a bar to the insured, if the identity of

182 the owner or operator who caused the injury or damages
183 complained of, becomes known, from bringing an action
184 against the owner or operator theretofore proceeded
185 against as John Doe. Any recovery against such owner or
186 operator shall be paid to the insurance company to the
187 extent that such insurance company shall have paid the
188 insured in the action brought against such owner or opera-
189 tor as John Doe, except that such insurance company shall
190 pay its proportionate part of any reasonable costs and
191 expenses incurred in connection therewith, including rea-
192 sonable attorney's fees. Nothing in an endorsement or
193 provision made under this subsection, nor any other provi-
194 sion of law, shall operate to prevent the joining, in an ac-
195 tion against John Doe, of the owner or operator of the
196 motor vehicle causing injury as a party defendant, and
197 such joinder is hereby specifically authorized.

198 (g) No such endorsement or provisions shall contain
199 any provision requiring arbitration of any claim arising
200 under any such endorsement or provision, nor may any-
201 thing be required of the insured except the establishment
202 of legal liability, nor shall the insured be restricted or
203 prevented in any manner from employing legal counsel or
204 instituting legal proceedings.

205 (h) The provisions of subsections (a) and (b) of this
206 section shall not apply to any policy of insurance to the
207 extent that it covers the liability of an employer to his
208 employees under any workers' compensation law.

209 (i) The commissioner of insurance shall formulate and
210 require the use of standard policy provisions for the insur-
211 ance required by this section, but use of such standard
212 policy provisions may be waived by the commissioner in
213 the circumstances set forth in section ten of this article.

214 (j) A motor vehicle shall be deemed to be uninsured
215 within the meaning of this section, if there has been a valid
216 bodily injury or property damage liability policy issued
217 upon such vehicle, but which policy is uncollectible in
218 whole or in part, by reason of the insurance company
219 issuing such policy upon such vehicle being insolvent or
220 having been placed in receivership. The right of subroga-
221 tion granted insurers under the provisions of subsection

222 (f) of this section shall not apply as against any person or
223 persons who is or becomes an uninsured motorist for the
224 reasons set forth in this subsection.

225 (k) Nothing contained herein shall prevent any insurer
226 from also offering benefits and limits other than those
227 prescribed herein, nor shall this section be construed as
228 preventing any insurer from incorporating in such terms,
229 conditions and exclusions as may be consistent with the
230 premium charged.

231 (l) The insurance commissioner shall review on an
232 annual basis the rate structure for uninsured and
233 underinsured motorists' coverage as set forth in subsection
234 (b) of this section and shall report to the Legislature on
235 said rate structure on or before the fifteenth day of
236 January, one thousand nine hundred eighty-three, and on
237 or before the fifteenth day of January of each of the next
238 two succeeding years.

CHAPTER 134

(H. B. 2264—By Delegates Gallagher, Cann, Greear, Hall, Hunt,
McGraw and Thompson)

[Passed March 2, 1995; in effect July 1, 1995. Approved by the Governor.]

AN ACT to amend and reenact section thirty-one-c, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to substandard risk motor vehicle insurance policies; requiring contrasting color or reverse print notices on applications and policies; advising policyholders of future eligibility for standard or preferred policies; and requiring notice to such policyholders of potential eligibility for standard or preferred coverage for driving without additional traffic violations or accidents over a three-year period while being continuously insured.

Be it enacted by the Legislature of West Virginia:

That section thirty-one-c, 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.

§33-6-31c. Substandard risk motor vehicle insurance policies; definitions; required notices and provisions; promulgation of rules; effective date.

1 (a) For purposes of this section, the following
2 definitions shall apply:

3 (1) A "substandard risk" means an applicant for
4 insurance who presents a greater exposure to loss than that
5 contemplated by commonly used rate classifications, as
6 evidenced by one or more of the following conditions:

7 (A) Record of traffic accidents;

8 (B) Record of traffic law violations;

9 (C) Undesirable occupational circumstances;

10 (D) Any other valid underwriting consideration.

11 (2) "Substandard risk rate" means a rate or premium
12 charge that reflects the greater than normal exposure to
13 loss which is assumed by an insurer writing insurance for a
14 substandard risk.

15 (b) Every application for a motor vehicle insurance
16 policy to be issued in this state and written on the basis of
17 a substandard risk rate schedule shall have printed thereon,
18 in bold-faced type in a contrasting color or in reverse
19 print, a statement reading substantially as follows: THE
20 POLICY FOR WHICH YOU ARE APPLYING HAS BEEN
21 RATED IN ACCORDANCE WITH A SPECIAL RATING
22 SCHEDULE FILED WITH THE COMMISSIONER OF
23 INSURANCE PROVIDING FOR HIGHER PREMIUM
24 CHARGES THAN THOSE GENERALLY APPLICABLE
25 FOR AVERAGE RISKS. IF THE COVERAGE OR
26 PREMIUM IS NOT SATISFACTORY, YOU MAY BE
27 ELIGIBLE FOR OTHER INSURANCE. IF THIS
28 COVERAGE OR PREMIUM IS SATISFACTORY, YOU

29 MAY BE ELIGIBLE FOR COVERAGE UNDER A
30 STANDARD OR PREFERRED POLICY IF DURING THE
31 NEXT THREE YEARS YOU HAVE NO TRAFFIC
32 VIOLATIONS OR ACCIDENTS AND YOU MAINTAIN
33 CONTINUOUS INSURANCE COVERAGE.

34 (c) Every motor vehicle insurance policy issued in this
35 state and written on the basis of a substandard risk rate
36 schedule shall have printed thereon, in bold-faced type in
37 a contrasting color or in reverse print, a statement reading
38 substantially as follows: THIS POLICY HAS BEEN
39 RATED IN ACCORDANCE WITH A SPECIAL RATING
40 SCHEDULE FILED WITH THE COMMISSIONER OF
41 INSURANCE PROVIDING FOR HIGHER PREMIUM
42 CHARGES THAN THOSE GENERALLY APPLICABLE
43 FOR AVERAGE RISKS. IF THE COVERAGE OR
44 PREMIUM IS NOT SATISFACTORY, YOU MAY BE
45 ELIGIBLE FOR OTHER INSURANCE. IF THIS
46 COVERAGE OR PREMIUM IS SATISFACTORY, YOU
47 MAY BE ELIGIBLE FOR COVERAGE UNDER A
48 STANDARD OR PREFERRED POLICY IF DURING THE
49 NEXT THREE YEARS YOU HAVE NO TRAFFIC
50 VIOLATIONS OR ACCIDENTS AND YOU MAINTAIN
51 CONTINUOUS INSURANCE COVERAGE.

52 (d) On or before the first day of July, one thousand
53 nine hundred ninety-three, all insurers licensed or
54 registered in this state to market or sell substandard risk
55 motor vehicle insurance policies shall submit all
56 applications and policies for substandard risk insurance to
57 the commissioner of insurance for approval prior to being
58 used by the insurer.

59 (e) On or after the first day of July, one thousand nine
60 hundred ninety-five, all insurers selling or which have in
61 force substandard risk motor vehicle insurance policies
62 shall provide a one time notice in writing to such
63 policyholders who have maintained continuous insurance
64 coverage for three years, have not been convicted of any
65 moving traffic violations and had no at fault accidents, that
66 they may be eligible for coverage under a standard or
67 preferred policy.

68 (f) The commissioner shall promulgate rules in

69 accordance with the provisions of chapter twenty-nine-a of
70 this code regarding the format, style, design and approval
71 of substandard risk insurance applications, notices and
72 policies and such other procedures as may be required by
73 this section.

74 (g) The effective date of this section shall be the first
75 day of July, one thousand nine hundred ninety-five.

CHAPTER 135

(H. B. 2413—By Delegates Gallagher and Nesbitt)

[Passed March 2, 1995; 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 mandatory continuing education for insurance agents, requiring that as a portion of their biennial continuing education quota all appointed health maintenance organization agents receive no less than six hours of continuing education on topics specific to health maintenance organizations; requiring that no program of insurance agent continuing education be approved which dictates more than six hours of continuing education biannually for insurance agents who sell only preneed burial insurance or insurance agents who sell insurance products only through scripted telephone presentations which presentations have been approved by the insurance commissioner.

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. Continuing education required.**

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 to
5 be set up under the board of insurance agent education.
6 Nothing in this section shall prohibit an individual from
7 receiving commissions which have been vested and earned
8 while that individual maintained an approved insurance
9 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 as
24 the commissioner may exempt;

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

27 (c) (1) The board of insurance agent education as es-
28 tablished by section two of this article shall develop a
29 program of continuing insurance education and submit
30 the proposal for the approval of the commissioner on or
31 before the thirty-first day of December of each year.

32 Each year after the first day of July, one thousand nine
33 hundred ninety-seven, the program shall contain a
34 requirement that any person appointed to be an agent on
35 behalf of a licensed health maintenance organization at
36 any time during the relevant biennium must, as a
37 component of his or her mandatory continuing insurance
38 education, complete a minimum of six hours of continu-
39 ing insurance education during the biennium which is on
40 topics specific to health maintenance organizations.

41 No program shall be approved by the commissioner
42 that includes a requirement that any agent complete more
43 than thirty hours of continuing insurance education
44 biennially. No program shall be approved by the com-
45 missioner that includes a requirement that any of the
46 following individuals complete more than six hours of
47 continuing insurance education biennially:

48 (A) Insurance agents who sell only preneed burial
49 insurance contracts; and

50 (B) Insurance agents who engage solely in tele-
51 marketing insurance products by a scripted presentation
52 which scripted presentation has been filed with and ap-
53 proved by the commissioner.

54 (2) The commissioner and the board, under standards
55 established by the board, may approve any course or
56 program of instruction developed or sponsored by an
57 authorized insurer, accredited college or university, agents'
58 association, insurance trade association or independent
59 program of instruction that presents the criteria and the
60 number of hours that the board and commissioner
61 determine appropriate for the purpose of this section.

62 (d) Persons licensed to sell insurance and who are not
63 otherwise exempt shall satisfactorily complete the courses
64 or programs of instructions the commissioner may pre-
65 scribe.

66 (e) Every person, subject to the continuing education
67 requirements shall furnish, at intervals and on forms as
68 may be prescribed by the commissioner, written certifi-

69 cation listing the courses, programs or seminars of in-
70 struction successfully completed by the person. The
71 certification shall be executed by, or on behalf of, the
72 organization sponsoring the courses, programs or
73 seminars of instruction.

74 (f) Any person, failing to meet the requirements
75 mandated in this section, and who has not been granted an
76 extension of time, with respect to such requirements, or
77 who has submitted to the commissioner a false or fraudu-
78 lent certificate of compliance shall, after a hearing thereon,
79 which hearing may be waived by the person, be subjected
80 to suspension of all licenses issued for any kind or kinds
81 of insurance. No further license may be issued to the
82 person for any kind or kinds of insurance until he or she
83 has demonstrated to the satisfaction of the commissioner
84 that he or she has complied with all of the requirements
85 mandated by this section and all other applicable laws or
86 rules.

87 (g) Hearings for the violation of any provision of this
88 section, and the administrative procedure prior to, during
89 and following these hearings, shall be conducted in
90 accordance with the provisions of article two of this
91 chapter.

92 (h) The commissioner is authorized to hire personnel
93 and make reasonable expenditures as deemed necessary
94 for purposes of establishing and maintaining a system of
95 continuing education for insurers.

CHAPTER 136

(H. B. 2266—By Delegates Gallagher, Douglas, Walters,
Hutchins, Loulsois and Kominar)

[Passed March 2, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article twelve,

chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to insurance; agents, brokers, solicitors and excess lines; and excess line broker's affidavit and report.

Be it enacted by the Legislature of West Virginia:

That section eleven, 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.

§33-12-11. Excess line broker's reporting requirements.

1 On or before the first day of March, one thousand nine
2 hundred ninety-six, and on or before the first day of
3 March thereafter, each excess line broker shall file, on a
4 form prescribed by the commissioner, a report under oath,
5 setting forth facts from which it may be determined
6 whether the requirements of section ten of this article have
7 been met with respect to each excess line policy procured
8 by the excess line broker during the preceding calendar
9 year. Such report shall include, but not be limited to, the
10 following:

- 11 (a) Name and address of the insurer;
12 (b) Number of the policy issued;
13 (c) Name and address of the insured;
14 (d) Nature and amount of liability assumed by the
15 insurer;
16 (e) Premium, and premium rate if applicable;
17 (f) Other information reasonably required by the
18 commissioner.

19 The commissioner shall promulgate rules pursuant to
20 the provisions of section one, article one, chapter
21 twenty-nine-a of this code, specifying the reporting forms
22 required by this section prior to the first day of August,
23 one thousand nine hundred ninety-five.

CHAPTER 137

(H. B. 2265—By Delegates Gallagher, Dempsey, Nesbitt and Tillis)

[Passed March 2, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article thirteen, 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 fourteen-a; and to amend article fourteen of said chapter by adding thereto two new sections, designated sections thirty and thirty-a, all relating to the payment of claims to beneficiaries of life insurance policies; and providing for interest on proceeds from the date of death of the insured.

Be it enacted by the Legislature of West Virginia:

That article thirteen, 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 fourteen-a; and that article fourteen of said chapter be amended by adding thereto two new sections, designated sections thirty and thirty-a, all to read as follows:

Article

- 13. Life Insurance.
- 14. Group Life Insurance.

ARTICLE 13. LIFE INSURANCE.

§33-13-14a. Payment of interest on death claims.

- 1 (a) On and after the effective date of this section, any
- 2 life insurance company authorized to do business in this
- 3 state shall pay interest, in accordance with subsection (b)
- 4 of this section and subject to subsection (c) of this section,
- 5 on any proceeds that become due upon the death of the
- 6 insured pursuant to the terms of a life insurance policy
- 7 other than a credit life insurance policy and that are not

8 paid in accordance with the terms of the contract, upon the
9 date the proceeds become due. For purposes of this
10 section, the proceeds of a life insurance policy become
11 due on the date of death of the insured.

12 (b) Interest payable pursuant to subsection (a) of this
13 section shall be computed from the date of death at the
14 current rate of interest on proceeds left on deposit with the
15 insurer.

16 (c) Subsection (a) of this section does not require, and
17 shall not be construed as requiring, the payment of interest
18 unless the insured was a resident of this state on the date of
19 his or her death.

ARTICLE 14. GROUP LIFE INSURANCE.

§33-14-30. Payment of claims.

§33-14-30a. Payment of interest on death claims.

§33-14-30. Payment of claims.

1 There shall be a provision that when a policy shall
2 become a claim by the death of the insured, settlement
3 shall be made upon receipt of due proof of death and, at
4 the insurer's option, surrender of the policy and/or proof
5 of the interest of the claimant. If an insurer shall specify a
6 particular period prior to the expiration of which
7 settlement shall be made, such period shall not exceed two
8 months from the receipt of such proofs.

§33-14-30a. Payment of interest on death claims.

1 (a) On and after the effective date of this section, any
2 life insurance company authorized to do business in this
3 state shall pay interest, in accordance with subsection (b)
4 of this section and subject to subsection (c) of this section,
5 on any proceeds that become due upon the death of the
6 insured pursuant to the terms of a life insurance policy
7 other than a credit life insurance policy and that are not
8 paid in accordance with the terms of the contract, upon the
9 date the proceeds become due. For purposes of this
10 section, the proceeds of a life insurance policy become
11 due on the date of death of the insured.

12 (b) Interest payable pursuant to subsection (a) of this
13 section shall be computed from the date of death at the
14 current rate of interest on proceeds left on deposit with the
15 insurer.

16 (c) Subsection (a) of this section does not require, and
17 shall not be construed as requiring, the payment of interest
18 unless the insured was a resident of this state on the date of
19 his or her death.

CHAPTER 138

(Com. Sub. for S. B. 377—By Senator Wagner)

[Passed March 9, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three and four, article sixteen-e, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to excluding accident and sickness disability insurance from the definition of limited benefits accident and sickness insurance policies and certificates; and to amend the refund requirements for limited benefits policies and certificates.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 16E. LIMITED BENEFITS ACCIDENT AND SICKNESS
INSURANCE POLICIES AND CERTIFICATES.**

§33-16E-2. Definitions.

§33-16E-3. Premium rate increase requests; loss ratio requirements.

§33-16E-4. Premium refunds; calculation of refunds; payments.

§33-16E-2. Definitions.

1 For purposes of this article:

2 (a) "Limited benefits policy or certificate" means any
3 individual or group accident and sickness insurance policy
4 that is not required to offer or provide all benefits mandat-
5 ed by any other applicable provision of this chapter. Such
6 policies include, but are not limited to, accident only, sick-
7 ness only disability, sickness only, accident only disability,
8 hospital indemnity, specified disease and travel accident
9 insurance policies: *Provided*, That the following types of
10 policies and certificates are excluded from the definition
11 of "limited benefits policy or certificate" for purposes of
12 this article:

13 (1) Credit accident and sickness insurance;

14 (2) Long-term care insurance;

15 (3) Medicare supplement insurance; and

16 (4) Minimum benefits accident and sickness insurance
17 issued pursuant to section fifteen, article fifteen of this
18 chapter or article sixteen-c of this chapter;

19 (5) Accident and sickness policies which provide ben-
20 efits for loss of income due to disability;

21 (6) Major medical policies;

22 (7) Dental policies; and

23 (8) Vision policies.

24 (b) "Experience period" means the period beginning
25 on the first day of the calendar year during which a pre-
26 mium rate first takes effect and ending on the last day of
27 the calendar year during which the insurer earns five hun-
28 dred thousand dollars in premiums on the form in West
29 Virginia or, if the annual premium earned on the form in
30 West Virginia is less than five hundred thousand dollars,
31 earns nationally.

32 (c) "Successive experience period" means the experi-
33 ence period beginning on the first day following the end

34 of the preceding experience period.

35 (d) "Annual loss ratio" is the ratio of earned premium
36 received by the insurer on a given form during the experi-
37 ence period compared to the incurred losses paid out by
38 the insurer on the same form during the same experience
39 period and expressed in percentage of earned premiums
40 paid out.

**§33-16E-3. Premium rate increase requests; loss ratio re-
quirements.**

1 (a) To be eligible to make a premium rate increase
2 request after the first day of July, one thousand nine hun-
3 dred ninety-three, any insurer offering a limited benefits
4 policy form or certificate form in West Virginia which was
5 not delivered or issued for delivery in West Virginia prior
6 to the effective date of this article shall be expected to
7 return to policyholders and certificate holders in the form
8 of five-year aggregate loss ratios under the policy form or
9 certificate form:

10 (1) At least seventy-five percent of the earned premi-
11 ums in the case of a group policy or certificate; and

12 (2) At least sixty-five percent of the earned premiums
13 in the case of an individual policy.

14 (b) To be eligible to make a premium rate increase
15 request after the first day of July, one thousand nine hun-
16 dred ninety-three, any insurer renewing a limited benefits
17 policy form or certificate form which was in force in West
18 Virginia on the effective date of this article, shall be ex-
19 pected to return to policyholders and certificate holders in
20 the form of annual loss ratios under the policy or certifi-
21 cate a percentage of the earned premium which is equal to
22 the anticipated loss ratio originally filed with the insurance
23 commissioner.

24 (c) With respect to a policy form or certificate form
25 which has been offered by an insurer in West Virginia or
26 nationally for five years or less the insurer may use the
27 anticipated loss ratio filed with and approved by the com-

28 commissioner for that form to determine compliance with the
29 requirements of this section.

30 (d) For purposes of this section, limited benefits poli-
31 cies and certificates issued as a result of solicitation of
32 individuals through the mail or mass media advertising,
33 including both print and broadcast advertising, shall be
34 treated as individual policies.

**§33-16E-4. Premium refunds; calculation of refunds; pay-
ments.**

1 (a) Beginning on the first day of July, one thousand
2 nine hundred ninety-four, any insurer offering a limited
3 benefits policy or certificate which was not delivered or
4 issued for delivery in West Virginia prior to the effective
5 date of this article shall make premium refunds to policy-
6 holders and certificate holders if it fails to return to such
7 policyholders and certificate holders in the form of annual
8 loss ratios under the policy or certificate:

9 (1) At least sixty-five percent of the earned premiums
10 in the case of a group policy or certificate; and

11 (2) At least fifty-five percent of the earned premiums
12 in the case of an individual policy.

13 (b) Any insurer offering a limited benefits policy or
14 certificate which was in force in West Virginia on the ef-
15 fective date of this article shall make premium refunds to
16 policyholders and certificate holders if it fails to return to
17 such policyholders and certificate holders in the form of
18 annual loss ratios under the policy or certificate a percent-
19 age of the earned premium which is the anticipated loss
20 ratio originally filed by the insurer with the insurance
21 commissioner less five percent.

22 (c) With respect to a policy form or certificate form
23 which has been in force or offered by an insurer either in
24 West Virginia or nationally for more than five years, re-
25 funds to West Virginia policyholders or certificate holders
26 made pursuant to the requirements of this section and
27 based upon annual earned premium volume in West Vir-

28 ginia shall be calculated by multiplying the anticipated
29 loss ratio by the applicable earned premium during the
30 experience period and subtracting from that result the
31 actual incurred claims during the experience period.

32 (d) With respect to a policy form or certificate form
33 which has been in force or offered by an insurer for more
34 than five years, refunds to West Virginia policyholders or
35 certificate holders made pursuant to the requirements of
36 this section and based upon national annual earned premi-
37 um volume shall be calculated by:

38 (1) Multiplying the mandated loss ratio by the appli-
39 cable earned premium during the experience period and
40 subtracting from that result the actual incurred claims
41 during the experience period; and

42 (2) Multiplying the results of subdivision (1) of this
43 subsection by the total earned premium during the experi-
44 ence period from all West Virginia policyholders or certif-
45 icate holders eligible for refunds; and

46 (3) Dividing the results of subdivision (2) of this sub-
47 section by the total earned premium during that period in
48 all states on the policy form.

49 (e) With respect to a policy form or certificate form
50 which has been offered by an insurer in West Virginia or
51 nationally for five years or less, the insurer may use the
52 anticipated loss ratio filed with and approved by the com-
53 missioner to determine the amount of premium refunds, if
54 any, that must be made pursuant to subsection (a) of this
55 section.

56 (f) Refunds shall be made to all West Virginia policy-
57 holders and certificate holders who are insured under the
58 applicable policy form or certificate as of the last day of
59 the experience period. Such refund shall include interest,
60 at the current accident and health reserve interest rate
61 established by the national association of insurance com-
62 missioners, from the end of the experience period until the
63 date of payment. Payment shall be made during the third

64 quarter of the year following the experience period for
65 which a refund is determined to be due.

66 (g) Refunds of less than ten dollars shall be
67 aggregated and held by the insurer in a policyholders' and
68 certificate holders' liability fund and shall be used to offset
69 any future rate increases.

CHAPTER 139

(Com. Sub. for S. B. 226—By Senators Dittmar and Craigo)

[Passed March 3, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seventeen, 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 nine-a, relating to the payment of insurance claims for damage to structures; and the insurers' responsibilities to their insureds.

Be it enacted by the Legislature of West Virginia:

That article seventeen, 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 nine-a, to read as follows:

ARTICLE 17. FIRE AND MARINE INSURANCE.

§33-17-9a. Disbursement of insurance proceeds.

1 Upon notice of a claim of an insured total loss to a
2 structure located in this state, insurance companies must
3 notify the insured of any coverage in the insurance policy
4 providing cleanup, removal of any refuse, debris, remnants
5 or remains of the dwelling and appurtenances and
6 securing the structure. The notification shall be by letter
7 to the insured, mailed within ten days of the notification of
8 the claim, and shall include, but not be limited to:

- 9 (a) The terms and limits of coverage designated by the
10 insurance policy for securing, cleanup and removal; and
- 11 (b) Any time limitations imposed on the insured for
12 securing, cleanup and removal.

CHAPTER 140

(Com. Sub. for H. B. 2619—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed March 11, 1995; in effect ninety days from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact sections two, three, four, seven, eight, nine, eleven, twelve, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty-four, twenty-five and twenty-six, article twenty-five-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto three new sections, designated sections three-a, seven-a and thirty-three, all relating to insurance; health maintenance organization act; definitions; application for certificate of authority; conditions precedent to issuance of certificate of authority; issuance of certificate of authority; effect of bankruptcy proceedings; fiduciary duties of officers; approval of contracts by commissioner; provider contracts; evidence of coverage; charges for health care services; cancellation of contract by enrollee; annual report; open enrollment period; limitation on medicare and medicaid beneficiaries; grievance procedure; prohibited practices; licensing and appointment of agents; regulation of marketing; powers of insurers and hospital and medical service corporations; examinations; suspension or revocation of certificate of authority; rehabilitation, liquidation or conservation of health maintenance organization; statutory construction and relationship to other laws; filings and reports as public documents; confidentiality of medical information; and guaranty fund plan.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

- §33-25A-2. Definitions.
- §33-25A-3. Application for certificate of authority.
- §33-25A-3a. Conditions precedent to issuance or maintenance of a certificate of authority; effect of bankruptcy proceedings.
- §33-25A-4. Issuance of certificate of authority.
- §33-25A-7. Fiduciary responsibilities of officers; approval of contracts by commissioner.
- §33-25A-7a. Provider contracts.
- §33-25A-8. Evidence of coverage; charges for health care services; cancellation of contract by enrollee.
- §33-25A-9. Annual report.
- §33-25A-11. Open enrollment period; limitation on medicare and medicaid beneficiaries.
- §33-25A-12. Grievance procedure.
- §33-25A-14. Prohibited practices.
- §33-25A-15. Agent licensing and appointment required; regulation of marketing.
- §33-25A-16. Powers of insurers and hospital and medical service corporations.
- §33-25A-17. Examinations.
- §33-25A-18. Suspension or revocation of certificate of authority.
- §33-25A-19. Rehabilitation, liquidation or conservation of health maintenance organization.
- §33-25A-24. Statutory construction and relationship to other laws.
- §33-25A-25. Filings and reports as public documents.
- §33-25A-26. Confidentiality of medical information.
- §33-25A-33. Guaranty fund.

§33-25A-2. Definitions.

- 1 (1) "Basic health care services" means physician, hos-
- 2 pital, out-of-area, podiatric, laboratory, X ray, emergency,
- 3 short-term mental health services not exceeding twenty

4 outpatient visits in any twelve-month period, and
5 cost-effective preventive services including immunizations,
6 well-child care, periodic health evaluations for adults,
7 voluntary family planning services, infertility services and
8 children's eye and ear examinations conducted to deter-
9 mine the need for vision and hearing corrections.

10 (2) "Capitation" means the fixed amount paid by a
11 health maintenance organization to a health care provider
12 under contract with the health maintenance organization
13 in exchange for the rendering of health care services.

14 (3) "Commissioner" means the commissioner of insur-
15 ance.

16 (4) "Consumer" means any person who is not a pro-
17 vider of care or an employee, officer, director or stock-
18 holder of any provider of care.

19 (5) "Copayment" means a specific dollar amount,
20 except as otherwise provided for by statute, that the sub-
21 scriber must pay upon receipt of covered health care ser-
22 vices and which is set at an amount consistent with allow-
23 ing subscriber access to health care services.

24 (6) "Employee" means a person in some official em-
25 ployment or position working for a salary or wage contin-
26 uously for no less than one calendar quarter and who is in
27 such a relation to another person that the latter may con-
28 trol the work of the former and direct the manner in which
29 the work shall be done.

30 (7) "Employer" means any individual, corporation,
31 partnership, other private association, or state or local
32 government that employs the equivalent of at least two
33 full-time employees during any four consecutive calendar
34 quarters.

35 (8) "Enrollee", "subscriber," or "member" means an
36 individual who has been voluntarily enrolled in a health
37 maintenance organization, including individuals on whose
38 behalf a contractual arrangement has been entered into
39 with a health maintenance organization to receive health
40 care services.

41 (9) "Evidence of coverage" means any certificate,
42 agreement or contract issued to an enrollee setting out the
43 coverage and other rights to which the enrollee is entitled.

44 (10) "Health care services" means any services or
45 goods included in the furnishing to any individual of
46 medical, mental or dental care, or hospitalization or inci-
47 dent to the furnishing of the care or hospitalization, osteo-
48 pathic services, home health, health education, or rehabili-
49 tation, as well as the furnishing to any person of any and
50 all other services or goods for the purpose of preventing,
51 alleviating, curing or healing human illness or injury.

52 (11) "Health maintenance organization" or "HMO"
53 means a public or private organization which provides, or
54 otherwise makes available to enrollees, health care services,
55 including at a minimum basic health care services which:

56 (a) Receives premiums for the provision of basic
57 health care services to enrollees on a prepaid per capita or
58 prepaid aggregate fixed sum basis, excluding copayments;

59 (b) Provides physicians' services primarily (i) directly
60 through physicians who are either employees or partners
61 of the organization, or (ii) through arrangements with
62 individual physicians or one or more groups of physicians
63 organized on a group practice or individual practice ar-
64 rangement, or (iii) through some combination of para-
65 graphs (i) and (ii) of this subdivision;

66 (c) Assures the availability, accessibility and quality,
67 including effective utilization, of the health care services
68 which it provides or makes available through clearly iden-
69 tifiable focal points of legal and administrative responsi-
70 bility; and

71 (d) Offers services through an organized delivery
72 system, in which a primary care physician is designated
73 for each subscriber upon enrollment. The primary care
74 physician is responsible for coordinating the health care
75 of the subscriber and is responsible for referring the sub-
76 scriber to other providers when necessary: *Provided*, That
77 when dental care is provided by the health maintenance
78 organization the dentist selected by the subscriber from

79 the list provided by the health maintenance organization
80 shall coordinate the covered dental care of the subscriber,
81 as approved by the primary care physician or the health
82 maintenance organization.

83 (12) "Impaired" means a financial situation in which,
84 based upon the financial information which would be
85 required by this chapter for the preparation of the health
86 maintenance organization's annual statement, the assets of
87 the health maintenance organization are less than the sum
88 of all of its liabilities and required reserves including any
89 minimum capital and surplus required of the health main-
90 tenance organization by this chapter so as to maintain its
91 authority to transact the kinds of business or insurance it is
92 authorized to transact.

93 (13) "Individual practice arrangement" means any
94 agreement or arrangement to provide medical services on
95 behalf of a health maintenance organization among or
96 between physicians or between a health maintenance orga-
97 nization and individual physicians or groups of physi-
98 cians, where the physicians are not employees or partners
99 of the health maintenance organization and are not mem-
100 bers of or affiliated with a medical group.

101 (14) "Insolvent" or "insolvency" means a financial
102 situation in which, based upon the financial information
103 which would be required by this chapter for the prepara-
104 tion of the health maintenance organization's annual state-
105 ment, the assets of the health maintenance organization are
106 less than the sum of all of its liabilities and required re-
107 serves.

108 (15) "Medical group" or "group practice" means a
109 professional corporation, partnership, association, or other
110 organization composed solely of health professionals
111 licensed to practice medicine or osteopathy and of such
112 other licensed health professionals, including podiatrists,
113 dentists and optometrists, as are necessary for the provi-
114 sion of health services for which the group is responsible:
115 (a) A majority of the members of which are licensed to
116 practice medicine or osteopathy; (b) who as their principal
117 professional activity engage in the coordinated practice of
118 their profession; (c) who pool their income for practice as

119 members of the group and distribute it among themselves
120 according to a prearranged salary, drawing account or
121 other plan; and (d) who share medical and other records
122 and substantial portions of major equipment and profes-
123 sional, technical and administrative staff.

124 (16) "Premium" means a prepaid per capita or prepaid
125 aggregate fixed sum unrelated to the actual or potential
126 utilization of services of any particular person which is
127 charged by the health maintenance organization for health
128 services provided to an enrollee.

129 (17) "Primary care physician" means the general prac-
130 titioner, family practitioner, obstetrician/gynecologist,
131 pediatrician, or specialist in general internal medicine who
132 is chosen or designated for each subscriber who will be
133 responsible for coordinating the health care of the sub-
134 scriber, including necessary referrals to other providers.

135 (18) "Provider" means any physician, hospital or other
136 person or organization which is licensed or otherwise
137 authorized in this state to furnish health care services.

138 (19) "Uncovered expenses" means the cost of health
139 care services that are covered by a health maintenance
140 organization, for which a subscriber would also be liable
141 in the event of the insolvency of the organization.

142 (20) "Service area" means the county or counties ap-
143 proved by the commissioner within which the health main-
144 tenance organization may provide or arrange for health
145 care services to be available to its subscribers.

146 (21) "Statutory surplus" means the minimum amount
147 of unencumbered surplus which a corporation must main-
148 tain pursuant to the requirements of this article.

149 (22) "Surplus" means the amount by which a corpora-
150 tion's assets exceeds its liabilities and required reserves
151 based upon the financial information which would be
152 required by this chapter for the preparation of the corpo-
153 ration's annual statement except that assets pledged to
154 secure debts not reflected on the books of the health
155 maintenance organization shall not be included in surplus.

156 (23) "Surplus notes" means debt which has been sub-
157 ordinated to all claims of subscribers and general creditors
158 of the organization.

159 (24) "Qualified independent actuary" means an actu-
160 ary who is a member of the American academy of actuar-
161 ies or the society of actuaries and has experience in estab-
162 lishing rates for health maintenance organizations and
163 who has no financial or employment interest in the health
164 maintenance organization.

§33-25A-3. Application for certificate of authority.

1 (1) Notwithstanding any law of this state to the con-
2 trary, any person may apply to the commissioner for and
3 obtain a certificate of authority to establish or operate a
4 health maintenance organization in compliance with this
5 article. No person shall sell health maintenance organiza-
6 tion enrollee contracts, nor shall any health maintenance
7 organization commence services, prior to receipt of a
8 certificate of authority. Any person may, however, estab-
9 lish the feasibility of a health maintenance organization
10 prior to receipt of a certificate of authority through fund-
11 ing drives and by receiving loans and grants.

12 (2) Every health maintenance organization in opera-
13 tion as of the effective date of this article shall submit an
14 application for a certificate of authority under this section
15 within thirty days of the effective date of this article. Each
16 applicant may continue to operate until the commissioner
17 acts upon the application. In the event that an application
18 is denied pursuant to section four of this article, the appli-
19 cant shall be treated as a health maintenance organization
20 whose certificate of authority has been revoked: *Provided*,
21 That all health maintenance organizations in operation for
22 at least five years are exempt from filing applications for a
23 new certificate of authority.

24 (3) The commissioner may require any organization
25 providing or arranging for health care services on a pre-
26 paid per capita or prepaid aggregate fixed sum basis to
27 apply for a certificate of authority under this article. The
28 commissioner shall promulgate rules to facilitate the en-
29 forcement of this subsection: *Provided*, That any provider

30 who is assuming risk by virtue of a contract or other ar-
31 rangement with an HMO or entity which has a certificate,
32 may not be required to file for a certificate: *Provided,*
33 *however,* That the commissioner may require such ex-
34 empted entities to file complete financial data for a deter-
35 mination as to their solvency. Any organization directed
36 to apply for a certificate of authority is subject to the pro-
37 visions of subsection (2) of this section.

38 (4) Each application for a certificate of authority shall
39 be verified by an officer or authorized representative of
40 the applicant, shall be in a form prescribed by the com-
41 missioner and shall set forth or be accompanied by any
42 and all information required by the commissioner, includ-
43 ing:

44 (a) The basic organizational document;

45 (b) The bylaws or rules;

46 (c) A list of the names, addresses and official positions
47 of each member of the governing body, which shall con-
48 tain a full disclosure in the application of any financial
49 interest by the officer or member of the governing body
50 or any provider or any organization or corporation owned
51 or controlled by that person and the health maintenance
52 organization and the extent and nature of any contract or
53 financial arrangements between that person and the health
54 maintenance organization;

55 (d) A description of the health maintenance organiza-
56 tion;

57 (e) A copy of each evidence of coverage form and of
58 each enrollee contract form;

59 (f) Financial statements which include the assets, liabil-
60 ities and sources of financial support of the applicant and
61 any corporation or organization owned or controlled by
62 the applicant;

63 (g) (i) A description of the proposed method of mar-
64 keting the plan; (ii) a schedule of proposed charges; and
65 (iii) a financial plan which includes a three-year projection
66 of the expenses and income and other sources of future

67 capital;

68 (h) A power of attorney duly executed by the appli-
69 cant, if not domiciled in this state, appointing the commis-
70 sioner and his or her successors in office, and duly autho-
71 rized deputies, as the true and lawful attorney of the appli-
72 cant in and for this state upon whom all lawful process in
73 any legal action or proceeding against the health mainte-
74 nance organization on a cause of action arising in this
75 state may be served;

76 (i) A statement reasonably describing the service area
77 or areas to be served and the type or types of enrollees to
78 be served;

79 (j) A description of the complaint procedures to be
80 utilized as required under section twelve of this article;

81 (k) A description of the mechanism by which
82 enrollees will be afforded an opportunity to participate in
83 matters of policy and operation under section six of this
84 article;

85 (l) A complete biographical statement on forms pre-
86 scribed by the commissioner and an independent investi-
87 gation report on all of the individuals referred to in subdivi-
88 sion (c) of this section and all officers, directors and
89 persons holding five percent or more of the common
90 stock of the organization;

91 (m) A comprehensive feasibility study, performed by
92 a qualified independent actuary in conjunction with a
93 certified public accountant which shall contain a certifica-
94 tion by the qualified actuary and an opinion by the certi-
95 fied public accountant as to the feasibility of the proposed
96 organization. The study shall be for the greater of three
97 years or until the health maintenance organization has
98 been projected to be profitable for twelve consecutive
99 months. The study must show that the health maintenance
100 organization would not, at the end of any month of the
101 projection period, have less than the minimum capital and
102 surplus as required by subparagraph (ii), subdivision (c),
103 subsection (2), section four of this article. The qualified
104 independent actuary shall certify that: The rates are nei-

105 ther inadequate nor excessive nor unfairly discriminatory;
106 the rates are appropriate for the classes of risks for which
107 they have been computed; the rating methodology is ap-
108 propriate: *Provided*, That the certification shall include an
109 adequate description of the rating methodology showing
110 that the methodology follows consistent and equitable
111 actuarial principles; the health maintenance organization is
112 actuarially sound: *Provided, however*, That the certifica-
113 tion shall consider the rates, benefits, and expenses of, and
114 any other funds available for the payment of obligations
115 of, the organization; the rates being charged or to be
116 charged are actuarially adequate to the end of the period
117 for which rates have been guaranteed; and incurred but
118 not reported claims and claims reported but not fully paid
119 have been adequately provided for; and

120 (n) Such other information as the commissioner may
121 require to be provided.

122 (5) A health maintenance organization shall, unless
123 otherwise provided for by rules promulgated by the com-
124 missioner, file notice prior to any modification of the
125 operations or documents filed pursuant to this section or
126 as the commissioner may require by rule. If the commis-
127 sioner does not disapprove of the filing within ninety days
128 of filing, it shall be considered approved and may be im-
129 plemented by the health maintenance organization.

**§33-25A-3a. Conditions precedent to issuance or maintenance
of a certificate of authority; effect of bankruptcy
proceedings.**

1 (1) As a condition precedent to the issuance or main-
2 tenance of a certificate of authority, a health maintenance
3 organization must file or have on file with the commis-
4 sioner:

5 (a) An acknowledgment that a delinquency proceed-
6 ing pursuant to article ten of this chapter or supervision by
7 the commissioner pursuant to article thirty-four of this
8 chapter constitutes the sole and exclusive method for the
9 liquidation, rehabilitation, reorganization, or conservation
10 of a health maintenance organization; and

11 (b) A waiver of any right to file or be subject to a
12 bankruptcy proceeding.

13 (2) After the effective date of this section, as a condi-
14 tion precedent to the issuance of a certificate of authority,
15 any organization that has not yet obtained a certificate of
16 authority to operate a health maintenance organization in
17 this state shall be incorporated under the provisions of
18 article one, chapter thirty-one of this code.

19 (3) The commencement of a bankruptcy proceeding
20 either by or against a health maintenance organization
21 shall, by operation of law:

22 (a) Terminate the health maintenance organization's
23 certificate of authority; and

24 (b) Vest in the commissioner for the use and benefit
25 of the subscribers of the health maintenance organization
26 the title to any deposits of the HMO held by the commis-
27 sioner.

28 (4) If the proceeding is initiated by a party other than
29 the health maintenance organization, the operation of
30 subsection (2) of this section shall be stayed for a period
31 of sixty days following the date of commencement of the
32 proceeding.

§33-25A-4. Issuance of certificate of authority.

1 (1) Upon receipt of an application for a certificate of
2 authority, the commissioner shall determine whether the
3 application for a certificate of authority, with respect to
4 health care services to be furnished has demonstrated:

5 (a) The willingness and potential ability of the organi-
6 zation to assure that basic health services will be provided
7 in such a manner as to enhance and assure both the avail-
8 ability and accessibility of adequate personnel and facili-
9 ties;

10 (b) Arrangements for an ongoing evaluation of the
11 quality of health care provided by the organization; and

12 (c) That the organization has a procedure to develop,
13 compile, evaluate and report statistics relating to the cost

14 of its operations, the pattern of utilization of its services,
15 the quality, availability and accessibility of its services, and
16 such other matters as may be reasonably required by rule.

17 (2) The commissioner shall issue or deny a certificate
18 of authority to any person filing an application within one
19 hundred twenty days after receipt of the application. Issu-
20 ance of a certificate of authority shall be granted upon
21 payment of the application fee prescribed, if the commis-
22 sioner is satisfied that the following conditions are met:

23 (a) The health maintenance organization's proposed
24 plan of operation meets the requirements of subsection (1)
25 of this section;

26 (b) The health maintenance organization will effec-
27 tively provide or arrange for the provision of at least basic
28 health care services on a prepaid basis except for
29 copayments: *Provided*, That nothing in this section shall
30 be construed to relieve a health maintenance organization
31 from the obligations to provide health care services be-
32 cause of the nonpayment of copayments unless the
33 enrollee fails to make payment in at least three instances
34 over any twelve-month period: *Provided, however*, That
35 nothing in this section shall permit a health maintenance
36 organization to charge copayments to medicare beneficia-
37 raries or medicaid recipients in excess of the copayments
38 permitted under those programs, nor shall a health mainte-
39 nance organization be required to provide services to the
40 medicare beneficiaries or medicaid recipients in excess of
41 the benefits compensated under those programs;

42 (c) The health maintenance organization is financially
43 responsible and may reasonably be expected to meet its
44 obligations to enrollees and prospective enrollees. In mak-
45 ing this determination, the commissioner may consider:

46 (i) The financial soundness of the health maintenance
47 organization's arrangements for health care services and
48 the proposed schedule of charges used in connection with
49 the health care services;

50 (ii) That the health maintenance organization has and
51 maintains fully paid in capital stock, if a for profit stock

52 corporation, or statutory surplus funds, if a nonprofit
53 corporation, at least one million dollars. In addition, each
54 health maintenance organization shall have and maintain
55 additional surplus funds of at least one million dollars;

56 (iii) Any arrangements which will guarantee for the
57 continuation of benefits and payments to providers for
58 services rendered both prior to and after insolvency for
59 the duration of the contract period for which payment has
60 been made, except that benefits to members who are con-
61 fined on the date of insolvency in an inpatient facility
62 shall be continued until their discharge; and

63 (iv) Any agreement with providers for the provision of
64 health care services;

65 (d) Reasonable provisions have been made for emer-
66 gency and out-of-area health care services;

67 (e) The enrollees will be afforded an opportunity to
68 participate in matters of policy and operation pursuant to
69 section six of this article;

70 (f) The health maintenance organization has demon-
71 strated that it will assume full financial risk on a prospec-
72 tive basis for the provision of health care services, includ-
73 ing hospital care: *Provided*, That the requirement of this
74 subdivision shall not prohibit a health maintenance orga-
75 nization from obtaining insurance or making other ar-
76 rangements:

77 (i) For the cost of providing to any enrollee health
78 care services, the aggregate value of which exceeds four
79 thousand dollars in any year;

80 (ii) For the cost of providing health care services to its
81 members on a nonelective emergency basis, or while they
82 are outside the area served by the organization; or

83 (iii) For not more than ninety-five percent of the
84 amount by which the health maintenance organization's
85 costs for any of its fiscal years exceed one hundred five
86 percent of its income for those fiscal years;

87 (g) The ownership, control and management of the
88 organization is competent and trustworthy and possesses

89 managerial experience that would make the proposed
90 health maintenance organization operation beneficial to
91 the subscribers. The commissioner may, at his or her dis-
92 cretion, refuse to grant or continue authority to transact
93 the business of a health maintenance organization in this
94 state at any time during which the commissioner has prob-
95 able cause to believe that the ownership, control or man-
96 agement of the organization includes any person whose
97 business operations are or have been marked by business
98 practices or conduct that is to the detriment of the public,
99 stockholders, investors or creditors;

100 (h) The health maintenance organization has deposit-
101 ed and maintained in trust with the state treasurer, for the
102 protection of its subscribers or its subscribers and credi-
103 tors, cash or government securities eligible for the invest-
104 ment of capital funds of domestic insurers as described in
105 section seven, article eight of this chapter in the amount of
106 one hundred thousand dollars.

107 (3) A certificate of authority shall be denied only after
108 compliance with the requirements of section twenty-one of
109 this article.

110 (4) No person who has not been issued a certificate of
111 authority shall use the words "health maintenance organi-
112 zation" or the initials "HMO" in its name, contracts or
113 literature: *Provided*, That persons who are operating under
114 a contract with, operating in association with, enrolling
115 enrollees for, or otherwise authorized by a health mainte-
116 nance organization licensed under this article to act on its
117 behalf may use the terms "health maintenance organiza-
118 tion" or "HMO" for the limited purpose of denoting or
119 explaining their association or relationship with the autho-
120 rized health maintenance organization. No health mainte-
121 nance organization which has a minority of board mem-
122 bers who are consumers shall use the words "consumer
123 controlled" in its name or in any way represent to the
124 public that it is controlled by consumers.

§33-25A-7. Fiduciary responsibilities of officers; approval of contracts by commissioner.

1 (a) Any director, officer or partner of a health mainte-

2 nance organization who receives, collects, disburses or
3 invests funds in connection with the activities of the orga-
4 nization is responsible for the funds in a fiduciary rela-
5 tionship to the enrollees.

6 (b) Any contracts made with providers of health care
7 services enabling a health maintenance organization to
8 provide health care services authorized under this article
9 shall be filed with the commissioner. The commissioner
10 has the power to require immediate cancellation of the
11 contracts or the immediate renegotiation of the contract
12 by the parties whenever he or she determines that they
13 provide for excessive payments, or that they fail to include
14 reasonable incentives for cost control, or that they other-
15 wise substantially and unreasonably contribute to escala-
16 tion of the costs of providing health care services to
17 enrollees.

§33-25A-7a. Provider contracts.

1 (1) Whenever a contract exists between a health main-
2 tenance organization and a provider and the organization
3 fails to meet its obligations to pay fees for services already
4 rendered to a subscriber, the health maintenance organiza-
5 tion is liable for the fee or fees rather than the subscriber;
6 and the contract shall state that liability.

7 (2) No subscriber of an HMO is liable to any provider
8 of health care services for any services covered by the
9 HMO if at any time during the provision of the services,
10 the provider, or its agents, are aware the subscriber is an
11 HMO enrollee.

12 (3) No provider of services or any representative of
13 the provider shall collect or attempt to collect from an
14 HMO subscriber any money for services covered by an
15 HMO and no provider or representative of the provider
16 may maintain any action at law against a subscriber of an
17 HMO to collect money owed to the provider by an HMO.

18 (4) Every contract between an HMO and a provider of
19 health care services shall be in writing and shall contain a
20 provision that the subscriber is not liable to the provider
21 for any services covered by the subscriber's contract with

22 the HMO.

23 (5) The provisions of this section shall not be con-
24 strued to apply to the amount of any deductible or
25 copayment which is not covered by the contract of the
26 HMO.

27 (6) For all provider contracts executed on or after the
28 fifteenth day of April, one thousand nine hundred
29 ninety-five, and within one hundred eighty days of that
30 date for contracts in existence on that date:

31 (a) The contracts must provide that the provider shall
32 provide sixty days advance written notice to the health
33 maintenance organization and the commissioner before
34 canceling the contract with the health maintenance organi-
35 zation for any reason; and

36 (b) The contract must also provide that nonpayment
37 for goods or services rendered by the provider to the
38 health maintenance organization is not a valid reason for
39 avoiding the sixty day advance notice of cancellation.

40 (7) Upon receipt by the health maintenance organiza-
41 tion of a sixty day cancellation notice, the health mainte-
42 nance organization may, if requested by the provider,
43 terminate the contract in less than sixty days if the health
44 maintenance organization is not financially impaired or
45 insolvent.

§33-25A-8. Evidence of coverage; charges for health care services; cancellation of contract by enrollee.

1 (1) (a) Every enrollee is entitled to evidence of cover-
2 age in accordance with this section. The health mainte-
3 nance organization or its designated representative shall
4 issue the evidence of coverage.

5 (b) No evidence of coverage, or amendment thereto,
6 shall be issued or delivered to any person in this state until
7 a copy of the form of the evidence of coverage, or amend-
8 ment thereto, has been filed with and approved by the
9 commissioner.

10 (c) An evidence of coverage shall contain a clear,
11 concise and complete statement of:

12 (i) The health care services and the insurance or other
13 benefits, if any, to which the enrollee is entitled;

14 (ii) Any exclusions or limitations on the services, kind
15 of services, benefits, or kind of benefits, to be provided,
16 including any copayments;

17 (iii) Where and in what manner information is avail-
18 able as to how services, including emergency and
19 out-of-area services, may be obtained;

20 (iv) The total amount of payment and copayment, if
21 any, for health care services and the indemnity or service
22 benefits, if any, which the enrollee is obligated to pay with
23 respect to individual contracts, or an indication whether
24 the plan is contributory or noncontributory with respect to
25 group certificates; and

26 (v) A description of the health maintenance organiza-
27 tion's method for resolving enrollee grievances.

28 (d) Any subsequent approved change in an evidence
29 of coverage shall be issued to each enrollee.

30 (e) A copy of the form of the evidence of coverage to
31 be used in this state, and any amendment thereto, is subject
32 to the filing and approval requirements of subdivision (b),
33 subsection (1) of this section, unless the commissioner
34 promulgates a rule dispensing with this requirement or
35 unless it is subject to the jurisdiction of the commissioner
36 under the laws governing health insurance or, hospital or
37 medical service corporations, in which event the filing and
38 approval provisions of those laws apply. To the extent,
39 however, that those provisions do not apply the require-
40 ments in subdivision (c), subsection (1) of this section, are
41 applicable.

42 (2) Premiums may be established in accordance with
43 actuarial principles: *Provided*, That premiums shall not be
44 excessive, inadequate or unfairly discriminatory. A certifi-
45 cation by a qualified independent actuary shall accompa-
46 ny a rate filing and shall certify that: The rates are neither
47 inadequate nor excessive nor unfairly discriminatory; that
48 the rates are appropriate for the classes of risks for which
49 they have been computed; provide an adequate descrip-

50 tion of the rating methodology showing that the method-
51 ology follows consistent and equitable actuarial principles;
52 and the rates being charged are actuarially adequate to the
53 end of the period for which rates have been guaranteed.
54 In determining whether the charges are reasonable, the
55 commissioner shall consider whether the health mainte-
56 nance organization has (a) made a vigorous, good faith
57 effort to control rates paid to health care providers; (b)
58 established a premium schedule, including copayments, if
59 any, which encourages enrollees to seek out preventive
60 health care services; and (c) made a good faith effort to
61 secure arrangements whereby basic services can be ob-
62 tained by subscribers from local providers to the extent
63 that the providers offer the services.

64 (3) Rates are inadequate if the premiums derived from
65 the rating structure, plus investment income, copayments,
66 and revenues from coordination of benefits and subroga-
67 tion, fees-for-service and reinsurance recoveries are not set
68 at a level at least equal to the anticipated cost of medical
69 and hospital benefits during the period for which the rates
70 are to be effective, and the other expenses which would be
71 incurred if other expenses were at the level for the current
72 or nearest future period during which the HMO is project-
73 ed to make a profit. For this analysis, investment income
74 shall not exceed three percent of total projected revenues.

75 (4) The commissioner shall within a reasonable period
76 approve any form if the requirements of subsection (1) of
77 this section are met and any schedule of charges if the
78 requirements of subsection (2) of this section are met. It is
79 unlawful to issue the form or to use the schedule of charg-
80 es until approved. If the commissioner disapproves of the
81 filing, he or she shall notify the filer promptly. In the
82 notice, the commissioner shall specify the reasons for his
83 or her disapproval and the findings of fact and conclu-
84 sions which support his or her reasons. A hearing will be
85 granted by the commissioner within fifteen days after a
86 request in writing, by the person filing, has been received
87 by the commission. If the commissioner does not disap-
88 prove any form or schedule of charges within sixty days
89 of the filing of the forms or charges, they shall be consid-
90 ered approved.

91 (5) The commissioner may require the submission of
92 whatever relevant information in addition to the schedule
93 of charges which he or she considers necessary in deter-
94 mining whether to approve or disapprove a filing made
95 pursuant to this section.

96 (6) An individual enrollee may cancel a contract with
97 a health maintenance organization at any time for any
98 reason: *Provided*, That a health maintenance organization
99 may require that the enrollee give sixty days advance
100 notice: *Provided, however*, That an individual enrollee
101 whose premium rate was determined pursuant to a group
102 contract may cancel a contract with a health maintenance
103 organization pursuant to the terms of that contract.

§33-25A-9. Annual report.

1 (1) Every health maintenance organization shall com-
2 ply with and is subject to the provisions of section four-
3 teen, article four of this chapter relating to filing of finan-
4 cial statements with the commissioner and the national
5 association of insurance commissioners. The annual finan-
6 cial statement required by that section shall include, but
7 not be limited to, the following:

8 (a) A statutory financial statement of the organization,
9 including its balance sheet and receipts and disbursements
10 for the preceding year certified by an independent certi-
11 fied public accountant, reflecting at least: (i) All prepay-
12 ment and other payments received for health care services
13 rendered; (ii) expenditures to all providers, by classes or
14 groups of providers, and insurance companies or nonprof-
15 it health service plan corporations engaged to fulfill obli-
16 gations arising out of the health maintenance contract; and
17 (iii) expenditures for capital improvements, or additions
18 thereto, including, but not limited to, construction, renova-
19 tion or purchase of facilities and capital equipment;

20 (b) The number of new enrollees enrolled during the
21 year, the number of enrollees as of the end of the year and
22 the number of enrollees terminated during the year on a
23 form prescribed by the commissioner;

24 (c) A summary of information compiled p

25 subdivision (c), subsection (1), section four of this article
26 in such form as may be required by the department of
27 health and human resources or other accredited entity;

28 (d) A report of the names and residence addresses of
29 all persons set forth in subdivision (c), subsection (4),
30 section three of this article who were associated with the
31 health maintenance organization during the preceding
32 year, and the amount of wages, expense reimbursements,
33 or other payments to those individuals for services to the
34 health maintenance organization, including a full disclo-
35 sure of all financial arrangements during the preceding
36 year required to be disclosed pursuant to subdivision (c),
37 subsection (4), section three of this article; and

38 (e) Such other information relating to the perfor-
39 mance of the health maintenance organization as is rea-
40 sonably necessary to enable the commissioner to carry out
41 his or her duties under this article.

**§33-25A-11. Open enrollment period; limitation on medicare
and medicaid beneficiaries.**

1 (1) Once a health maintenance organization has been
2 in operation at least five years, or has enrollment of not
3 less than fifty thousand persons, the health maintenance
4 organization shall, in any year following a year in which
5 the health maintenance organization has achieved an oper-
6 ating surplus, maintain an open enrollment period of at
7 least thirty days during which time the health maintenance
8 organization shall, within the limits of its capacity, accept
9 individuals in the order in which they apply without re-
10 gard to preexisting illness, medical conditions or degree of
11 disability except for individuals who are confined to an
12 institution because of chronic illness or permanent injury:
13 *Provided*, That no health maintenance organization shall
14 be required to continue an open enrollment period after
15 such time as enrollment pursuant to the open enrollment
16 period is equal to three percent of the health maintenance
17 organization's net increase in enrollment during the previ-
18 ous year.

9 (2) Where a health maintenance organization demon-
10 strates to the satisfaction of the commissioner that it has a

21 disproportionate share of high-risk enrollees and that, by
22 maintaining open enrollment, it would be required to
23 enroll so disproportionate a share of high-risk enrollees as
24 to jeopardize its economic viability, the commissioner
25 may:

26 (a) Waive the requirement for open enrollment for a
27 period of not more than three years; or

28 (b) Authorize the organization to impose such under-
29 writing restrictions upon open enrollment as are necessary
30 (i) to preserve its financial stability; (ii) to prevent exces-
31 sive adverse selection by prospective enrollees; or (iii) to
32 avoid unreasonably high or unmarketable charges for
33 enrollee coverage of health services. A health maintenance
34 organization may receive more than one waiver or autho-
35 rization.

36 (3) The enrollment by a health maintenance organiza-
37 tion of medicare beneficiaries who are at least sixty-five
38 years of age and medicaid beneficiaries shall not exceed
39 fifty percent of its total enrollee population. The commis-
40 sioner may permit by written order and upon application
41 of a health maintenance organization, the health mainte-
42 nance organization to exceed the fifty percent limitation,
43 but in no event may the medicare and medicaid beneficia-
44 ries enrollment exceed seventy-five percent of its total
45 enrollee population: *Provided*, That before the commis-
46 sioner grants such a waiver, the health maintenance orga-
47 nization must provide the opinion of a qualified independ-
48 ent actuary that the higher percentage of medicaid and
49 medicare recipients will not be detrimental to the solvency
50 of the health maintenance organization for a period of at
51 least thirty-six months into the future.

§33-25A-12. Grievance procedure.

1 (1) A health maintenance organization shall establish
2 and maintain a grievance procedure, which has been ap-
3 proved by the commissioner, to provide adequate and
4 reasonable procedures for the expeditious resolution of
5 written grievances initiated by enrollees concerning any
6 matter relating to any provisions of the organization's
7 health maintenance contracts, including, but not limited to,

8 claims regarding the scope of coverage for health care
9 services; denials, cancellations or nonrenewals of enrollee
10 coverage; observance of an enrollee's rights as a patient;
11 and the quality of the health care services rendered.

12 (2) A detailed description of the HMO's subscriber
13 grievance procedure shall be included in all group and
14 individual contracts as well as any certificate or member
15 handbook provided to subscribers. This procedure shall
16 be administered at no cost to the subscriber. An HMO
17 subscriber grievance procedure shall include the follow-
18 ing:

19 (a) Both informal and formal steps shall be available
20 to resolve the grievance. A grievance is not considered
21 formal until a written grievance is executed by the sub-
22 scriber or completed on such forms as prescribed and
23 received by the HMO;

24 (b) Each HMO shall designate at least one grievance
25 coordinator who is responsible for the implementation of
26 the HMO's grievance procedure;

27 (c) Phone numbers shall be specified by the HMO for
28 the subscriber to call to present an informal grievance or
29 to contact the grievance coordinator. Each phone number
30 shall be toll free within the subscriber's geographic area
31 and provide reasonable access to the HMO without undue
32 delays. There must be an adequate number of phone lines
33 to handle incoming grievances;

34 (d) An address shall be included for written grievanc-
35 es;

36 (e) Each level of the grievance procedure shall have
37 some person with problem solving authority to participate
38 in each step of the grievance procedure;

39 (f) The HMO shall process the formal written sub-
40 scriber grievance through all phases of the grievance pro-
41 cedure in a reasonable length of time not to exceed sixty
42 days, unless the subscriber and HMO mutually agree to
43 extend the time frame. If the complaint involves the col-
44 lection of information outside the service area, the HMO
45 has thirty additional days to process the subscriber com-

46 plaint through all phases of the grievance procedure. The
47 time limitations prescribed in this subdivision requiring
48 completion of the grievance process within sixty days shall
49 be tolled after the HMO has notified the subscriber, in
50 writing, that additional information is required in order to
51 properly complete review of the grievance. Upon receipt
52 by the HMO of the additional information requested, the
53 time for completion of the grievance process set forth in
54 this subdivision shall resume;

55 (g) The subscriber grievance procedure shall state that
56 the subscriber has the right to appeal to the commissioner.
57 There shall be the additional requirement that subscribers
58 under a group contract between the HMO and a depart-
59 ment or division of the state shall first appeal to the state
60 agency responsible for administering the relevant pro-
61 gram, and if either of the two parties are not satisfied with
62 the outcome of the appeal, they may then appeal to the
63 commissioner. The HMO shall provide to the subscriber
64 written notice of the right to appeal upon completion of
65 the full grievance procedure and supply the commissioner
66 with a copy of the final decision letter;

67 (h) The HMO shall have physician involvement in
68 reviewing medically related grievances. Physician involve-
69 ment in the grievance process should not be limited to the
70 subscriber's primary care physician, but may include at
71 least one other physician;

72 (i) The HMO shall offer to meet with the subscriber
73 during the formal grievance process. The location of the
74 meeting shall be at the administrative offices of the HMO
75 within the service area or at a location within the service
76 area which is convenient to the subscriber;

77 (j) The HMO may not establish time limits of less than
78 one year from the date of occurrence for the subscriber to
79 file a formal grievance;

80 (k) Each HMO shall maintain an accurate record of
81 each formal grievance. Each record shall include the fol-
82 lowing: (i) A complete description of the grievance, the
83 subscriber's name and address, the provider's name and

84 address and the HMO's name and address; (ii) a complete
85 description of the HMO's factual findings and conclusions
86 after completion of the full formal grievance procedure;
87 (iii) a complete description of the HMO's conclusions
88 pertaining to the grievance as well as the HMO's final
89 disposition of the grievance; and (iv) a statement as to
90 which levels of the grievance procedure the grievance has
91 been processed and how many more levels of the grievance
92 procedure are remaining before the grievance has
93 been processed through the HMO's entire grievance pro-
94 cedure.

95 Copies of the grievances and the responses thereto
96 shall be available to the commissioner, and the public for
97 inspection for three years.

98 (3) Any subscriber grievance in which time is of the
99 essence must be handled on an expedited basis, such that a
100 reasonable person would believe that a prevailing sub-
101 scriber would be able to realize the full benefit of a deci-
102 sion in his or her favor.

103 (4) Each health maintenance organization shall submit
104 to the commissioner an annual report in a form prescribed
105 by the commissioner which describes such grievance pro-
106 cedure and contains a compilation and analysis of the
107 grievances filed, their disposition, and their underlying
108 causes.

§33-25A-14. Prohibited practices.

1 (1) No health maintenance organization, or represen-
2 tative thereof, may cause or knowingly permit the use of
3 advertising which is untrue or misleading, solicitation
4 which is untrue or misleading, or any form of evidence of
5 coverage which is deceptive. For purposes of this article:

6 (a) A statement or item of information shall be consid-
7 ered to be untrue if it does not conform to fact in any
8 respect which is or may be significant to an enrollee of, or
9 person considering enrollment in, a health maintenance
10 organization;

11 (b) A statement or item of information shall be con-

12 sidered to be misleading, whether or not it may be literally
13 untrue if, in the total context in which the statement is
14 made or the item of information is communicated, the
15 statement or item of information may be reasonably un-
16 derstood by a reasonable person, not possessing special
17 knowledge regarding health care coverage, as indicating
18 any benefit or advantage or the absence of any exclusion,
19 limitation, or disadvantage of possible significance to an
20 enrollee of, or person considering enrollment in, a health
21 maintenance organization, if the benefit or advantage or
22 absence of limitation, exclusion or disadvantage does not
23 in fact exist;

24 (c) An evidence of coverage shall be considered to be
25 deceptive if the evidence of coverage taken as a whole, and
26 with consideration given to typography and format, as well
27 as language, shall be such as to cause a reasonable person,
28 not possessing special knowledge regarding health mainte-
29 nance organizations, and evidences of coverage therefor,
30 to expect benefits, services or other advantages which the
31 evidence of coverage does not provide or which the health
32 maintenance organization issuing the evidence of cover-
33 age does not regularly make available for enrollees cov-
34 ered under such evidence of coverage; and

35 (d) The commissioner may further define practices
36 which are untrue, misleading or deceptive.

37 (2) No health maintenance organization may cancel or
38 fail to renew the coverage of an enrollee except for: (a)
39 Failure to pay the charge for health care coverage; (b)
40 termination of the health maintenance organization; (c)
41 termination of the group plan; (d) enrollee moving out of
42 the area served; (e) enrollee moving out of an eligible
43 group; or (f) other reasons established in rules promulgat-
44 ed by the commissioner. No health maintenance organiza-
45 tion shall use any technique of rating or grouping to can-
46 cel or fail to renew the coverage of an enrollee. An
47 enrollee shall be given thirty days' notice of any cancella-
48 tion or nonrenewal and the notice shall include the reasons
49 for the cancellation or nonrenewal: *Provided*, That each
50 enrollee moving out of an eligible group shall be granted
51 the opportunity to enroll in the health maintenance orga-

52 nization on an individual basis. A health maintenance
53 organization may not disenroll an enrollee for nonpay-
54 ment of copayments unless the enrollee has failed to make
55 payment in at least three instances over any twelve-month
56 period: *Provided, however,* That the enrollee may not be
57 disenrolled if the disenrollment would constitute abandon-
58 ment of a patient. Any enrollee wrongfully disenrolled
59 shall be reenrolled.

60 (3) No health maintenance organization may use in its
61 name, contracts or literature any of the words "insurance",
62 "casualty", "surety", "mutual" or any other words which are
63 descriptive of the insurance, casualty or surety business or
64 deceptively similar to the name or description of any in-
65 surance or surety corporation doing business in this state:
66 *Provided,* That when a health maintenance organization
67 has contracted with an insurance company for any cover-
68 age permitted by this article, it may so state.

69 (4) The providers of a health maintenance organiza-
70 tion who provide health care services and the health main-
71 tenance organization shall not have recourse against
72 enrollees for amounts above those specified in the evi-
73 dence of coverage as the periodic prepayment or
74 copayment for health care services.

75 (5) No health maintenance organization shall enroll
76 more than three hundred thousand persons in this state:
77 *Provided,* That a health maintenance organization may
78 petition the commissioner to exceed an enrollment of
79 three hundred thousand persons and, upon notice and
80 hearing, good cause being shown and a determination
81 made that such an increase would be beneficial to the
82 subscribers, creditors and stockholders of the organization
83 or would otherwise increase the availability of coverage to
84 consumers within the state, the commissioner may, by
85 written order only, allow the petitioning organization to
86 exceed an enrollment of three hundred thousand persons.

87 (6) No health maintenance organization shall discrimi-
88 nate in enrollment policies or quality of services against
89 any person on the basis of race, sex, age, religion, place of
90 residence, health status or source of payment: *Provided,*
91 That differences in rates based on valid actuarial distinc-

92 tions, including distinctions relating to age and sex, shall
93 not be considered discrimination in enrollment policies.

94 (7) No agent of a health maintenance organization or
95 person selling enrollments in a health maintenance organi-
96 zation shall sell an enrollment in a health maintenance
97 organization unless the agent or person shall first disclose
98 in writing to the prospective purchaser the following infor-
99 mation using the following exact terms in bold print: (a)
100 "Services offered", including any exclusions or limitations;
101 (b) "full cost", including copayments; (c) "facilities avail-
102 able and hours of services"; (d) "transportation services";
103 (e) "disenrollment rate"; and (f) "staff", including the
104 names of all full-time staff physicians, consulting special-
105 ists, hospitals and pharmacies associated with the health
106 maintenance organization. In any home solicitation, any
107 three-day cooling-off period applicable to consumer
108 transactions generally applies in the same manner as con-
109 sumer transactions.

110 The form disclosure statement shall not be used in
111 sales until it has been approved by the commissioner or
112 submitted to the commissioner for sixty days without
113 disapproval. Any person who fails to disclose the requisite
114 information prior to the sale of an enrollment may be held
115 liable in an amount equivalent to one year's subscription
116 rate to the health maintenance organization, plus costs and
117 a reasonable attorney's fee.

118 (8) No contract with an enrollee shall prohibit an
119 enrollee from canceling his or her enrollment at any time
120 for any reason except that the contract may require thirty
121 days' notice to the health maintenance organization.

122 (9) Any person who in connection with an enrollment
123 violates any subsection of this section may be held liable
124 for an amount equivalent to one year's subscription rate,
125 plus costs and a reasonable attorney's fee.

**§33-25A-15. Agent licensing and appointment required; regu-
lation of marketing.**

1 (1) Health maintenance organizations are subject to
2 the provisions of article twelve of this chapter.

3 (2) After a subscriber signs an HMO enrollment appli-
4 cation and before the HMO can process the application
5 changing or initiating the subscriber coverage, each HMO
6 must verify the intent and desire of the individual sub-
7 scriber to join the HMO. The verification must be in writ-
8 ing and conducted by someone outside the HMO's mar-
9 keting department. Each verification shall include the
10 following:

11 (a) Confirmation that the subscriber intends and de-
12 sires to join the HMO;

13 (b) If the subscriber is a medicare or medicaid recipi-
14 ent, confirmation that the subscriber understands by join-
15 ing the HMO he or she will be limited to the benefits pro-
16 vided by the HMO, and medicare or medicaid will pay the
17 HMO for the subscriber coverage;

18 (c) Confirmation that the subscriber understands the
19 applicable restrictions of HMOs, especially that he or she
20 must use the HMO providers and secure approval from the
21 HMO to use health care providers outside the plan; and

22 (d) If the subscriber is a member of an HMO, confir-
23 mation that the subscriber understands he or she is trans-
24 ferring to another HMO.

25 (e) The HMO shall not pay a commission, fee, money
26 or any other form of scheduled compensation to any
27 health insurance agent until verification from the subscrib-
28 er of his or her intent and desire to enroll into the HMO
29 has been secured and the enrollment process has been
30 completed. The HMO shall verify the intent of the sub-
31 scriber to enroll with a written notice to the subscriber
32 stating that he or she has transferred from his or her exist-
33 ing coverage (i.e. from medicare, medicaid, another HMO,
34 etc.) to the new HMO. Each written verification notice
35 shall be accompanied with printed materials explaining the
36 nature of the HMO and any applicable restrictions and
37 exclusions. The enrollment process shall be considered
38 complete seven days after the HMO mails the confirma-
39 tion notice. Each HMO must notify the subscriber of the
40 date enrollment begins and when benefits will be available.
41 Each HMO is directly responsible for enrollment abuses.

42 (3) The commissioner may, in his or her discretion,
43 after notice and hearing, promulgate rules as are necessary
44 to regulate marketing of health maintenance organizations
45 by persons compensated directly or indirectly by the
46 health maintenance organizations. When necessary the
47 rules may prohibit door-to-door solicitations, may prohib-
48 it commission sales, and may provide for such other pro-
49 scriptions and other rules as are required to effectuate the
50 purposes of this article.

§33-25A-16. Powers of insurers and hospital and medical service corporations.

1 (1) An insurance company licensed in this state or a
2 hospital or medical service corporation authorized to do
3 business in this state, after applying for and receiving a
4 certificate of authority as a health maintenance organiza-
5 tion, may through a subsidiary or affiliate organize and
6 operate a health maintenance organization under the pro-
7 visions of this article. Notwithstanding any other law to the
8 contrary, any two or more insurance companies, hospital
9 or medical service corporations, or subsidiaries or affiliates
10 thereof, may jointly organize and operate a health mainte-
11 nance organization. The business of insurance is consid-
12 ered to include the providing of health care by a health
13 maintenance organization owned or operated by an insur-
14 er or a subsidiary thereof.

15 (2) Notwithstanding any provision of insurance and
16 hospital or medical service corporation laws, an insurer or
17 a hospital or medical service corporation may contract
18 with a health maintenance organization to provide insur-
19 ance or similar protection against the cost of care provided
20 through health maintenance organizations and to provide
21 coverage in the event of the failure of the health mainte-
22 nance organization to meet its obligations. The enrollees
23 of a health maintenance organization constitute a permis-
24 sible group under such laws. Among other things, under
25 the contracts, the insurer or hospital or medical service
26 corporation may make benefit payments to health mainte-
27 nance organizations for health care services rendered by
28 providers.

§33-25A-17. Examinations.

1 (1) The commissioner may make an examination of
2 the affairs of any health maintenance organization and
3 providers with whom the organization has contracts, agree-
4 ments or other arrangements as often as he or she consid-
5 ers it necessary for the protection of the interests of the
6 people of this state but not less frequently than once every
7 three years.

8 (2) The commissioner may contract with the depart-
9 ment of health and human resources or any entity con-
10 tracted with by the department of health and human re-
11 sources which has been accredited by a nationally recog-
12 nized accrediting organization and has been approved by
13 the commissioner to make examinations concerning the
14 quality of health care services of any health maintenance
15 organization and providers with whom the organization
16 has contracts, agreements or other arrangements as often
17 as it considers necessary for the protection of the interests
18 of the people of this state, but not less frequently than
19 once every three years: *Provided*, That in making the
20 examination, the department of health and human re-
21 sources or the accredited entity shall utilize the services of
22 persons or organizations with demonstrable expertise in
23 assessing quality of health care.

24 (3) Every health maintenance organization and affili-
25 ated provider shall submit its books and records to the
26 examinations and in every way facilitate them. For the
27 purpose of examinations, the commissioner and the de-
28 partment of health and human resources have all powers
29 necessary to conduct the examinations, including, but not
30 limited to, the power to issue subpoenas, the power to
31 administer oaths to and examine the officers and agents of
32 the health maintenance organization and the principles of
33 the providers concerning their business.

34 (4) The health maintenance organization is subject to
35 the provisions of section nine, article two of this chapter in
36 regard to the expense and conduct of examinations.

37 (5) In lieu of the examination, the commissioner may
38 accept the report of an examination made by other states.

§33-25A-18. Suspension or revocation of certificate of authority.

1 (1) The commissioner may suspend or revoke any
2 certificate of authority issued to a health maintenance
3 organization under this article if he or she finds that any
4 of the following conditions exist:

5 (a) The health maintenance organization is operating
6 significantly in contravention of its basic organization
7 document, in any material breach of contract with an
8 enrollee, or in a manner contrary to that described in and
9 reasonably inferred from any other information submitted
10 under section three of this article unless amendments to
11 the submissions have been filed with an approval of the
12 commissioner;

13 (b) The health maintenance organization issues evi-
14 dence of coverage or uses a schedule of premiums for
15 health care services which do not comply with the require-
16 ments of section eight of this article;

17 (c) The health maintenance organization does not
18 provide or arrange for basic health care services;

19 (d) The department of health and human resources or
20 other accredited entity certifies to the commissioner that:
21 (i) The health maintenance organization is unable to fulfill
22 its obligations to furnish health care services as required
23 under its contract with enrollees; or (ii) the health mainte-
24 nance organization does not meet the requirements of
25 subsection (1), section four of this article;

26 (e) The health maintenance organization is no longer
27 financially responsible and may reasonably be expected to
28 be unable to meet its obligations to enrollees or prospec-
29 tive enrollees or is otherwise determined by the commis-
30 sioner to be in a hazardous financial condition;

31 (f) The health maintenance organization has failed to
32 implement a mechanism affording the enrollees an oppor-
33 tunity to participate in matters of policy and operation
34 under section six of this article;

35 (g) The health maintenance organization has failed to

36 implement the grievance procedure required by section
37 twelve of this article in a manner to reasonably resolve
38 valid grievances;

39 (h) The health maintenance organization, or any per-
40 son on its behalf, has advertised or merchandised its ser-
41 vices in an untrue, misrepresentative, misleading, deceptive
42 or unfair manner;

43 (i) The continued operation of the health maintenance
44 organization would be hazardous to its enrollees;

45 (j) The health maintenance organization has otherwise
46 failed to substantially comply with this article; or

47 (k) The health maintenance organization has violated
48 a lawful order of the commissioner.

49 (2) A certificate of authority shall be suspended or
50 revoked only after compliance with the requirements of
51 section twenty-one of this article.

52 (3) When the certificate of authority of a health main-
53 tenance organization is suspended, the health maintenance
54 organization shall not, during the period of the suspen-
55 sion, enroll any additional enrollees except newborn chil-
56 dren or other newly acquired dependents of existing
57 enrollees, and shall not engage in any advertising or solici-
58 tation whatsoever.

59 (4) When the certificate of authority of a health main-
60 tenance organization is revoked, the organization shall
61 proceed, immediately following the effective date of the
62 order of revocation, to terminate its affairs, and shall con-
63 duct no further business except as may be essential to the
64 orderly conclusion of the affairs of the organization. It
65 shall engage in no further advertising or solicitation what-
66 soever. The commissioner may, by written order, permit
67 such further operation of the organization as he or she
68 may find to be in the best interests of enrollees, to the end
69 that enrollees will be afforded the greatest practical oppor-
70 tunity to obtain continuing health care coverage.

§33-25A-19. Rehabilitation, liquidation or conservation of health maintenance organization.

1 Any rehabilitation, liquidation or conservation of a
2 health maintenance organization shall be considered to be
3 the rehabilitation, liquidation or conservation of an insur-
4 ance company, shall be the exclusive remedy for rehabili-
5 tation, liquidation and conservation of an HMO as provid-
6 ed by this article and shall be conducted under the super-
7 vision of the commissioner pursuant to the law governing
8 the rehabilitation, liquidation or conservation of insurance
9 companies. The commissioner may apply for an order
10 directing him or her to rehabilitate, liquidate or conserve a
11 health maintenance organization upon any one or more
12 grounds set out in the rehabilitation statutes or when, in his
13 or her opinion, the continued operation of the health
14 maintenance organization would be hazardous either to
15 the enrollees or to the people of this state.

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

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

12 (b) Factually accurate advertising or solicitation re-
13 garding the range of services provided, the premiums and
14 copayments charged, the sites of services and hours of
15 operation, and any other quantifiable, nonprofessional
16 aspects of its operation by a health maintenance organiza-
17 tion granted a certificate of authority, or its representative
18 shall not be construed to violate any provision of law relat-
19 ing to solicitation or advertising by health professions:
20 *Provided*, That nothing contained in this subsection shall
21 be construed as authorizing any solicitation or advertising
22 which identifies or refers to any individual provider or
23 makes any qualitative judgment concerning any provider.

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

28 (d) The provisions of section fifteen, article four (gen-
29 eral provisions); article six-c (guaranteed loss ratio); article
30 seven (assets and liabilities); article eight (investments);
31 article nine (administration of deposits); article twelve
32 (agents, brokers, solicitors and excess line); section four-
33 teen, article fifteen (individual accident and sickness insur-
34 ance); section sixteen, article fifteen (coverage of chil-
35 dren); section eighteen, article fifteen (equal treatment of
36 state agency); section nineteen, article fifteen (coordina-
37 tion of benefits with medicaid); article fifteen-b (uniform
38 health care administration act); section three, article six-
39 teen (required policy provisions); section three-f, article
40 sixteen (treatment of temporomandibular disorder and
41 craniomandibular disorder); section eleven, article sixteen
42 (coverage of children); section thirteen, article sixteen
43 (equal treatment of state agency); section fourteen, article
44 sixteen (coordination of benefits with medicaid); article
45 sixteen-a (group health insurance conversion); article
46 sixteen-c (small employer group policies); article
47 sixteen-d (marketing and rate practices for small employ-
48 ers); article twenty-seven (insurance holding company
49 systems); article thirty-four-a (standards and commis-
50 sioner's authority for companies deemed to be in hazard-
51 ous financial condition); article thirty-five (criminal sanc-
52 tions for failure to report impairment); article thirty-seven
53 (managing general agents); and article thirty-nine (disclo-
54 sure of material transactions) shall be applicable to any
55 health maintenance organization granted a certificate of
56 authority under this article. In circumstances where the
57 code provisions made applicable to health maintenance
58 organizations by this section refer to the "insurer", the
59 "corporation" or words of similar import, the language
60 shall be construed to include health maintenance organi-
61 zations.

62 (e) Any long-term care insurance policy delivered or
63 issued for delivery in this state by a health maintenance
64 organization shall comply with the provisions of article

65 fifteen-a of this chapter.

§33-25A-25. Filings and reports as public documents.

1 All applications, filings and reports required under this
2 article shall be treated as public documents: *Provided*,
3 That where the provisions of other articles in this chapter
4 are applicable to health maintenance organizations, all
5 applications, filings and reports required under those arti-
6 cles shall be afforded the level of confidentiality as pro-
7 vided in those articles.

§33-25A-26. Confidentiality of medical information.

1 Any data or information pertaining to the diagnosis,
2 treatment or health of any enrollee or applicant obtained
3 from that person or from any provider by any health
4 maintenance organization shall be held in confidence and
5 shall not be disclosed to any person except: (1) To the
6 extent that it may be necessary to facilitate an assessment
7 of the quality of care delivered pursuant to section seven-
8 teen of this article or to review the grievance procedure
9 pursuant to section twelve of this article; (2) upon the
10 express written consent of the enrollee or his or her legally
11 authorized representative; (3) pursuant to statute or court
12 order for the production of evidence or the discovery
13 thereof; (4) in the event of claim or litigation between that
14 person and the health maintenance organization wherein
15 the data or information is pertinent; or (5) to a department
16 or division of the state pursuant to the terms of a group
17 contract for the provision of health care services between
18 the HMO and the department or division of the state. A
19 health maintenance organization is entitled to claim any
20 statutory privileges against the disclosure which the pro-
21 vider who furnished the information to the health mainte-
22 nance organization is entitled to claim.

§33-25A-33. Guaranty fund.

1 On or before the fifteenth day of January, one thou-
2 sand nine hundred ninety-six, the commissioner shall
3 submit a report to the Legislature setting forth a plan to
4 establish a guaranty fund for health maintenance organi-
5 zations operating in West Virginia.

CHAPTER 141

(Com. Sub. for H. B. 2397—By Delegates Collins, Williams and Kuhn)

[Passed March 11, 1995; in effect ninety days from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact section seventeen, article five, chapter twenty-one; and sections one and four, article three-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to firefighters in emergency situations; expanding the definition of emergency so that voluntary fire department personnel are not fired or otherwise discriminated against for situations not presently included in such definition; expanding situations in which firefighters may enter privately-owned buildings; expanding situations in which persons are guilty of a felony or misdemeanor for interfering with firefighters during an emergency.

Be it enacted by the Legislature of West Virginia:

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

Chapter

21. Labor.

29. Miscellaneous Boards and Officers.

CHAPTER 21. LABOR.

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-17. Employers prohibited from discharging employees for time lost as volunteer firemen.

1 No employer may terminate an employee who is a
2 member of a volunteer fire department who, in the line of

3 emergency duty as a volunteer fireman, responds to an
4 emergency call prior to the time he is due to report for
5 work and which emergency results in a loss of time from
6 his employment.

7 Any time lost from employment as provided in this
8 section may be charged against the employee's regular
9 pay.

10 At the request of an employer, any employee losing
11 time as provided herein shall supply his employer with a
12 statement from the chief of the volunteer fire department
13 stating that the employee responded to an emergency call
14 and the time thereof.

15 As used in this section, "emergency" shall mean going
16 to, attending to or coming from (1) a fire call, (2) a haz-
17 ardous or toxic materials spill and cleanup, or (3) any
18 other situation to which his or her fire department has
19 been or later could be dispatched. The term "employer"
20 includes any individual, partnership, association, corpora-
21 tion, business trust or any person or group of persons
22 acting directly or indirectly in the interest of an employer
23 in relation to any employee.

24 Any employer who willfully and knowingly violates
25 the provisions of this section shall be required to reinstate
26 such employee to his former position and shall be re-
27 quired to pay such employee all lost wages and benefits
28 for the period between termination and reinstatement.
29 Any action to enforce the provisions of this section shall
30 be commenced within a period of one year after the date
31 of violation and such action shall be commenced in the
32 circuit court of the county wherein the place of employ-
33 ment is located.

**CHAPTER 29. MISCELLANEOUS BOARDS
AND OFFICERS.**

ARTICLE 3A. AUTHORITY OF LOCAL FIRE DEPARTMENTS.

§29-3A-1. Authority of fire officers in charge of fire, service call or other
emergency; definitions.

§29-3A-4. Person attacking or hindering or obstructing firefighter or emergency equipment; penalties.

§29-3A-1. Authority of fire officers in charge of fire, service call or other emergency; definitions.

1 While any fire department recognized or approved by
2 the West Virginia state fire commission is responding to,
3 operating at or returning from a fire, fire hazard, service
4 call or other emergency, the fire chief, any other elected
5 or appointed fire line officer, or any member serving in
6 the capacity of appointed fire line officer in charge, ex-
7 cept on industrial property where trained industrial fire
8 fighting personnel are present, shall have the authority:

9 (1) Of controlling and directing fire fighting and fire
10 control activities at such scene;

11 (2) To order any person or persons to leave any build-
12 ing or place in the vicinity of such scene for the purpose
13 of protecting such persons from injury;

14 (3) To blockade any public highway, street or private
15 right-of-way temporarily while at such scene;

16 (4) To enter the building, structure, enclosure or other
17 property of any person or persons at any time of the day
18 or night, without liability, while operating at such scene;

19 (5) To enter any building, including private dwellings,
20 or upon any premises where an emergency exists, or
21 where there is reasonable cause to believe an emergency
22 exists, for the purpose of eliminating the emergency;

23 (6) To enter any building, including private dwellings,
24 or premises near the scene of the emergency for the pur-
25 pose of protecting the building or premises or for the
26 purpose of eliminating the emergency which is in progress
27 in another building or premises;

28 (7) To inspect for preplanning, all buildings, structures
29 or other places in their fire district, excepting, however, the
30 interior of a private dwelling, with the consent of the own-

31 er or occupant, where any combustible materials, includ-
32 ing waste paper, rags, shavings, waste, leather, rubber,
33 crates, boxes, barrels, rubbish or other combustible materi-
34 al that is or may become dangerous as a fire menace to
35 such building or buildings, structure or other places has
36 been allowed to accumulate or where such chief or his
37 designated representative has reason to believe that such
38 material of a combustible nature has accumulated or is
39 liable to be accumulated;

40 (8) To direct the removal or destroying of any fence,
41 house, motor vehicle or other thing which may reasonably
42 be determined to be necessary to be pulled down, de-
43 stroyed, or removed to prevent the further spread of the
44 fire or hazardous condition;

45 (9) To request and be supplied with additional materi-
46 als such as sand, treatments, chemicals, etc., and special
47 equipment when dealing with an accident on a public
48 highway or railroad right-of-way when it is deemed a
49 necessity to prevent the further spread of the fire or haz-
50 arduous condition, the cost of which to be borne by the
51 owner of the instrumentality which caused the fire or haz-
52 arduous condition;

53 (10) To order disengagement or discouplement of any
54 convoy, caravan or train of vehicles, craft or railway cars if
55 deemed a necessity in the interest of safety of persons or
56 property; and

57 (11) As used in this article, the term "emergency"
58 means a situation in which the fire officer in charge knows
59 or in which a reasonable person would believe that there
60 exists an imminent threat of serious bodily harm or death
61 to a person or significant damage to property.

**§29-3A-4. Person attacking or hindering or obstructing
firefighter or emergency equipment; penalties.**

1 (a) It shall be unlawful, while any fire department or
2 company or firefighter is lawfully exercising or discharg-
3 ing such department's, company's or firefighter's official
4 duty during an emergency, for any person to:

5 (1) Attack any firefighter or any of his or her
6 equipment with any deadly weapon as defined in section
7 two, article seven, chapter sixty-one of this code, or

8 (2) Intentionally hinder, obstruct, oppose, or attempt
9 to hinder, obstruct or oppose, or counsel, advise or invite
10 others to hinder, obstruct or oppose, any fire department,
11 fire company or firefighter.

12 (b) Any person violating the provisions of this section
13 is guilty of a felony, and, upon conviction thereof, shall be
14 imprisoned in the penitentiary not less than one nor more
15 than ten years, or, in the discretion of the court, be
16 confined in the county jail not more than one year or
17 fined not more than five hundred dollars, or both fined
18 and imprisoned.

19 (c) Any person willfully violating any of the
20 provisions of section one or three of this article is guilty of
21 a misdemeanor, and, upon conviction thereof, shall be
22 fined not less than one hundred dollars nor more than five
23 hundred dollars.

24 (d) Nothing in this article shall be construed to
25 prevent law-enforcement officials from controlling traffic
26 and otherwise maintaining order at the scene of a fire.

CHAPTER 142

(S. B. 196—By Senators Wagner, Bailey, Bowman, Buckalew,
Miller, Wiedebusch and Yoder)

[Passed February 20, 1995; in effect July 1, 1995. Approved by the Governor.]

AN ACT to repeal article four, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the repeal of provisions establishing labor-management council.

Be it enacted by the Legislature of West Virginia:

That article four, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed.

§1. Repeal of article creating the labor-management council.

1 Article four, chapter five-b of the code of West Virginia,
2 one thousand nine hundred thirty-one, as amended, is
3 hereby repealed. It is not the intention of the Legislature
4 in enacting this section to terminate or to prohibit the
5 continued operation of regional advisory councils
6 heretofore created.

CHAPTER 143

(Com. Sub. for H. B. 2001—By Delegates Beane, Love, J. Martin, Mezzatesta
and Rowe)

[Passed January 26, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, 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-seven, relating to the superintendent of the division of public safety or his or her designee providing state flags for funeral services for all employed law-enforcement officers.

Be it enacted by the Legislature of West Virginia:

That article one, 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-seven, 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.**

ARTICLE 1. THE GOVERNOR.

§5-1-27. Draping of state flag to honor the passing of law-enforcement officers.

1 When any law-enforcement officer employed by the
2 state or any of its political subdivisions dies while on active
3 duty or after being honorably discharged or honorably
4 retired, upon the request of next of kin, the state shall
5 honor the officer by providing a state flag, at no cost, for
6 draping the coffin at the funeral service of the deceased
7 officer. The superintendent of the West Virginia state
8 police or his or her designee shall upon request provide
9 the flag upon verifying the deceased's service.

CHAPTER 144

(H. B. 2013—By Delegate Love)

[Passed March 11, 1995; in effect ninety days from passage.

Became law without Governor's signature.]

AN ACT to amend article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen-d; to amend article fourteen, chapter eight of said code by adding thereto a new section, designated section twenty-four; to amend and reenact section two, article seven, chapter twenty of said code; and to amend and reenact section four, article seven, chapter sixty-one of said code, all relating to retired law-enforcement officers; requiring law-enforcement agency to provide identification card for honorably retiring member and permitting honorably retiring member to retain a complete standard uniform; identifying occasions on which retired member may wear uniform; permitting honorably retired officer to acquire a badge; bringing conservation officer employment qualifications into compliance with the Federal Age Discrimination in Employment Act; and exempting retired law-enforcement officer from certain requirements to obtain license to carry a concealed deadly weapon.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 7. County Commissions and Officers.**
- 8. Municipal Corporations.**
- 20. Natural Resources.**
- 61. Crimes and Their Punishment.**

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-17d. Right to receive complete standard uniform; and right to acquire badge.

1 A deputy sheriff, upon honorable retirement, shall be
2 authorized to maintain at his or her own cost a complete
3 standard uniform from the law-enforcement agency of
4 which he or she was a member, and shall be issued an
5 identification card indicating his or her honorable retire-
6 ment from the law-enforcement agency. The uniform
7 may be worn by the officer in retirement only on the
8 following occasions: Police Officer's Memorial Day, Law
9 Enforcement Appreciation Day, at the funeral of a
10 law-enforcement officer or during any other police cere-
11 mony. The honorably retired officer is authorized to
12 acquire a badge of the law-enforcement agency from
13 which he or she is retired with the word "retired" placed on
14 it.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-24. Right to receive complete standard uniform; and right to acquire badge.

1 A police officer, upon honorable retirement, shall be
2 authorized to maintain at his or her own cost a complete
3 standard uniform from the law-enforcement agency of
4 which he or she was a member, and shall be issued an
5 identification card indicating his or her honorable retire-
6 ment from the law-enforcement agency. The uniform may
7 be worn by the officer in retirement only on the following
8 occasions: Police Officer's Memorial Day, Law Enforce-
9 ment Appreciation Day, at the funeral of a law-enforce-
10 ment officer or during any other police ceremony. The
11 honorably retired officer is authorized to acquire a badge
12 of the law-enforcement agency from which he or she is
13 retired with the word "retired" placed on it.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-2. Qualifications, etc., of conservation officers; right of retired officer to receive complete standard uniform; right of retired officer to acquire uniform; and right of retired officer to acquire badge.

1 In addition to civil service qualifications and require-
2 ments, persons selected as conservation officers shall have
3 reached their eighteenth birthday at the time of appoint-
4 ment, be in good physical condition and of good moral
5 character, temperate in habits and shall not have been
6 convicted of a felony. Whenever possible and practicable,
7 preference in selection of conservation officers shall be
8 given honorably discharged United States military person-

9 nel. Each conservation officer, before entering upon the
10 discharge of his duties, shall take and subscribe to the oath
11 of office prescribed in article IV, section 5 of the Constitu-
12 tion of West Virginia, which executed oath shall be filed
13 with the director.

14 The director shall prescribe the kind, style and materi-
15 al of uniforms to be worn by conservation officers. Uni-
16 forms and other equipment furnished to the conservation
17 officers shall be and remain the property of the state, ex-
18 cept as hereinafter provided in this section.

19 A conservation officer, upon honorable retirement,
20 shall be authorized to maintain at his or her own cost a
21 complete standard uniform from the law-enforcement
22 agency of which he or she was a member, and shall be
23 issued an identification card indicating his or her honor-
24 able retirement from the law-enforcement agency. The
25 uniform may be worn by the officer in retirement only on
26 the following occasions: Police Officer's Memorial Day,
27 Law Enforcement Appreciation Day, at the funeral of a
28 law-enforcement officer or during any other police cere-
29 mony. The honorably retired officer is authorized to
30 acquire a badge of the law-enforcement agency from
31 which he or she is retired with the word "retired" placed on
32 it.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-4. License to carry deadly weapons; how obtained.

1 (a) Except as provided in subsection (h) of this sec-
2 tion, any person desiring to obtain a state license to carry a
3 concealed deadly weapon shall apply to the circuit court
4 of his or her county for such license, and shall pay to the
5 clerk of the circuit court, at the time of application, a filing
6 fee of twenty dollars. The applicant shall file with the
7 clerk of the circuit court an application in writing, duly
8 verified, which sets forth the following:

9 (1) That the applicant is a citizen of the United States

10 of America or lawfully resides in the United States of
11 America;

12 (2) That, on the date the application is made, the ap-
13 plicant is a bona fide resident of this state and of the coun-
14 ty in which the application is made;

15 (3) That the applicant is eighteen years of age or
16 older;

17 (4) That the applicant is not addicted to alcohol, a
18 controlled substance or a drug, and is not an unlawful user
19 thereof;

20 (5) That the applicant has not been convicted of a
21 felony or of an act of violence involving the misuse of
22 such deadly weapon;

23 (6) That the applicant desires to carry such deadly
24 weapon for the defense of self, family, home or state, or
25 other lawful purpose;

26 (7) That the applicant is physically and mentally com-
27 petent to carry such weapon;

28 (8) That, in the case of a person applying for a license
29 to carry a concealed pistol or revolver, the applicant has
30 qualified under minimum requirements for handling and
31 firing such firearms. These minimum requirements are
32 those promulgated by the division of natural resources
33 and attained under the auspices of the division of natural
34 resources: *Provided*, That the court shall waive this re-
35 quirement in the case of a renewal applicant who has pre-
36 viously qualified: *Provided, however*, That the following
37 may be substituted for those minimum requirements pro-
38 mulgated by the division of natural resources:

39 (A) Successful completion of any official national
40 rifle association firearms safety or training course;

41 (B) Successful completion of any firearms safety or
42 training course or class available to the general public
43 offered by an official law-enforcement organization, com-
44 munity college, junior college, college, or private or public

45 institution or organization or firearms training school,
46 utilizing instructors currently certified by the national rifle
47 association;

48 (C) Successful completion of any firearms training or
49 safety course or class conducted by a firearms instructor
50 certified as such by the state or by the national rifle associ-
51 ation.

52 A photocopy of a certificate of completion of any of
53 the courses or classes or an affidavit from the instructor,
54 school, club, organization, or group that conducted or
55 taught said course or class attesting to the successful com-
56 pletion of the course or class by the applicant or a copy of
57 any document which shows successful completion of the
58 course or class, shall constitute evidence of qualification
59 under this section.

60 (b) The court shall issue or deny such license within
61 thirty days after the application is filed with the circuit
62 clerk. The court shall, if necessary, hear evidence upon all
63 matters stated in such application and upon any other
64 matter related to the eligibility of the applicant under
65 subsection (a) of this section. If from such application or
66 the proof it appears that the purpose for such person to
67 carry such weapon is defense of self, family, home or state,
68 or other lawful purpose, and all other conditions in sub-
69 section (a) are complied with, the court, or the judge there-
70 of in vacation, shall grant such license.

71 (c) In the event an application is denied, the specific
72 reasons for the denial shall be stated in the order of the
73 court denying the application. Upon denial of an applica-
74 tion and at the request of the applicant made within ten
75 days of such denial, the court shall schedule the matter for
76 a hearing. The applicant may be represented by counsel,
77 but in no case shall the court be required to appoint coun-
78 sel for an applicant. The final order of the court shall
79 include the court's findings of fact and conclusions of law.

80 (d) If an application is approved, the court shall re-
81 quire in its order granting the license that before any li-
82 cense shall be issued or become effective, the applicant

83 shall pay to the sheriff a license fee in the amount of fifty
84 dollars. Any such license shall be valid for five years,
85 unless sooner revoked.

86 (e) All license fees collected hereunder shall be paid
87 by the sheriff and accounted for to the auditor as other
88 license taxes are collected and paid, and the state tax com-
89 missioner shall prepare all suitable forms for licenses and
90 certificates showing that such license has been granted and
91 shall do any other act required to be done to protect the
92 state and see to the enforcement of this section.

93 (f) The clerk of the circuit court shall, immediately
94 after the license is granted as aforesaid, furnish the super-
95 intendent of the West Virginia state police a certified copy
96 of the order of the court granting such license, for which
97 service the clerk shall be paid a fee of two dollars which
98 shall be taxed as costs in the proceeding. It shall be the
99 duty of the clerk of each circuit court to furnish to the
100 superintendent of the West Virginia state police, at any
101 time so requested, a certified list of all such licenses issued
102 in the county.

103 (g) No person who is engaged in the receipt, review,
104 or in the issuance of such license shall incur any civil
105 liability as the result of the lawful performance of his or
106 her duties under this article.

107 (h) Notwithstanding the provisions of subsections (a)
108 and (d) of this section, with respect to application by a
109 former law-enforcement officer honorably retired from
110 agencies governed by article fourteen, chapter seven; arti-
111 cle fourteen, chapter eight; and article seven, chapter twen-
112 ty of this code, an honorably retired officer is exempt
113 from payment of fees and costs as otherwise required by
114 this section, and the application of the honorably retired
115 officer shall be granted without proof or inquiry by the
116 court as to those requirements set forth in subdivisions (6)
117 and (8) of subsection (a) of this section, if the officer
118 meets the requirements of subdivisions (1) through (5)
119 and subdivision (7) of subsection (a) of this section and
120 has the approval of the appropriate chief law-enforcement
121 officer.

CHAPTER 145

(S. B. 414—By Senators Wooton, Oliverio, Love, Yoder, Buckalew, Wiedebusch, White, Bailey, Plymale, Wagner, Anderson and Sharpe)

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fourteen-c, relating to deputy sheriffs; procedure for investigation; definitions; investigation or interrogation of a deputy sheriff; hearing; right to refuse to disclose personal finances; exceptions; and appeal.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14C. DEPUTY SHERIFFS; PROCEDURE FOR INVESTIGATION.

§7-14C-1. Definitions.

§7-14C-2. Investigation and interrogation of a deputy sheriff.

§7-14C-3. Hearing.

§7-14C-4. Right to refuse to disclose personal finances; exceptions.

§7-14C-5. Appeal.

§7-14C-1. Definitions.

1 Unless the context clearly indicates otherwise, as used
2 in this article:

3 (1) "Deputy sheriff" means any person appointed by a
4 sheriff as his or her deputy whose primary duties as deputy
5 are within the scope of active, general law enforcement
6 and as such is authorized to carry deadly weapons, patrol
7 the highways, perform police functions, make arrests or
8 safeguard prisoners. This definition may not be construed

9 to include any person or persons whose sole duties are the
10 service of civil process and subpoenas as provided in sec-
11 tion fourteen, article one, chapter fifty of this code, but the
12 exclusion does not preclude the service of civil process or
13 subpoenas by deputy sheriffs covered by the provisions of
14 this code.

15 (2) "Under investigation" or "under interrogation"
16 means any situation in which any deputy sheriff becomes
17 the focus of inquiry regarding any matter which may
18 result in punitive action.

19 (3) "Punitive action" means any action which may lead
20 to dismissal, demotion, suspension, reduction in salary,
21 written reprimand or transfer for purposes of punishment.

22 (4) "Hearing board" means a board which is autho-
23 rized by the sheriff to hold a hearing on a complaint
24 against a deputy sheriff and which consists of three mem-
25 bers, all to be selected from deputy sheriffs within that
26 agency, or law-enforcement officers or firefighters of
27 another agency with the approval of the sheriff and who
28 have had no part in the investigation or interrogation of
29 the deputy sheriff under investigation. One of the mem-
30 bers of the board shall be appointed by the sheriff, one
31 shall be appointed by the deputy sheriff's association and
32 these two members of the board shall, by mutual agree-
33 ment, appoint the third member of the board: *Provided,*
34 That if the first two members of the board fail to agree
35 upon the appointment of the third member of the board
36 within five days, they shall submit to the sheriff's civil
37 service commission a list of four qualified candidates from
38 which list the commission shall appoint the third member
39 of the board: *Provided, however,* That in the event one or
40 more members of the board cannot be appointed as other-
41 wise provided in this section, then the chief judge of the
42 circuit court of the county shall appoint a sufficient num-
43 ber of citizens of the county as may be necessary to con-
44 stitute the board. At least one member of the hearing
45 board shall be of the same rank as the deputy sheriff
46 against whom the complaint has been filed.

47 (5) "Hearing" means any meeting in the course of an
48 investigatory proceeding, other than an interrogation at
49 which no testimony is taken under oath, conducted by a
50 hearing board for the purpose of taking or inducing testi-
51 mony or receiving evidence.

§7-14C-2. Investigation and interrogation of a deputy sheriff.

1 When any deputy sheriff is under investigation and
2 subjected to interrogation by his or her commanding
3 officer, or any other member of the department, which
4 could lead to punitive action, the interrogation shall be
5 conducted under the following conditions:

6 (a) The interrogation shall be conducted at a reason-
7 able hour, preferably at a time when the deputy sheriff is
8 on duty, or during his or her normal working hours, un-
9 less the seriousness of the investigation requires otherwise.
10 If the interrogation does occur during the off-duty time of
11 the deputy sheriff being interrogated at any place other
12 than his or her residence, the deputy sheriff shall be com-
13 pensated for that off-duty time in accordance with regular
14 department procedure. If the interrogation of the deputy
15 sheriff occurs during his or her regular duty hours, the
16 deputy sheriff may not be released from employment for
17 any work missed due to interrogation.

18 (b) Any deputy sheriff under investigation shall be
19 informed of the nature of the investigation prior to any
20 interrogation. The deputy sheriff shall also be informed
21 of the name, rank and command of the officer in charge
22 of the interrogation, the interrogating officers and all
23 other persons to be present during the interrogation. No
24 more than three interrogators at one time may question
25 the deputy sheriff under investigation.

26 (c) No deputy sheriff under interrogation may be
27 subjected to offensive language or threatened with puni-
28 tive action. No promise of reward may be made as an
29 inducement to answering questions.

30 (d) The complete interrogation of any deputy sheriff

31 shall be recorded, whether written, taped or transcribed.
32 Upon request of the deputy sheriff under investigation or
33 his or her counsel, and upon advance payment of the
34 reasonable cost thereof, a copy of the record shall be
35 made available to the deputy sheriff not less than ten days
36 prior to any hearing.

37 (e) Upon the filing of a formal written statement of
38 charges or whenever an interrogation focuses on matters
39 which are likely to result in punitive action against any
40 deputy sheriff, then that deputy sheriff shall have the right
41 to be represented by counsel who may be present at all
42 times during the interrogation.

43 Nothing herein prohibits the immediate temporary
44 suspension from duty, pending an investigation, of any
45 deputy sheriff who reports for duty under the influence of
46 alcohol or a controlled substance which would prevent the
47 deputy from performing his or her duties as defined in
48 chapter sixty-a of this code, or under the influence of an
49 apparent mental or emotional disorder.

§7-14C-3. Hearing.

1 (a) If the investigation or interrogation of a deputy
2 sheriff results in the recommendation of some punitive
3 action, then, before taking punitive action the sheriff shall
4 give notice to the deputy sheriff that he or she is entitled
5 to a hearing on the issues by a hearing board. The notice
6 shall state the time and place of the hearing and the issues
7 involved and be delivered to the deputy sheriff not less
8 than ten days prior to the hearing. An official record,
9 including testimony and exhibits, shall be kept of the
10 hearing.

11 (b) The hearing shall be conducted by the hearing
12 board of the deputy sheriff except that in the event the
13 recommended punitive action is discharge, suspension or
14 reduction in rank or pay, and the action has been taken,
15 the hearing shall be pursuant to the provisions of section
16 seventeen, article fourteen of this chapter, if applicable.
17 Both the sheriff and the deputy sheriff shall be given am-

18 ple opportunity to present evidence and argument with
19 respect to the issues involved.

20 (c) With respect to the subject of any investigation or
21 hearing conducted pursuant to this section, the hearing
22 board may subpoena witnesses and administer oaths or
23 affirmations and examine any individual under oath and
24 may require and compel the production of records, books,
25 papers, contracts and other documents.

26 (d) Any decision, order or action taken as a result of
27 the hearing shall be in writing and shall be accompanied
28 by findings of fact. The findings shall consist of a concise
29 statement upon each issue in the case. A copy of the deci-
30 sion or order and accompanying findings and conclu-
31 sions, along with written recommendations for action, shall
32 be delivered or mailed promptly to the deputy sheriff or
33 to his or her attorney of record.

**§7-14C-4. Right to refuse to disclose personal finances; excep-
tions.**

1 For the purposes of job assignment or other personnel
2 action, a sheriff may not require or request a deputy sher-
3 iff to disclose any item if his or her property, income,
4 assets, sources of income, debts or personal or domestic
5 expenditures unless such information is obtained through
6 proper legal procedures or is necessary for the employing
7 agency to ascertain the desirability of assigning the deputy
8 sheriff to a specialized unit in which there is a strong pos-
9 sibility that bribes or other improper inducements might
10 be offered.

§7-14C-5. Appeal.

1 Any deputy sheriff adversely affected by any decision,
2 order or action taken as a result of a hearing as herein
3 provided has the right to appeal the decision, order or
4 action to the deputy sheriff's civil service commission, in
5 the manner provided for in section fifteen, article fourteen
6 of this chapter.

7 The sheriff may also appeal the decision of the hear-
 8 ing board if he or she believes the department would be
 9 adversely affected by the order or action of the hearing
 10 board.

11 The order or action of the hearing board is binding
 12 upon all involved parties unless overturned in the appeal
 13 process by the deputy sheriff's civil service commission or
 14 the circuit court of the county wherein the affected parties
 15 reside.

CHAPTER 146

(Com. Sub. for S. B. 259—By Senator Whitlow)

[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fourteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-a, relating to authorizing police officers to enter certain private lands to investigate automobile accidents.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. MISCELLANEOUS RULES.

§17C-14-13a. Police officers authorized to conduct investigations on private property.

1 Notwithstanding any provision of law to the contrary,
 2 nothing may prohibit any duly authorized municipal
 3 police officers, county deputy sheriffs or members of the
 4 department of public safety from entering upon private
 5 lands in order to investigate a motor vehicle accident when
 6 said private lands are open to the use of the public at-large
 7 for any purpose.

CHAPTER 147

(H. B. 2833—By Delegates Kiss, Farris, Leach, Mezzatesta,
Browning and Miller)

[Passed March 11, 1995; in effect from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact section three, article three, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to newspapers and legal advertisements; rates which a qualified newspaper may charge for legal advertising; establishing the amount of rate increases allowed to be charged for legal advertising for the years one thousand nine hundred ninety-five through one thousand nine hundred ninety-six; requiring affidavits and notice of legal advertising rates; and effective dates of rates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. NEWSPAPERS AND LEGAL ADVERTISEMENTS.

§59-3-3. Rates for legal advertisements; computation; filing affidavits with secretary of state.

1 (a) The rates which a publisher or proprietor of a
2 qualified newspaper in West Virginia may charge and
3 receive for a single or first publication of any legal adver-
4 tisement set solid shall depend upon the bona fide circula-
5 tion of such newspaper, as follows:

6 (1) Two cents per word if the qualified newspaper has
7 a bona fide circulation of less than one thousand, except
8 as provided in subdivision (1), subsection (a) of this sec-
9 tion;

10 (2) Five cents per word if the qualified newspaper has
11 a bona fide circulation of one thousand to ten thousand;

12 (3) Six and one-fourth cents per word if the qualified
13 newspaper has a bona fide circulation of more than ten
14 thousand but less than forty thousand; or

15 (4) Seven and one-fourth cents per word if the quali-
16 fied newspaper has a bona fide circulation of forty thou-
17 sand or more: *Provided*, That on the first day of July in
18 the year one thousand nine hundred ninety-five and on
19 the first day of July in the year one thousand nine hun-
20 dred ninety-six, the allowable rate per word in each of the
21 classifications of qualified newspapers with reference to
22 circulation as set forth in this subsection shall, for each
23 classification, increase one cent per word over the prior
24 year's rate. It is the intent of the Legislature to reconsider
25 the issue of publication rates for legal advertisement in the
26 year one thousand nine hundred ninety-seven.

27 (b) In computing the number of words in a legal ad-
28 vertisement, not set solid, the basis shall be upon the size
29 of type in which legal advertising is set by the qualified
30 newspaper making the publication, and shall be computed
31 at the legal rate as though the matter was solid type, that is
32 to say, on the basis of eighty-four words to the single
33 column inch in six point type, and fifty-four words to the
34 single column inch in eight point type, and any other size
35 type in proportion.

36 (c) In determining the cost of a legal advertisement
37 which is to appear more than once in the same qualified
38 newspaper, the cost for the first publication shall be com-
39 puted as specified in subsections (a) and (b) of this sec-
40 tion, and the cost of the second and each subsequent pub-
41 lication shall be seventy-five percent of the cost of the first
42 publication computed as aforesaid.

43 (d) The average bona fide circulation stated by each
44 qualified newspaper in the statement filed by such newspa-
45 per with the United States post office department in No-
46 vember, one thousand nine hundred ninety-four, shall
47 control the rate of circulation classification of such quali-
48 fied newspaper for the period commencing the first day of
49 July, one thousand nine hundred ninety-five, until the first
50 day of July, one thousand nine hundred ninety-six. On or
51 before the first day of November, one thousand nine hun-

52 dred ninety-five, the publisher or proprietor of each news-
53 paper desiring to publish any legal advertisement during
54 the ensuing one year time period commencing the first
55 day of July, one thousand nine hundred ninety-six, shall
56 file with the secretary of state an affidavit stating the aver-
57 age bona fide circulation of such newspaper during the
58 preceding twelve month time period ending the thirtieth
59 day of June immediately preceding the November in
60 which the affidavit is filed, and sufficient facts shall be set
61 forth in the affidavit to show whether such newspaper is a
62 qualified newspaper. The average bona fide circulation
63 stated in such affidavit by each qualified newspaper shall
64 control the rate circulation classification for the ensuing
65 twelve month period commencing the first day of July,
66 one thousand nine hundred ninety-six. The publisher or
67 proprietor of each newspaper desiring to publish any legal
68 advertisement during the ensuing twelve month period
69 commencing the first day of July, shall file an affidavit as
70 aforesaid on or before the first day of November of each
71 succeeding year, and such affidavit shall control the rate
72 circulation classification of such newspaper, if it is a quali-
73 fied newspaper, for the ensuing twelve month period com-
74 mencing the first day of July. Any qualified newspaper
75 for which the required affidavit is not filed on or before
76 the first day of March of any calendar year after the year
77 one thousand nine hundred ninety-six, shall be conclu-
78 sively presumed to have for the ensuing twelve month
79 period commencing the first day of July of such year, a
80 bona fide circulation of less than one thousand. At the
81 time a publisher or proprietor of a qualified newspaper
82 files an affidavit with the secretary of state, as aforesaid,
83 such publisher or proprietor shall notify the clerk of the
84 county commission and the board of education of the
85 county in which such qualified newspaper is published of
86 the circulation classification of such qualified newspaper
87 and of the applicable rate for publishing legal advertise-
88 ments in such qualified newspaper during the ensuing
89 twelve month period commencing the first day of July. If
90 the qualified newspaper is published in a municipality, the
91 publisher or proprietor shall at the same time also furnish
92 the same notification to the clerk or recorder of such mu-
93 nicipality.

94 (e) The rate charged for political advertising appear-
95 ing in a newspaper at any time or times during the time
96 period commencing thirty days prior to any primary or
97 general election and ending the day following such elec-
98 tion may not exceed one hundred five percent of the low-
99 est commercial rate charged by the newspaper in which
100 such political advertising appears.

101 (f) Nothing contained herein may prohibit qualified
102 newspapers from charging less than the specified rates for
103 any legal advertisement.

CHAPTER 148

(Com. Sub. for H. B. 2350—By Delegates Dempsey, Beane and Preece)

[Passed March 11, 1995; in effect ninety days from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact section one, article two, chapter two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing legal holidays; when county commission may designate time off; effect on compensation of certain municipal police and fire department employees; computing time periods and fixing specific dates for official acts and court proceedings; and providing an exception for school holidays.

Be it enacted by the Legislature of West Virginia:

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

§2-2-1. Legal holidays; official acts or court proceedings.

- 1 (a) The following days are legal holidays:
- 2 (1) The first day of January is "New Year's Day";
- 3 (2) The third Monday of January is "Martin Luther

4 King's Birthday";

5 (3) The twelfth day of February is "Lincoln's Birth-
6 day";

7 (4) The third Monday of February is "Washington's
8 Birthday";

9 (5) The last Monday in May is "Memorial Day";

10 (6) The twentieth day of June is "West Virginia Day";

11 (7) The fourth day of July is "Independence Day";

12 (8) The first Monday of September is "Labor Day";

13 (9) The second Monday of October is "Columbus
14 Day";

15 (10) The eleventh day of November is "Veterans'
16 Day";

17 (11) The fourth Thursday of November is "Thanks-
18 giving Day";

19 (12) The twenty-fifth day of December is "Christmas
20 Day";

21 (13) Any day on which a general, primary or special
22 election is held is a holiday throughout the state, a political
23 subdivision of the state, a district or an incorporated city,
24 town or village in which the election is conducted; and

25 (14) Any day proclaimed or ordered by the governor
26 or the president of the United States as a day of special
27 observance or thanksgiving, or a day for the general
28 cessation of business, is a holiday.

29 (b) If a holiday otherwise described in subsection (a)
30 of this section falls on a Sunday, then the following
31 Monday is the legal holiday. If a holiday otherwise
32 described in subsection (a) of this section falls on a
33 Saturday, then the preceding Friday is the legal holiday:
34 *Provided*, That this subsection (b) shall not apply to
35 subdivision (13), subsection (a) of this section.

36 (c) Any day or part thereof designated by the
37 governor as time off, without charge against accrued

38 annual leave, for state employees statewide may also be
39 time off for county employees if the county commission
40 elects to designate the day or part thereof as time off,
41 without charge against accrued annual leave for county
42 employees. Any entire or part statewide day off design-
43 nated by the governor may, for all courts, be treated as if it
44 were a legal holiday.

45 (d) In computing any period of time prescribed by
46 any applicable provision of this code or any legislative
47 rule or other administrative rule or regulation promul-
48 gated pursuant to the provisions of this code, the day of
49 the act, event, default or omission from which the
50 applicable period begins to run is not included. The last
51 day of the period so computed is included, unless it is a
52 Saturday, a Sunday, a legal holiday or a designated day
53 off in which event the prescribed period of time runs until
54 the end of the next day that is not a Saturday, Sunday,
55 legal holiday or designated day off.

56 (e) If any applicable provision of this code or any
57 legislative rule or other administrative rule or regulation
58 promulgated pursuant to the provisions of this code
59 designates a particular date on, before or after which an
60 act, event, default or omission is required or allowed to
61 occur, and if the particular date designated falls on a
62 Saturday, Sunday, legal holiday or designated day off,
63 then the date on which the act, event, default or omission is
64 required or allowed to occur is the next day that is not a
65 Saturday, Sunday, legal holiday or designated day off.

66 (f) With regard to the courts of this state, the
67 computation of periods of time, the specific dates or days
68 when an act, event, default or omission is required or
69 allowed to occur and the relationship of those time periods
70 and dates to Saturdays, Sundays or legal holidays, are
71 governed by rules promulgated by the supreme court of
72 appeals, and local rules established by circuit courts.

73 (g) The provisions of this section do not increase or
74 diminish the legal school holidays provided for in section
75 two, article five, chapter eighteen-a of this code.

CHAPTER 149

(S. B. 185—By Senator Jackson)

(Passed March 8, 1995; 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 resource allocation policy; and authorizing proprietary, correspondence, business, occupational and trade schools.

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 the
2 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 on
6 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 the
10 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 the
14 eighth day of September, one thousand nine hundred
15 ninety-two, relating to the board of trustees (holidays), are
16 authorized.

17 (d) The legislative rules filed in the state register on the
18 third day of April, one thousand nine hundred ninety-two,
19 relating to the board of trustees (alcoholic beverages on
20 campuses), are authorized.

21 (e) The legislative rules filed in the state register on the
22 fifteenth day of November, one thousand nine hundred
23 ninety-three, relating to the board of trustees (acceptance
24 of advanced placement credit), are authorized.

25 (f) The legislative rules filed in the state register on the
26 thirteenth day of December, one thousand nine hundred
27 ninety-three, modified by the board of trustees to meet the
28 objections of the legislative oversight commission on
29 education accountability and refiled in the state register on
30 the twenty-first day of January, one thousand nine
31 hundred ninety-four, relating to the board of trustees
32 (assessment, payment and refund of fees), are authorized.

33 (g) The legislative rules filed in the state register on the
34 first day of November, one thousand nine hundred
35 ninety-three, modified by the board of trustees to meet the
36 objections of the legislative oversight commission on
37 education accountability and refiled in the state register on
38 the twenty-first day of December, one thousand nine
39 hundred ninety-three, relating to the board of trustees
40 (personnel administration), are authorized.

41 (h) The legislative rules filed in the state register on the
42 twenty-seventh day of January, one thousand nine
43 hundred ninety-four, relating to the board of trustees
44 (resource allocation policy), are authorized.

§18B-17-3. Board of directors.

1 (a) The legislative rules filed in the state register on the
2 sixteenth day of December, one thousand nine hundred
3 ninety-one, modified by the board of directors to meet the

4 objections of the legislative oversight commission on
5 education accountability and refiled in the state register on
6 the twenty-first day of January, one thousand nine
7 hundred ninety-two, relating to the board of directors
8 (report card), are authorized.

9 (b) The legislative rules filed in the state register on the
10 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 authorized.

13 (c) The legislative rules filed in the state register on the
14 fourth day of December, one thousand nine hundred
15 ninety-one, relating to the board of directors (holiday
16 policy), are authorized.

17 (d) The legislative rules filed in the state register on the
18 nineteenth day of March, one thousand nine hundred
19 ninety-two, as modified and refiled in the state register on
20 the tenth day of July, one thousand nine hundred
21 ninety-two, relating to the board of directors (presidential
22 appointments, responsibilities and evaluations), are
23 authorized.

24 (e) The legislative rules filed in the state register on the
25 twentieth day of September, one thousand nine hundred
26 ninety-three, relating to the board of directors (acceptance
27 of advanced placement credit), are authorized.

28 (f) The legislative rules filed in the state register on the
29 tenth day of December, one thousand nine hundred
30 ninety-three, relating to the board of directors (resource
31 allocation policy), are authorized.

32 (g) The legislative rules filed in the state register on the
33 eighth day of December, one thousand nine hundred
34 ninety-three, modified by the board of directors to meet
35 the objections of the legislative oversight commission on
36 education accountability and refiled in the state register on
37 the eleventh day of January, one thousand nine hundred
38 ninety-four, relating to the board of directors (assessment,
39 payment and refund of fees), are authorized.

40 (h) The legislative rules filed in the state register on
41 the first day of November, one thousand nine hundred
42 ninety-three, modified by the board of directors to meet
43 the objections of the legislative oversight commission on
44 education accountability and refiled in the state register on
45 the twenty-first day of December, one thousand nine
46 hundred ninety-three, relating to the board of directors
47 (personnel administration), are authorized.

48 (i) The legislative rules filed in the state register on the
49 twenty-seventh day of October, one thousand nine
50 hundred ninety-four, modified by the board of directors
51 to meet the objections of the legislative oversight
52 commission on education accountability and refiled in the
53 state register on the nineteenth day of December, one
54 thousand nine hundred ninety-four, relating to the board
55 of directors (proprietary, correspondence, business,
56 occupational and trade schools), are authorized.

CHAPTER 150

(H. B. 2501—By Delegates Douglas, Gallagher, Faircloth,
Compton and Linch)

[Passed March 11, 1995; in effect ninety days from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact sections five, nine, eleven and twelve, article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to rule making; notice of proposed rule making; allowing an agency to hold either a public hearing or a public comment period; proposal of legislative rules; requiring the filing of agency approved rules within a specified time; providing for extending the time period for filing the agency approved rule; submission of legislative rules to the legislative rule-making review committee; requiring the

filing of relevant federal statutes and regulations with the committee; submission of legislative rules to the Legislature; and changing deadline by which rules must be filed with the committee for consideration at the legislative session.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 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-3-5. 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 of
3 state, for publication in the state register, a notice of its
4 action, including therein any request for the submission of
5 evidence to be presented on any factual determinations or
6 inquiries required by law to promulgate such rule. At the
7 time of filing the notice of its action, the agency shall also
8 file with the secretary of state a copy of the full text of the
9 rule proposed, and a fiscal note as defined in subsection
10 (b), section four of this article. If the agency is consider-
11 ing alternative draft proposals, it may also file with the
12 secretary of state the full text of such draft proposals.

13 The notice shall fix a date, time and place for the re-
14 ceipt of public comment in the form of oral statements,
15 written statements and documents bearing upon any find-
16 ings and determinations which are a condition precedent
17 to the final approval by the agency of the proposed rule,
18 and shall contain a general description of the issues to be
19 decided. If no specific findings and determinations are
20 required as a condition precedent to the final approval by
21 the agency of the approved rule, the notice shall fix a date,

22 time and place for the receipt of general public comment
23 on the proposed rule. To comply with the public com-
24 ment provisions of this section, the agency may hold a
25 public hearing or schedule a public comment period for
26 the receipt of written statements and documents, or both.

27 If findings and determinations are a condition prece-
28 dent to the promulgation of such rule, then an opportunity
29 for general public comment on the merits of the rule shall
30 be afforded after such findings and determinations are
31 made. In such event, notice of the hearing or of the peri-
32 od for receiving public comment on the proposed rule
33 shall be attached to and filed as a part of the findings and
34 determinations of the agency when filed in the state regis-
35 ter.

36 In any hearing for public comment on the merits of
37 the rule, the agency may limit presentations to written
38 material. The time, date and place fixed in the notice shall
39 constitute the last opportunity to submit any written mate-
40 rial relevant to any hearing, all of which may be earlier
41 submitted by filing with the agency. After the public
42 hearing or the close of the public comment period, which-
43 ever is later, the agency shall not permit the filing or re-
44 ceipt of, nor shall it consider, any attempted ex parte com-
45 munications directed to it in the form of additional com-
46 ment, prior to the submission of its final agency-approved
47 rule to the legislative rule-making review committee pur-
48 suant to the provisions of section eleven of this article.

49 The agency may also, at its expense, cause to be pub-
50 lished as a Class I legal publication in every county of the
51 state any notice required by this section.

52 Any citizen or other interested party may appear and
53 be heard at such hearings as are required by this section.

§29A-3-9. Proposal of legislative rules.

1 When an agency proposes a legislative rule, other than
2 an emergency rule, it shall be deemed to be applying to
3 the Legislature for permission, to be granted by law, to
4 promulgate such rule as approved by the agency for sub-
5 mission to the Legislature or as amended and authorized

6 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 amend-
14 ments, for submission to the Legislature and file such
15 notice of approval in the state register and with the legis-
16 lative rule-making review committee, within ninety days
17 after the public hearing was held or within ninety days
18 after the end of the public comment period required un-
19 der section five of this article: *Provided*, That upon re-
20 ceipt of a written request from an agency, setting forth
21 valid reasons why the agency is unable to file the agency
22 approved rule within the ninety-day time period, the legis-
23 lative rule-making review committee may grant the agency
24 an extension of time to file the agency approved rule.

25 Such final agency approval of the rule under this
26 section is deemed to be approval for submission to the
27 Legislature only and does not give any force and effect to
28 the proposed rule. The rule shall have full force and ef-
29 fect only when authority for promulgation of the rule is
30 granted by an act of the Legislature and the rule is pro-
31 mulgated pursuant to the provisions of section thirteen of
32 this article.

§29A-3-11. Submission of legislative rules to the legislative rule-making review committee.

1 (a) When an agency finally approves a proposed legis-
2 lative rule for submission to the Legislature, pursuant to
3 the provisions of section nine of this article, the secretary
4 of the executive department which administers the agency
5 pursuant to the provisions of article two, chapter five-f of
6 this code shall submit to the legislative rule-making review
7 committee at its offices or at a regular meeting of such
8 committee fifteen copies of: (1) The full text of the legis-
9 lative rule as finally approved by the agency, with new
10 language underlined and with language to be deleted from

11 any existing rule stricken through but clearly legible; (2) a
12 brief summary of the content of the legislative rule and a
13 description and a copy of any existing rule which the
14 agency proposes to amend or repeal; (3) a statement of
15 the circumstances which require the rule; (4) a fiscal note
16 containing all information included in a fiscal note for
17 either house of the Legislature and a statement of the
18 economic impact of the rule on the state or its residents;
19 (5) one copy of any relevant federal statutes or regula-
20 tions; and (6) any other information which the committee
21 may request or which may be required by law. If the
22 agency is an agency, board or commission which is not
23 administered by an executive department as provided for
24 in article two, chapter five-f of this code, the agency shall
25 submit the final agency-approved rule as required by this
26 subsection.

27 (b) The committee shall review each proposed legisla-
28 tive rule and, in its discretion, may hold public hearings
29 thereon. Such review shall include, but not be limited to, a
30 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 confor-
35 mity with the legislative intent of the statute which the rule
36 is intended to implement, extend, apply, interpret or make
37 specific;

38 (3) Whether the proposed legislative rule conflicts with
39 any other provision of this code or with any other rule
40 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 reasonable,
45 especially as it affects the convenience of the general pub-
46 lic 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 the
49 general public; and

50 (7) Whether the proposed legislative rule was proposed
51 for promulgation in compliance with the requirements of
52 this article and with any requirements imposed by any
53 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 state
64 register and with the agency proposing the rule: *Provid-*
65 *ed*, That when the committee makes the recommendations
66 of subdivision (2), (3) or (4) of this subsection, the notice
67 shall contain a statement of the reasons for such recom-
68 mendation.

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 legislative
72 services to draft a bill authorizing the promulgation of all
73 or part of the legislative rule and incorporating such
74 amendments as the committee desires. If the committee
75 recommends that the rule not be authorized, it shall in-
76 clude in its report a draft of a bill authorizing promulga-
77 tion of the rule together with a recommendation. Any
78 draft bill prepared under this section shall contain a legis-
79 lative finding that the rule is within the legislative intent of
80 the statute which the rule is intended to implement, extend,
81 apply or interpret and shall be available for any member
82 of the Legislature 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 of
3 the legislative rule-making review committee shall submit
4 to the clerk of the respective houses of the Legislature
5 copies of all proposed legislative rules which have been
6 submitted to and considered by the committee pursuant to
7 the provisions of section eleven of this article and which
8 have not been previously submitted to the Legislature for
9 study, together with the recommendations of the commit-
10 tee with respect to such rules, a statement of the reasons
11 for any recommendation that a rule be amended or with-
12 drawn and a statement that a bill authorizing the legislative
13 rule has been drafted by the staff of the committee or by
14 legislative services pursuant to section eleven of this article.
15 The cochairman of the committee may also submit
16 such rules at the direction of the committee at any time
17 before or during a special session in which consideration
18 thereof may be appropriate. The committee may withhold
19 from its report any proposed legislative rule which was
20 submitted to the committee fewer than two hundred
21 twenty-five days before the end of the regular session.
22 The clerk of each house shall submit the report to his or
23 her house at the commencement of the next session.

24 All bills introduced authorizing the promulgation of a
25 rule may be referred by the speaker of the House of Dele-
26 gates and by the president of the Senate to appropriate
27 standing committees of the respective houses for further
28 consideration or the matters may be otherwise dealt with as
29 each house or its rules provide. The Legislature may by
30 act authorize the agency to adopt a legislative rule incor-
31 porating the entire rule or may authorize the agency to
32 adopt a rule with any amendments which the Legislature
33 shall designate. The clerk of the house originating such
34 act shall forthwith file a copy of any bill of authorization
35 enacted with the secretary of state and with the agency
36 proposing such rule and the clerk of each house may
37 prepare and file a synopsis of legislative action during any
38 session on any proposed rule submitted to the house dur-
39 ing such session for which authority to promulgate was
40 not by law provided during such session. In acting upon
41 the separate bills authorizing the promulgation of rules,

42 the Legislature may, by amendment or substitution, com-
43 bine the separate bills of authorization insofar as the vari-
44 ous rules authorized therein are proposed by agencies
45 which are placed under the administration of one of the
46 single separate executive departments identified under the
47 provisions of section two, article one, chapter five-f of this
48 code or the Legislature may combine the separate bills of
49 authorization by agency or agencies within an executive
50 department. In the case of rules proposed for promulga-
51 tion by an agency which is not administered by an execu-
52 tive department pursuant to the provisions of article two of
53 said chapter, the separate bills of authorization for the
54 proposed rules of that agency may, by amendment or
55 substitution, be combined. The foregoing provisions
56 relating to combining separate bills of authorization ac-
57 cording to department or agency are not intended to re-
58 strict the permissible breadth of bills of authorization and
59 do not preclude the Legislature from otherwise combining
60 various bills of authorization which have a unity of subject
61 matter. Any number of provisions may be included in a
62 bill of authorization, but the single object of the bill shall
63 be to authorize the promulgation of proposed legislative
64 rules.

65 (b) If the Legislature fails during its regular session to
66 act upon all or part of any legislative rule which was sub-
67 mitted to it by the legislative rule-making review commit-
68 tee during such session, no agency may thereafter issue
69 any rule or directive or take other action to implement
70 such rule or part thereof unless and until otherwise autho-
71 rized to do so.

72 (c) Nothing herein shall be construed to prevent the
73 Legislature by law from authorizing, or authorizing and
74 directing, an agency to promulgate legislative rules not
75 proposed by the agency or upon which some procedure
76 specified in this chapter is not yet complete.

77 (d) Whenever the Legislature is convened by procla-
78 mation of the governor, upon his or her own initiative or
79 upon application of the members of the Legislature, or
80 whenever a regular session of the Legislature is extended
81 or convened by the vote or petition of its members, the

82 Legislature may by act enacted during such extraordinary
83 or extended session authorize, in whole or in part, any
84 legislative rule whether submitted to the legislative
85 rule-making review committee, or not, if legislative action
86 on such rule during such session is a lawful order of
87 business.

88 (e) Whenever a date is required by this section to be
89 computed in relation to the end of a regular session of the
90 Legislature, such date shall be computed without regard to
91 any extensions of such session occasioned solely by the
92 proclamation of the governor.

93 (f) Whenever a date is required to be computed from
94 or is fixed by the first day of a regular session of the
95 Legislature, it shall be computed or fixed in the year one
96 thousand nine hundred eighty-four, and each fourth year
97 thereafter without regard to the second Wednesday of
98 January of such years.

CHAPTER 151

(Com. Sub. for H. B. 2134—By Delegates Gallagher, Douglas, Compton, Linch,
Faircloth and Riggs)

[Passed March 10, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and three, article one, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact article three of said chapter, all relating generally to the promulgation of administrative rules 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 legisla-

tive 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 division of environmental protection to promulgate legislative rules relating to the requirements for determining conformity of general federal actions to applicable air quality implementation plans (general conformity), as modified; authorizing the division of environmental protection to promulgate legislative rules relating to emission standards for hazardous air pollutants pursuant to 40 CFR Part 63, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to standards of performance for new stationary sources, as modified and amended; authorizing the division of environmental protection to promulgate legislative rules relating to permits for construction and major modification of major stationary sources of air pollution for the prevention of significant deterioration, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to requirements for determining conformity of transportation plans, programs and projects developed, funded or approved under title 23 U.S.C. or the federal transit act, to applicable air quality implementation plans, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to the prevention and control of air pollution from the operation of coal preparation plants and coal handling operations, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to the prevention and control of air pollution from hazardous waste treatment, storage or disposal facilities, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to acid rain provisions and permits, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to emission standards for hazardous air pollutants pursuant to 40 CFR Part 61, as modified; authorizing the division of environmental protection to promulgate legisla-

tive rules relating to provisions for determination of compliance with air quality management rules, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to the prevention and control of air pollution from the combustion of refuse, as modified; 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 regulations governing environmental laboratories certification and standards of performance, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to the state water pollution control revolving fund program, as modified; authorizing the environmental quality board to promulgate legislative rules relating to the requirements governing water quality standards, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to underground storage tanks; authorizing the division of environmental protection to promulgate legislative rules relating to hazardous waste management, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to the standards for certification of blasters-surface coal mines, as modified and amended; authorizing the division of environmental protection to promulgate legislative rules relating to abandoned mine lands and reclamation, as modified; authorizing the solid waste management board to promulgate legislative rules relating to the disbursement of grants to solid waste authorities; authorizing the division of environmental protection to promulgate legislative rules relating to the prevention and control of particulate air pollution from combustion of fuel in indirect heat exchangers, as amended; and authorizing the division of environmental protection to promulgate legislative rules relating to surface coal mining and reclamation, as amended.

Be it enacted by the Legislature of West Virginia:

That sections one, two and three, article one, chapter sixty-four of the code of West Virginia, one thousand nine hun-

dred thirty-one, as amended, be amended and reenacted; and that article three of said chapter be amended and reenacted, all to read as follows:

Article

1. **General Legislative Authorization.**
3. **Authorization for Bureau of Environment to Promulgate Legislative Rules.**

ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

- §64-1-1. Legislative authorization.
§64-1-2. Effective date of rules.
§64-1-3. Technical deficiencies waived.

§64-1-1. Legislative authorization.

1 Under the provisions of article three, chapter
2 twenty-nine-a of the code of West Virginia, the Legislature
3 expressly authorizes the promulgation of the rules de-
4 scribed in articles two through ten of this chapter, subject
5 only to the limitations set forth with respect to each such
6 rule in the section or sections of this chapter authorizing
7 its promulgation. The Legislature declares that all rules
8 now or hereafter authorized under articles two through ten
9 of this chapter are within the legislative intent of the statute
10 which the rule is intended to implement, extend, apply or
11 interpret. Legislative rules promulgated pursuant to the
12 provisions of articles one through ten of this chapter in
13 effect at the effective date of this section shall continue in
14 full force and effect until reauthorized in this chapter by
15 legislative enactment, or until amended by emergency rule
16 pursuant to the provisions of article three, chapter
17 twenty-nine-a of this code.

§64-1-2. Effective date of rules.

1 The effective date of the legislative rules authorized in
2 articles two through ten of this chapter shall be governed
3 by the provisions of section thirteen, article three, chapter
4 twenty-nine-a, unless the agency promulgating the rules
5 establishes an effective date which is earlier than that pro-

6 vided by section thirteen, article three, chapter twenty-
7 nine-a, in which case the effective date established by the
8 agency shall control, unless the Legislature in the bill
9 authorizing the rules establishes an effective date for such
10 rules in which case the effective date established by the
11 Legislature shall control.

§64-1-3. Technical deficiencies waived.

1 The Legislature declares each legislative rule now or
2 hereafter authorized under articles two through ten of this
3 chapter to have been validly promulgated notwithstanding
4 any failure to comply with any requirement of chapter
5 twenty-nine-a for the promulgation of rules at any stage
6 of the promulgation process prior to authorization by the
7 Legislature in articles two through ten of this chapter.

**ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRON-
MENT TO PROMULGATE LEGISLATIVE RULES.**

§64-3-1. Division of environmental protection.

§64-3-2. Environmental boards.

§64-3-1. Division of environmental protection.

1 (a) The legislative rules filed in the state register on the
2 twelfth day of August, one thousand nine hundred
3 ninety-four, modified by the division of environmental
4 protection 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 November, one thou-
7 sand nine hundred ninety-four, relating to the division of
8 environmental protection (requirements for determining
9 conformity of general federal actions to applicable air
10 quality implementation plans (general conformity), 45
11 CSR 35), are authorized.

12 (b) The legislative rules filed in the state register on
13 the twelfth day of August, one thousand nine hundred
14 ninety-four, modified by the division of environmental
15 protection to meet the objections of the legislative
16 rule-making review committee and refiled in the state

17 register on the twenty-third day of November, one thou-
18 sand nine hundred ninety-four, relating to the division of
19 environmental protection (emission standards for hazard-
20 ous air pollutants pursuant to 40 CFR Part 63, 45 CSR 34),
21 are authorized.

22 (c) The legislative rules filed in the state register on the
23 twelfth day of August, one thousand nine hundred
24 ninety-four, modified by the division of environmental
25 protection to meet the objections of the legislative
26 rule-making review committee and refiled in the state
27 register on the twenty-third day of November, one thou-
28 sand nine hundred ninety-four, relating to the division of
29 environmental protection (standards of performance for
30 new stationary sources, 45 CSR 16), are authorized with
31 the amendment set forth below:

32 "On page two, section 4, subsection 4.1, subdivision
33 4.1.i, by striking out 'Part 60.195(b)' and inserting in lieu
34 thereof 'Part 60.194(d)';

35 On page two, section 4, subsection 4.1., subdivision
36 4.1.k, by striking out 'Part 60.335(a)(1)(i)' and inserting
37 in lieu thereof 'Part 60.335(f)(1)';

38 And,

39 On page two, section 4, after subdivision 'k', by insert-
40 ing a new subdivision to read as follows:

41 'l. Part 60.335(f)(1).' "

42 (d) The legislative rules filed in the state register on
43 the fifteenth day of August, one thousand nine hundred
44 ninety-four, modified by the division of environmental
45 protection to meet the objections of the legislative
46 rule-making review committee and refiled in the state
47 register on the nineteenth day of December, one thousand
48 nine hundred ninety-four, relating to the division of envi-
49 ronmental protection (permits for construction and major
50 modification of major stationary sources of air pollution
51 for the prevention of significant deterioration, 45 CSR 14),

52 are authorized.

53 (e) The legislative rules filed in the state register on the
54 twelfth day of August, one thousand nine hundred
55 ninety-four, modified by the division of environmental
56 protection to meet the objections of the legislative
57 rule-making review committee and refiled in the state
58 register on the twenty-third day of November, one thou-
59 sand nine hundred ninety-four, relating to the division of
60 environmental protection (requirements for determining
61 conformity of transportation plans, programs and projects
62 developed, funded or approved under title 23 U.S.C. or
63 the federal transit act, to applicable air quality implemen-
64 tation plans, 45 CSR 36), are authorized.

65 (f) The legislative rules filed in the state register on the
66 twelfth day of August, one thousand nine hundred
67 ninety-four, modified by the division of environmental
68 protection to meet the objections of the legislative
69 rule-making review committee and refiled in the state
70 register on the twenty-ninth day of December, one thou-
71 sand nine hundred ninety-four, relating to the division of
72 environmental protection (to prevent and control air pol-
73 lution from the operation of coal preparation plants and
74 coal handling operations, 45 CSR 5), are authorized.

75 (g) The legislative rules filed in the state register on
76 the thirteenth day of September, one thousand nine hun-
77 dred ninety-four, modified by the division of environmen-
78 tal protection to meet the objections of the legislative
79 rule-making review committee and refiled in the state
80 register on the twelfth day of January, one thousand nine
81 hundred ninety-five, relating to the division of environ-
82 mental protection (to prevent and control air pollution
83 from hazardous waste treatment, storage or disposal facili-
84 ties, 45 CSR 25), are authorized.

85 (h) The legislative rules filed in the state register on
86 the twelfth day of August, one thousand nine hundred
87 ninety-four, modified by the division of environmental

88 protection to meet the objections of the legislative
89 rule-making review committee and refiled in the state
90 register on the twenty-third day of November, one thou-
91 sand nine hundred ninety-four, relating to the division of
92 environmental protection (acid rain provisions and per-
93 mits, 45 CSR 33), are authorized.

94 (i) The legislative rules filed in the state register on the
95 twelfth day of August, one thousand nine hundred
96 ninety-four, modified by the division of environmental
97 protection to meet the objections of the legislative
98 rule-making review committee and refiled in the state
99 register on the twenty-third day of November, one thou-
100 sand nine hundred ninety-four, relating to the division of
101 environmental protection (emission standards for hazard-
102 ous air pollutants pursuant to 40 CFR Part 61, 45 CSR 15),
103 are authorized.

104 (j) The legislative rules filed in the state register on the
105 twelfth day of August, one thousand nine hundred
106 ninety-four, modified by the division of environmental
107 protection to meet the objections of the legislative
108 rule-making review committee and refiled in the state
109 register on the twenty third day of November, one thou-
110 sand nine hundred ninety four, relating to the division of
111 environmental protection (provisions for determination of
112 compliance with air quality management rules, 43 CSR
113 38), are authorized.

114 (k) The legislative rules filed in the state register on
115 the twelfth day of August, one thousand nine hundred
116 ninety four, modified by the division of environmental
117 protection to meet the objections of the legislative
118 rule-making review committee and refiled in the state
119 register on the twenty third day of November, one thou-
120 sand nine hundred ninety four, relating to the division of
121 environmental protection (the permit and control of pol-
122 lution from combustion of refuse, 43 CSR 60), are autho-
123 rized.

52 are authorized.

53 (e) The legislative rules filed in the state register on the
54 twelfth day of August, one thousand nine hundred
55 ninety-four, modified by the division of environmental
56 protection to meet the objections of the legislative
57 rule-making review committee and refiled in the state
58 register on the twenty-third day of November, one thou-
59 sand nine hundred ninety-four, relating to the division of
60 environmental protection (requirements for determining
61 conformity of transportation plans, programs and projects
62 developed, funded or approved under title 23 U.S.C. or
63 the federal transit act, to applicable air quality implemen-
64 tation plans, 45 CSR 36), are authorized.

65 (f) The legislative rules filed in the state register on the
66 twelfth day of August, one thousand nine hundred
67 ninety-four, modified by the division of environmental
68 protection to meet the objections of the legislative
69 rule-making review committee and refiled in the state
70 register on the twenty-ninth day of December, one thou-
71 sand nine hundred ninety-four, relating to the division of
72 environmental protection (to prevent and control air pol-
73 lution from the operation of coal preparation plants and
74 coal handling operations, 45 CSR 5), are authorized.

75 (g) The legislative rules filed in the state register on
76 the thirteenth day of September, one thousand nine hun-
77 dred ninety-four, modified by the division of environmen-
78 tal protection to meet the objections of the legislative
79 rule-making review committee and refiled in the state
80 register on the twelfth day of January, one thousand nine
81 hundred ninety-five, relating to the division of environ-
82 mental protection (to prevent and control air pollution
83 from hazardous waste treatment, storage or disposal facili-
84 ties, 45 CSR 25), are authorized.

85 (h) The legislative rules filed in the state register on
86 the twelfth day of August, one thousand nine hundred
87 ninety-four, modified by the division of environmental

88 protection to meet the objections of the legislative
89 rule-making review committee and refiled in the state
90 register on the twenty-third day of November, one thou-
91 sand nine hundred ninety-four, relating to the division of
92 environmental protection (acid rain provisions and per-
93 mits, 45 CSR 33), are authorized.

94 (i) The legislative rules filed in the state register on the
95 twelfth day of August, one thousand nine hundred
96 ninety-four, modified by the division of environmental
97 protection to meet the objections of the legislative
98 rule-making review committee and refiled in the state
99 register on the twenty-third day of November, one thou-
100 sand nine hundred ninety-four, relating to the division of
101 environmental protection (emission standards for hazard-
102 ous air pollutants pursuant to 40 CFR Part 61, 45 CSR 15),
103 are authorized.

104 (j) The legislative rules filed in the state register on the
105 twelfth day of August, one thousand nine hundred
106 ninety-four, modified by the division of environmental
107 protection to meet the objections of the legislative
108 rule-making review committee and refiled in the state
109 register on the twenty-third day of November, one thou-
110 sand nine hundred ninety-four, relating to the division of
111 environmental protection (provisions for determination of
112 compliance with air quality management rules, 45 CSR
113 38), are authorized.

114 (k) The legislative rules filed in the state register on
115 the twelfth day of August, one thousand nine hundred
116 ninety-four, modified by the division of environmental
117 protection to meet the objections of the legislative
118 rule-making review committee and refiled in the state
119 register on the twenty-third day of November, one thou-
120 sand nine hundred ninety-four, relating to the division of
121 environmental protection (to prevent and control air pol-
122 lution from combustion of refuse, 45 CSR 6), are autho-
123 rized.

124 (l) The legislative rules filed in the state register on the
125 fifteenth day of August, one thousand nine hundred
126 ninety-four, modified by the division of environmental
127 protection to meet the objections of the legislative
128 rule-making review committee and refiled in the state
129 register on the fourth day of January, one thousand nine
130 hundred ninety-five, relating to the division of environ-
131 mental protection (dam safety, 47 CSR 34), are authorized
132 with the amendments set forth below:

133 On page 9, section §47-34-3, by striking out 3.5.2.
134 c.A, and substituting therefor the following:

135 "3.5.2.c.A. An impoundment exceeding forty (40)
136 feet in height or four hundred (400) acre-feet storage
137 volume shall not be classified as a Class 3 dam."

138 On pages 17 and 18, section §47-34-7, at the end of
139 section 7.1.1.b.C. by adding the following:

140 "The design precipitation for a Class 3 dam may be
141 reduced based on Risk Assessment pursuant to paragraph
142 3.5.4 of this rule, but in no case to less than a P₁₀₀ rainfall
143 of six (6) hours in duration."

144 On page 40, section §47-34-13, by striking out section
145 13.2 and substituting therefor the following:

146 "Performance Requirements - All dams completed
147 before July 1, 1973, shall meet the applicable design re-
148 quirements of Section 7 of this rule. Those dams which
149 do not meet the applicable design requirement of Section
150 7 of this rule shall be modified, breached, removed, or
151 properly abandoned pursuant to the provisions of this
152 rule. In developing the required plans, specifications, and
153 documentation necessary to bring the structure into con-
154 formity with section 7 of this rule, the design engineer
155 may consider in his submitted analyses, peculiarities and
156 local conditions for each impounding structure with rec-
157 ognition of the many factors involved, some of which may
158 not be precisely known. Existing construction documen-

159 tation and the historical performance of the structure in-
160 cluding documented storms and spillway flows may be
161 considered by the engineer as part of the evaluation of the
162 structure. Upon approval by the Director of the plans,
163 specifications, and documentation submitted by the engi-
164 neer, the Director may issue a certificate of approval."

165 (m) The legislative rules filed in the state register on
166 the fifteenth day of August, one thousand nine hundred
167 ninety-four, modified by the division of environmental
168 protection to meet the objections of the legislative
169 rule-making review committee and refiled in the state
170 register on the eleventh day of January, one thousand nine
171 hundred ninety-five, relating to the division of environ-
172 mental protection (regulations governing environmental
173 laboratories certification and standards of performance, 47
174 CSR 32), are authorized.

175 (n) The legislative rules filed in the state register on
176 the twenty-eighth day of February, one thousand nine
177 hundred ninety-four, modified by the division of environ-
178 mental protection to meet the objections of the legislative
179 rule-making review committee and refiled in the state
180 register on the twenty-eighth day of July, one thousand
181 nine hundred ninety-four, relating to the division of envi-
182 ronmental protection (state water pollution control revolv-
183 ing fund program, 47 CSR 31), are authorized.

184 (o) The legislative rules filed in the state register on
185 the fifteenth day of August, one thousand nine hundred
186 ninety-four, relating to the division of environmental pro-
187 tection (underground storage tanks, 47 CSR 36), are au-
188 thorized.

189 (p) The legislative rules filed in the state register on
190 the fifteenth day of August, one thousand nine hundred
191 ninety-four, modified by the division of environmental
192 protection to meet the objections of the legislative
193 rule-making review committee and refiled in the state
194 register on the thirteenth day of January, one thousand

195 nine hundred ninety-five, relating to the division of envi-
196 ronmental protection (hazardous waste management regu-
197 lations, 47 CSR 35), are authorized.

198 (q) The legislative rules filed in the state register on
199 the twenty-second day of July, one thousand nine hundred
200 ninety-four, modified by the division of environmental
201 protection to meet the objections of the legislative
202 rule-making review committee and refiled in the state
203 register on the twenty-ninth day of August, one thousand
204 nine hundred ninety-four, relating to the division of envi-
205 ronmental protection (standards for certification of
206 blasters-surface coal mines, 38 CSR 2C), are authorized
207 with the amendments set forth below:

208 On page 4, section 38.2C.4, after the words "Form
209 MR-30-TR." by inserting a second paragraph to read as
210 follows:

211 "In lieu of completing the training program, the appli-
212 cant for certification or re-certification may complete a
213 self-study course using the study guide and other materi-
214 als available from the Division of Environmental Protec-
215 tion."

216 On page 8, subsection 8.2, after the words "refresher
217 training course" by inserting the phrase "or complete the
218 self-study course."

219 On page 8 at subsection 10.1 by striking out the
220 phrase "a cessation order and/or take other action as pro-
221 vided in West Virginia Code 22-3-16 and 17" and the
222 phrase "the provisions of West Virginia Code 22-3-1 et
223 seq., rules promulgated under that article, or".

224 On page 9, subsection 11.1, by striking out the subsec-
225 tion and inserting in lieu thereof a new subsection to read
226 as follows: "11.1. **Suspension** - Upon service of a written
227 notice of violation by the Director to a certified blaster, the
228 Director may suspend his or her certification. Prior to the
229 issuance of such an order, the certified blaster shall be

230 granted a hearing before the Director to show cause why
231 his or her certification should not be suspended."

232 On page 9, subsection 11.2, by striking out the phrase
233 "or cessation order" in the first sentence.

234 On page 9, Section 12, by striking out the phrase
235 "cessation order".

236 (r) The legislative rules filed in the state register on the
237 fifteenth day of August, one thousand nine hundred
238 ninety-four, modified by the division of environmental
239 protection to meet the objections of the legislative
240 rule-making review committee and refiled in the state
241 register on the sixth day of January, one thousand nine
242 hundred ninety-five, relating to the division of environ-
243 mental protection (rules and regulations relating to aban-
244 doned mine lands and reclamation, 38 CSR 2D), are au-
245 thorized.

246 (s) The Legislature hereby authorizes and directs the
247 division of environmental protection to promulgate the
248 legislative rules filed in the state register on February sev-
249 enth, one thousand nine hundred ninety-five, relating to
250 the prevention and control of particulate air pollution
251 from combustion of fuel in indirect heat exchangers, 45
252 CSR 2, effective the * day of *, one thousand nine hun-
253 dred ninety-five, with the amendments set forth below:

254 On page eight, section 3.4(e) after the word "operated" by
255 adding the words "at normal operating loads";

256 And,

257 On page thirteen, section 9.4 by striking the words
258 "monthly or", and, following the words "quarterly basis"
259 by striking the word "as"; and by inserting the words "un-
260 less otherwise" following the words "quarterly basis" .

261 And,

262 On page thirteen, by creating a new section, designated
263 section "45.2.10. Variances.

264 10.1. In the event of an unavoidable shortage of fuel
265 having characteristics or specifications necessary for a fuel
266 burning unit to comply with the opacity standards set
267 forth in section 3 or any emergency situation or condition
268 creating a threat to public safety or welfare, the Director
269 may grant an exception to the otherwise applicable visible
270 emission standards for a period not to exceed fifteen (15)
271 days, provided that visible emissions during the exception
272 period do not exceed a maximum six (6) minute average
273 of thirty (30) percent and that a reasonable demonstration
274 is made by the owner or operator that the emission stan-
275 dards under section 4 of this rule will not be exceeded
276 during the exemption period."

277 10.2. In the event a fuel burning unit employing a
278 flue gas desulphurization system must by-pass such sys-
279 tem because of necessary planned or unplanned mainte-
280 nance, visible emissions may not exceed twenty percent
281 (20%) opacity during such period of maintenance. The
282 Director may require advance notice of necessary planned
283 maintenance, including a description of the necessity of
284 the maintenance activity and its expected duration and
285 may limit the duration of the variance or the amount of
286 the excess opacity exception herein allowed. The Director
287 shall be notified of unplanned maintenance and may limit
288 the duration of the variance or the amount of excess opac-
289 ity exception allowed during unplanned maintenance.

290 And, by renumbering subsequent sections.

291 (t) The legislative rules filed in the state register on the
292 nineteenth day of August, one thousand nine hundred
293 ninety-four, relating to the division of environmental pro-
294 tection (surface mining and reclamation regulations, 38
295 CSR 2), are authorized "with the amendments set forth
296 below"

297 On pages 2 and 3, by striking out subsections 1.6, 1.7

298 and 1.8 in their entirety;

299 On page 6, by inserting a new subsection 2.20, to read
300 as follows, and renumbering subsequent subsections;

301 "Chemical Treatment means - the treatment of water
302 from a surface coal mining operation using chemical
303 reagents such as but not limited to sodium hydroxide,
304 calcium carbonate, or anhydrous ammonia for purposes
305 of meeting applicable state and federal effluent limita-
306 tions. Chemical treatment does not include passive treat-
307 ment systems such as but not limited to limestone drains,
308 wetlands, alkaline addition, application of flyash, agricul-
309 tural lime, or injection of flyash, limestone, or other min-
310 erals into underground coal operations."

311 On page 16, section 2, by striking out subsection 2.92
312 and renumbering the subsequent subsections.

313 On page 25, by striking the second paragraph of sub-
314 section 3.1 (o) and inserting in lieu thereof a new second
315 paragraph 3.1 of subsection 3.1 (o), to read as follows:
316 "Any permit application which references an approved
317 centralized ownership and control file may be determined
318 to be complete and accurate for the purposes of this sub-
319 section. Each centralized ownership and control file shall
320 at a minimum:"

321 On page 63, by striking out subsection 3.25 (e).

322 On page 63, by striking out the first sentence in sub-
323 section 3.26, and inserting in lieu thereof the following:

324 "(a) All changes including name changes, replace-
325 ments, and additions to the ownership or control data
326 relative to a permittee or assignee who will function as an
327 operator pursuant to the provisions of paragraph (c) of
328 subsection 3.25 of this rule shall be reported to the Direc-
329 tor."

330 On page 64, after subsection 3.26 (a) (5) by inserting
331 a new subsection 3.26 (a) (6) to read as follows:

332 "(6) In the event that a permittee or operator has in-
333 curred no changes in its ownership and control informa-
334 tion and therefore has not been obligated to file a report
335 within any consecutive twelve-month period, that permittee
336 or operator is required to notify the Director in writing
337 that no changes to the information required by paragraphs
338 (b), (c), (d), and (i) of subsection 3.1 of this rule have
339 occurred."

340 On page 64, by striking out subsection 3.27 (a) and
341 inserting in lieu thereof the following:

342 "(a) All active surface mining operations shall be sub-
343 ject to the renewal requirements and provisions for issu-
344 ance of a renewal discussed in Section 19 of the Act: *Pro-*
345 *vided*, That the Director may waive the requirement for
346 renewal if the permittee certifies in writing that all coal
347 extraction is completed, that all backfilling and regrading
348 will be completed within sixty (60) days prior to the expi-
349 ration date of the permit, and that an application for Phase
350 I bond release will be filed prior to the expiration date of
351 the permit. Failure of the permittee complete backfilling
352 and regrading within sixty (60) days prior to the expira-
353 tion date of the permit will nullify the waiver.

354 Those operations which have been granted inactive
355 status in accordance with subsection 14.11 of this rule
356 shall also be subject to the renewal requirements of Sec-
357 tion 19 of the Act.

358 Applications for renewal shall be filed on forms pro-
359 vided by the Director and shall contain at a minimum the
360 following information:"

361 On page 79, by striking out subsection 3.32 (i) and
362 renumbering the remaining subsections.

363 On page 80, subsection 3.34 (b) after the word "crite-
364 ria" by inserting the words "paragraph (b) of subsection
365 3.32 of this section";

366 On page 80, by striking out subsection 3.34 (b) (3)

367 and substituting therefor a new subsection 3.34 (b) (3), to
368 read as follows: "(3) The permittee was linked to a viola-
369 tion, penalty or fee through ownership or control, under
370 the violation review criteria, paragraph (b) of subsection
371 3.32 of this section at the time the permit was issued and
372 an ownership or control link between the permittee and
373 the person responsible for the violation, penalty or fee still
374 exists, or when the link was severed the permittee contin-
375 ues to be responsible for the violation, penalty or fee."

376 On page 82, by striking out subsection 3.34 (g) and
377 substituting therefor a new subparagraph (g) to read as
378 follows:

379 "(g) For purposes of this subsection, a permit is issued
380 when it is originally approved, as well as when a transfer,
381 assignment, or sale of permit rights is approved pursuant
382 to paragraphs (a) or (c), subsection 3.25 of this rule, or
383 where a permit is revised pursuant to subsection 3.26 of
384 this rule."

385 On page 86, at the end of subsection 4.4, by adding
386 the following sentence: "Prospecting roads are to be de-
387 signed, constructed, maintained, and reclaimed in accor-
388 dance with the provisions of subsection 13.6 of this rule."

389 On page 88, by inserting a new subsection 4.7 (a) (1)
390 to read as follows: (1) minimize downstream sedimenta-
391 tion and flooding and renumbering the remaining subsec-
392 tions.

393 On page 92, subsection 4.12, by inserting a new sen-
394 tence between the second and third sentence which reads
395 as follows:

396 "Where the certification statement indicates a change from
397 the design standards or construction requirements ap-
398 proved in the permit, such changes will be documented in
399 as-built plans and submitted for approval to the Director
400 as a permit revision."

401 On Page 148, section 11.6 (a) in the underscored

402 language, after the word, "completed" by inserting the
403 words "or nearly completed".

404 On Page 223, by striking out subsection 14.14 (g) (8)
405 and inserting in lieu thereof a new subsection 14.14 (g)
406 (8), to read as follows: "(8) Surface water runoff from
407 areas above and adjacent to the fill shall be diverted into
408 properly designed and constructed stabilized diversion
409 channels which have been designed using best current
410 technology to safely pass the peak runoff from a 100
411 year, 24-hour precipitation event. The channel shall be
412 designed and constructed to ensure stability of the fill,
413 control erosion, and minimize water infiltration into the
414 fill."

415 On Page 232, by inserting a new subsection, designat-
416 ed subsection 14.19 (d) to read as follows: "(d) Timber
417 from clearing and grubbing operations may be wind-
418 rowed below the projected toe of the outslope in a manner
419 that will provide shelter and habitat for game and non-
420 game wildlife and provide for enhanced sediment control.
421 These materials may not be placed in natural water courses
422 or where they will be covered by spoil material at the toe
423 of the outslope. The wind-rows must be of relatively uni-
424 form height and width and must be more or less evenly
425 distributed along the lower reaches and within the permit
426 area."

427 On Page 240, subsection 17.1, in the first sentence,
428 after the words "mining and reclamation," by striking out
429 the remainder of the paragraph and substituting therefor
430 the following: "required by the Act and these Rules, in-
431 cluding the engineering analyses and designs; the devel-
432 opment of cross-section maps and plans; the geologic
433 drilling and statement of results of test borings and core
434 samplings; preblast surveys; the collection of site-specific
435 resource information and production of protection and
436 enhancement plans for fish and wildlife habitats and other
437 environmental values; and the collection of archaeological
438 and historical information; and any other archaeological

439 and historical information required by the federal depart-
440 ment of the interior and the preparation of plans that may
441 be necessitated thereby; and the director shall provide or
442 assume the cost of training coal operators that meet the
443 qualifications concerning the preparation of permit appli-
444 cations and compliance with the regulatory program, and
445 shall ensure that qualified coal operators are aware of the
446 assistance available under this section.

447 On Page 240, subsection 17.1, after the first paragraph
448 by inserting a new paragraph, to read as follows: "The
449 Director will develop a procedure for the interstate coordi-
450 nation and exchange of information collected under the
451 Small Operators Assistance Program."

452 On Page 241, by striking out subsection 17.4 in its
453 entirety and substituting therefor the following: "17.4
454 Request for Assistance. Each applicant requesting assis-
455 tance shall provide information on forms provided by the
456 director in an application that shall be clear and concise
457 and shall be provided in a format prescribed by the Direc-
458 tor and/or a format required by the Federal Office of Sur-
459 face Mining Reclamation and Enforcement."

460 On Page 249, subsection 17.7 (a) (4), after the words
461 "twelve (12) month period" by striking the remainder of
462 the sentence and inserting in lieu thereof the words "im-
463 mediately following permit issuance."

464 On page 273, subsection 20.6 (a), after the word
465 "first", by striking out the words "thirty (30)" and inserting
466 in lieu thereof the words "fifteen (15)".

467 On page 273, subsection 20.6 (c), after the words
468 "date of the" by striking out the words "Assessment Officer
469 receiving the finding specified in paragraph (a) of this
470 subsection." and inserting in lieu thereof the words "issu-
471 ance of a notice or order";

472 On page 274, subsection 20.6 (d), by striking out the
473 first sentence, and inserting in lieu thereof the following:
474 "The time and place of an informal assessment conference

475 shall be posted at the Department of Environmental Pro-
476 tection Office nearest to the operation.

477 **§64-3-2. Environmental boards.**

478 (a) The legislative rules filed by the environmental
479 quality board in the state register on the fifteenth day of
480 August, one thousand nine hundred ninety-four, under the
481 authority of section four, article three, chapter twenty-
482 two-b of this code, modified by the environmental quality
483 board to meet the objections of the legislative rule-making
484 review committee and refiled in the state register on the
485 twelfth day of January, one thousand nine hundred
486 ninety-five, relating to the division of environmental pro-
487 tection (requirements governing water quality standards,
488 46 CSR 1), are authorized.

489 (b) The legislative rules filed by the solid waste man-
490 agement board in the state register on the fourth day of
491 August, one thousand nine hundred ninety-four, under the
492 authority of section six, article three, chapter twenty-two-c
493 of this code, relating to the solid waste management board
494 (regulating for the disbursement of grants to solid waste
495 authorities, 54 CSR 5), are authorized.

CHAPTER 152

(Com. Sub. for S. B. 133—By Senators Manchin, Anderson, Boley,
Grubb and Macnaughtan)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; 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 committee for purchase of commodities and services from the handicapped to promulgate legislative rules relating to participation qualifications, as modified; authorizing consolidated public retirement board to promulgate legislative rules relating to benefit determination and appeal, as modified and amended; authorizing division of personnel to promulgate legislative rules relating to the administrative rules of the West Virginia division of personnel, as modified and amended; and authorizing ethics commission to promulgate legislative rules relating to guidelines and standards for determining the existence of disqualifying financial interests, as modified.

Be it enacted by the Legislature of West Virginia:

That 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.

§64-2-1. Committee for the purchase of commodities and services from the handicapped.

§64-2-2. Consolidated public retirement board.

§64-2-3. Division of personnel.

§64-2-4. Ethics commission.

§64-2-1. Committee for the purchase of commodities and services from the handicapped.

1 The legislative rules filed in the state register on the
2 fifteenth day of August, one thousand nine hundred
3 ninety-four, modified by the committee for the purchase
4 of commodities and services from the handicapped to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the fourth
7 day of January, one thousand nine hundred ninety-five,
8 relating to the committee for the purchase of commodities

9 and services from the handicapped (qualifications for
10 participation, 186 CSR 4), are authorized.

§64-2-2. Consolidated public retirement board.

1 The legislative rules filed in the state register on the
2 twenty-fifth day of October, one thousand nine hundred
3 ninety-three, modified by the consolidated public retire-
4 ment board to meet the objections of the legislative
5 rule-making review committee and refiled in the state
6 register on the thirtieth day of June, one thousand nine
7 hundred ninety-four, relating to the consolidated public
8 retirement board (benefit determination and appeal, 162
9 CSR 2), are authorized with the following amendment:

10 On page 1, section 2.1, following the word "Board" by
11 striking out the period and inserting in lieu thereof a com-
12 ma and the words "unless Disability Retirement is decided
13 by the Governor of the State of West Virginia pursuant to
14 statutory authority."

§64-2-3. Division of personnel.

1 The legislative rules filed in the state register on the
2 fifteenth day of August, one thousand nine hundred
3 ninety-four, modified by the division of personnel to meet
4 the objections of the legislative rule-making review com-
5 mittee and refiled in the state register on the sixteenth day
6 of December, one thousand nine hundred ninety-four,
7 relating to the division of personnel (administrative rule of
8 the West Virginia division of personnel, 143 CSR 1), are
9 authorized with the amendment set forth below:

10 "On page 61, section 17.01, by striking out all of para-
11 graph (h)."

§64-2-4. Ethics commission.

1 The legislative rules filed in the state register on the
2 eighth day of April, one thousand nine hundred
3 ninety-four, modified by the ethics commission to meet
4 the objections of the legislative rule-making review com-
5 mittee and refiled in the state register on the twenty-third
6 day of August, one thousand nine hundred ninety-four,
7 relating to the ethics commission (guidelines and stan-
8 dards for determining the existence of disqualifying fi-
9 nancial interests, 158 CSR 4), are authorized.

CHAPTER 153

(Com. Sub. for S. B. 105—By Senators Manchin, Anderson, Boley,
Grubb and Macnaughtan)

[Passed March 9, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article five, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules 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 division of health to promulgate legislative rules relating to wastewater treatment works and operators, as modified; 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 personal care homes, as modified; and authorizing the department of health and human resources to promulgate legislative rules relating to behavioral health patient rights, as modified and amended.

Be it enacted by the Legislature of West Virginia:

That article five, 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 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH
AND HUMAN RESOURCES TO PROMULGATE
LEGISLATIVE RULES.**

§64-5-1. State board of health; division of health.

§64-5-2. Department of health and human resources.

§64-5-1. State board of health; division of health.

1 The legislative rules filed in the state register on the
2 fifteenth day of August, one thousand nine hundred
3 ninety-four, modified by the division of health to meet the
4 objections of the legislative rule-making review committee
5 and refiled in the state register on the twentieth day of
6 October, one thousand nine hundred ninety-four, relating
7 to the division of health (wastewater treatment works and
8 operators, 64 CSR 5), are authorized.

§64-5-2. Department of health and human resources.

1 (a) The legislative rules filed in the state register on the
2 fifteenth day of August, one thousand nine hundred
3 ninety-four, modified by the department of health and
4 human resources to meet the objections of the legislative
5 rule-making review committee and refiled in the state
6 register on the twenty-eighth day of November, one thou-
7 sand nine hundred ninety-four, relating to the department
8 of health and human resources (public water systems, 64
9 CSR 3), are authorized.

10 (b) The legislative rules filed in the state register on
11 the fifteenth day of August, one thousand nine hundred
12 ninety-four, modified by the department of health and
13 human resources to meet the objections of the legislative
14 rule-making review committee and refiled in the state
15 register on the sixteenth day of January, one thousand
16 nine hundred ninety-five, relating to the department of
17 health and human resources (behavioral health patient
18 rights, 64 CSR 59), are authorized with the amendments
19 set forth below:

20 On page 1, section 2.2, in the first line after the word
21 "enforced" inserting the word "internally", and in the third
22 line after the word "designee," inserting the words "or
23 externally by individual action";

24 On page 2, section 3.8.3, by striking out all of section

25 3.8.3, and inserting in lieu thereof the following:

26 "3.8.3. An individual appointed as committee or
27 guardian prior to June 9, 1994, within the limits set by the
28 appointing order and W. Va. Code 44A-1-2(d);"

29 On page 2, section 3.8.4, first sentence by striking out
30 "in accordance with" following "medical power of attor-
31 ney," and inserting the words "pursuant to" and; in the
32 fourth line, by striking out "power of attorney" and insert-
33 ing the words "law and the appointment";

34 On page 2, section 3.8.5, by inserting a comma after
35 the word "act", and inserting the words, "Title 42 U.S.
36 Code §301 et seq., within the limits of the payee's legal
37 authority" and by striking out the word "or" following the
38 semi-colon;

39 On page 2, section 3.8.6, by striking out the period at
40 the end of the section and inserting a semi-colon and the
41 following two sections:

42 "Section 3.8.7. An individual having a durable power
43 of attorney pursuant to W. Va. Code §39-4-1, or a power
44 of attorney under common law, within the limits of the
45 appointment; or

46 Section 3.8.8. An individual lawfully appointed in a
47 similar or like relationship of responsibility for a client
48 under the laws of this State, or another State or legal juris-
49 diction, within the limits of the applicable statute and ap-
50 pointing authority.";

51 On page 2, section 3.8.7, by renumbering the section
52 as 3.8.9, and striking out "Wherever this rule sets forth
53 rights and responsibilities of an individual client, in mat-
54 ters relating to informed consent for treatment or the with-
55 holding of treatment, record release, authorizations, disclo-
56 sures of information, participation in treatment planning,
57 suspension or restrictions of the individual's rights as
58 granted or recognized in this rule, or in the laws of this
59 State or of the United States government, or any other
60 matters relating to the client's rights," and inserting the

61 words "If a legal representative has been appointed for or
 62 designated by any client as having the authority to exer-
 63 cise on behalf of the client one or more of the client's
 64 rights under this rule," and by striking out the word
 65 "rights" inserting the words "to exercise the" in the thir-
 66 teenth line and inserting in lieu thereof the word "authori-
 67 ty";

68 And,

69 On page 3, section 3.8.8, by striking out "section
 70 3.8.10" and inserting the words "The facility administrator
 71 and staff should note that the various types of legal repre-
 72 sentatives do not necessarily have the lawful authority to
 73 act on behalf of the resident in all matters which may
 74 require action by a legal representative. For example, a
 75 conservator may have responsibility for financial affairs,
 76 but not personal affairs, such as medical care."

CHAPTER 154

(Com. Sub for S. B. 88—By Senators Manchin, Anderson, Boley,
 Grubb and Macnaughtan)

[Passed March 10, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article six, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; 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 division of corrections to promulgate legislative rules relating to inmate telephone calls, as modified; authorizing the division of corrections to promulgate legislative rules relating to furlough programs for inmates under the custody and control of the commissioner of the division of corrections, as modified; authorizing the division of corrections to promulgate legislative rules relating to employment of displaced correctional employees, as modified; authorizing the jail and correctional facility standards commission to promulgate legislative rules relating to West Virginia minimum standards for construction, operation and maintenance of jails, as modified and amended; authorizing the state fire commission to promulgate legislative rules relating to the state fire code, as modified and amended; authorizing the fire commission to promulgate legislative rules relating to the state building code, as modified and amended; authorizing the West Virginia state police to promulgate legislative rules relating to the West Virginia state police's grievance procedure, as modified; and authorizing the West Virginia state police to promulgate legislative rules relating to cadet selection process, as modified.

Be it enacted by the Legislature of West Virginia:

That 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 MILITARY AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.

- §64-6-1. Division of corrections.
- §64-6-2. Jail and correctional facility standards commission.
- §64-6-3. State fire commission.

§64-6-1. Division of corrections.

- 1 (a) The legislative rules filed in the state register on the
- 2 fifth day of August, one thousand nine hundred
- 3 ninety-four, modified by the division of corrections to
- 4 meet the objections of the legislative rule-making review
- 5 committee and refiled in the state register on the
- 6 twenty-second day of November, one thousand nine hun-
- 7 dred ninety-four, relating to the division of corrections

8 (recording of inmate telephone calls, 90 CSR 5), are au-
9 thorized with the amendment set forth below:

10 On page two of the rule, section 3.2.2, after the period,
11 inserting the following sentence: "Except attorney-client
12 telephone calls which will not be recorded in any way."

13 (b) The legislative rules filed in the state register on
14 the fifth day of August, one thousand nine hundred
15 ninety-four, modified by the division of corrections to
16 meet the objections of the legislative rule-making review
17 committee and refiled in the state register on the
18 twenty-second day of November, one thousand nine hun-
19 dred ninety-four, relating to the division of corrections
20 (furlough programs for inmates under the custody and
21 control of the commissioner of the division of corrections,
22 90 CSR 3), are authorized.

23 (c) The legislative rules filed in the state register on the
24 twenty-seventh day of July, one thousand nine hundred
25 ninety-four, modified by the division of corrections to
26 meet the objections of the legislative rule-making review
27 committee and refiled in the state register on the
28 twenty-second day of November, one thousand nine hun-
29 dred ninety-four, relating to the division of corrections
30 (employment of displaced correctional employees, 90
31 CSR 4), are authorized.

§64-6-2. Jail and correctional facility standards commission.

1 The legislative rules filed in the state register on the
2 eleventh day of August, one thousand nine hundred
3 ninety-four, modified by the jail and correctional facility
4 standards commission to meet the objections of the legis-
5 lative rule-making review committee and refiled in the
6 state register on the fourth day of November, one thou-
7 sand nine hundred ninety-four, relating to the jail and
8 correctional facility standards commission (West Virginia
9 minimum standards for construction, operation and main-
10 tenance of jails, 95 CSR 1), are authorized with the amend-
11 ment set forth below:

12 On page forty, following section 17.18, by inserting a
13 new section 17.19, to read as follows:

14 17.19. Visitation to home county. The regional jail
15 authority shall provide transportation to the inmate's home
16 county for purposes of visitation if (1) The home county
17 has a holding facility which may be used for purposes of
18 visitation (2) The county commission and the sheriff of
19 the county agree to provide space in the holding facility
20 for purposes of visitation and to accept custody of the
21 inmate during such period of visitation and (3) Additional
22 transportation space is available on regularly scheduled
23 runs to the home county required for other necessary
24 purposes such as transporting other inmates to court pro-
25 ceedings. Priorities for inmates seeking transportation to
26 the home county for visitation shall be assigned to avail-
27 able space on regularly scheduled runs as follows in the
28 following order of priority: (1) Emergency circumstances
29 (2) Transportation for inmates awaiting court proceedings
30 and not under a sentence of incarceration for any crime
31 (3) Inmates who have not received a visit within a
32 three-month period and (4) Other inmates on a first-come,
33 first-served basis in order of date and time of request.

§64-6-3. State fire commission.

1 (a) The legislative rules filed in the state register on the
2 eighth day of August, one thousand nine hundred
3 ninety-four, modified by the state fire commission to meet
4 the objections of the legislative rule-making review com-
5 mittee and refiled in the state register on the fifth day of
6 October, one thousand nine hundred ninety-four, relating
7 to the state fire commission (state fire code, 87 CSR 1), are
8 authorized with the amendments set forth below:

9 On page five, section 5, line 3, after the word "with" by
10 striking out the words "NFPA 13, Standards" and inserting
11 in lieu thereof the words "the applicable NFPA standard."

12 And,

13 On page 53, by striking out all of section 14.13 and
14 inserting a new section 14.13 to read as follows:

15 14.13 Primary Care Facilities

16 Definitions:

17 Primary Care Facility: Medical care and services at the
18 point when a person first seeks assistance from the health
19 care system for the simpler and more common illnesses
20 and emergency patient treatment/stabilization, and which
21 takes ongoing responsibility for the recipient's health
22 maintenance and illness. Including these and similar facil-
23 ities: primary care centers, local health departments, rural
24 health initiative/Kellogg Clinics, and birthing centers where
25 patients are capable of taking action for self preservation.
26 No more than three non-ambulatory patients are permit-
27 ted.

28 Self-Preservation: Patients and other occupants of the
29 facility must be capable of removing themselves from the
30 facility with limited assistance, either physical or verbal, in
31 an emergency, such as fire.

32 Minimum Construction Requirements:

33 A. New Construction shall meet Section 5 of this rule.

34 Exception: No new facility shall be constructed of
35 unprotected wood frame construction (Type V (000)).

36 B. Existing Construction - no requirement except
37 unprotected wood frame construction shall not be accept-
38 able unless provided with an automatic sprinkler protec-
39 tion system.

40 Sprinkler System:

41 Automatic Sprinkler System. Design and installation
42 shall be in accordance with NFPA 13, Standard for the
43 Installation of Sprinkler Systems.

44 Occupant Load:

45 A. Occupant Load calculation will be one person per
46 100 square feet of gross floor area.

47 B. No birthing/non-ambulatory care rooms will be
48 located above or below the level of exit discharge.

49 Means of Egress Requirements:

50 Every aisle, passageway, corridor, stairways, exit dis-

51 charge, exit location, and access shall be in accordance
52 with NFPA 101, Life Safety Code, Means of Egress Re-
53 quirements, and as modified by this rule.

54 Number of Exits:

55 . There shall be not less than two remote exits provided
56 from each floor.

57 Corridors:

58 A. No dead end corridor shall exceed 20 feet.

59 B. Travel distance to an exit shall not exceed 150 feet
60 in a nonsprinklered building or 200 feet in a sprinklered
61 building.

62 C. All corridors shall be a minimum of 44 inches in
63 clear width. Primary Care facilities accepting non-ambu-
64 latory patients shall have 6 foot corridors.

65 D. Corridors shall be of smoke tight construction.

66 Doors:

67 A. Doors in Means of Egress shall be a minimum of
68 36 inches in width and comply with NFPA 101, Life Safe-
69 ty Code.

70 B. All exit doors shall be equipped with panic hard-
71 ware.

72 C. Doors not in the means of egress shall comply with
73 NFPA 101, Life Safety Code, Means of Egress Compo-
74 nents

75 Protection:

76 A. Vertical Openings: All openings will comply with
77 NFPA 101, Life Safety Code, Vertical Openings Require-
78 ments.

79 B. Hazardous Areas:

80 1. All hazardous areas shall be separated by one hour
81 fire resistive construction with openings protected with one
82 hour fire resistive assemblies or shall be protected with an
83 automatic sprinkler system and construction that resists the

84 passage of smoke.

85 2. General anesthetizing locations and laboratories
86 using hazardous chemicals shall be protected in accor-
87 dance with NFPA 99, Standard for Health Care Facilities.

88 C. Interior Finish:

89 Interior finish throughout the building will be Class A.
90 Where an approved automatic sprinkler system is installed,
91 Class B or C is acceptable.

92 D. Carpet:

93 All carpet will have a critical radiant flux minimum of
94 0.45 watts per square centimeter.

95 E. Fire Alarm:

96 The fire alarm system will comply with Section 11.01
97 and 11.04 of this rule. EXCEPTION: The fire alarm sys-
98 tem is not required to be connected to a communication
99 center.

100 F. Building Services:

101 Building services will comply with NFPA 101, Life
102 Safety Code, Building Service and Fire Protection Equip-
103 ment Requirements.

104 G. Rescue and Ventilation:

105 Sleeping rooms will have at least one outside window
106 for emergency rescue and ventilation. The window shall
107 provide a clear opening of not less than 20 inches in
108 width, 24 inches in height and 5.7 square feet in area. The
109 bottom of these window openings will be no more than 44
110 inches above the floor.

111 H. Separation Requirements:

112 When a facility is located within a building having
113 more than one occupancy, the facility will be separated
114 from all other occupancies with a two (2) hour fire barrier,
115 or the building will be completely protected with an auto-
116 matic sprinkler system in accordance with NFPA 13, Stan-
117 dard for the Installation of Sprinkler System.

CHAPTER 155

(Com. Sub. for S. B. 131—By Senators Manchin, Anderson, Boley,
Grubb and Macnaughtan)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules 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 alcohol beverage control commissioner to promulgate legislative rules relating to nonintoxicating beer, as modified and amended; authorizing the division of banking to promulgate legislative rules relating to the legal lending limit, as modified; authorizing the division of banking to promulgate legislative rules relating to the notice and treatment of joint accounts, as modified; authorizing the division of tax to promulgate legislative rules relating to the business investment and jobs expansion tax credit, the corporation headquarters relocation tax credit and the small business tax credit, as modified; authorizing the division of tax to promulgate legislative rules relating to the exchange of information agreement between the tax division and the division of environmental protection, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to individual accident and sickness insurance

minimum standards, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to the regulation of credit life insurance and credit accident and sickness insurance, as modified; and authorizing the insurance commissioner to promulgate legislative rules relating to credit for reinsurance, as modified.

Be it enacted by the Legislature of West Virginia:

That article seven, 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 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. Alcohol beverage control commissioner.

§64-7-2. Division of banking.

§64-7-3. Department of tax and revenue; division of tax; and state tax commissioner.

§64-7-4. Insurance commissioner.

§64-7-1. Alcohol beverage control commissioner.

1 The legislative rules filed in the state register on the
2 fifteenth day of August, one thousand nine hundred
3 ninety-four, modified by the alcohol beverage control
4 commissioner to meet the objections of the legislative
5 rule-making review committee and refiled in the state
6 register on the twelfth day of January, one thousand nine
7 hundred ninety-five, relating to the alcohol beverage con-
8 trol commissioner (nonintoxicating beer, 176 CSR 1), are
9 authorized, with the amendments set forth below:

10 "On page twenty-four, by adding the following:

11 7.1.3. By advertisements in newspapers, advertising
12 circular and similar publications that nonintoxicating beer
13 is for sale on the licensed premises.";

14 "On page twenty-five, by striking subsection 7.3.4.";

15 By renumbering the remaining subdivisions;

16 And,

17 "On page thirty-one, by adding a new subsection,
18 denoted as subsection 13.2.1.3 to read as follows:

19 In the event a brewer withdraws his products from the
20 state and subsequently reintroduces his products to the
21 state at a later date, that brewer or his successor shall offer
22 the territorial franchise for those products to such distribu-
23 tors who had a franchise agreement with the brewer in
24 effect at the time of the original withdrawal of the brewer's
25 products."

§64-7-2. Division of banking.

1 (a) The legislative rules filed in the state register on the
2 twelfth day of August, one thousand nine hundred
3 ninety-four, modified by the division of banking to meet
4 the objections of the legislative rule-making review com-
5 mittee and refiled in the state register on the second day of
6 November, one thousand nine hundred ninety-four, relat-
7 ing to the division of banking (legal lending limit, 106
8 CSR 9), are authorized.

9 (b) The legislative rules filed in the state register on
10 the twelfth day of August, one thousand nine hundred
11 ninety-four, relating to the division of banking (notice and
12 treatment of joint accounts, 106 CSR 17), are authorized.

**§64-7-3. Department of tax and revenue; division of tax; and
state tax commissioner.**

1 (a) The legislative rules filed in the state register on the
2 twelfth day of August, one thousand nine hundred
3 ninety-four, modified by the division of tax to meet the
4 objections of the legislative rule-making review committee
5 and refiled in the state register on the sixth day of January,
6 one thousand nine hundred ninety-five, relating to the
7 division of tax (business investment and jobs expansion
8 tax credit, corporation headquarters relocation tax credit,
9 small business tax credit, 110 CSR 13C), are authorized.

10 (b) The legislative rules filed in the state register on
11 the twelfth day of August, one thousand nine hundred
12 ninety-four, modified by the division of tax to meet the
13 objections of the legislative rule-making review committee
14 and refiled in the state register on the sixth day of January,
15 one thousand nine hundred ninety-five, relating to the
16 division of tax (exchange of information agreement be-
17 tween tax division and division of environmental protec-
18 tion, 110 CSR 6B), are authorized.

§64-7-4. Insurance commissioner.

1 (a) 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 insurance commissioner to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the seven-
6 teenth day of June, one thousand nine hundred
7 ninety-four, relating to the insurance commissioner (indi-
8 vidual accident and sickness insurance minimum stan-
9 dards, 114 CSR 12), are authorized.

10 (b) The legislative rules filed in the state register on
11 the fifteenth day of August, one thousand nine hundred
12 ninety-four, modified by the insurance commissioner to
13 meet the objections of the legislative rule-making review
14 committee and refiled in the state register on the
15 twenty-eighth day of November, one thousand nine hun-
16 dred ninety-four, relating to the insurance commissioner
17 (regulation of credit life insurance and credit accident and
18 sickness insurance, 114 CSR 6), are authorized.

19 (c) The legislative rules filed in the state register on the
20 twelfth day of August, one thousand nine hundred
21 ninety-four, modified by the insurance commissioner to
22 meet the objections of the legislative rule-making review
23 committee and refiled in the state register on the
24 twenty-third day of November, one thousand nine hun-
25 dred ninety-four, relating to the insurance commissioner
26 (credit for reinsurance, 114 CSR 40), are authorized.

CHAPTER 156

(H. B. 2823—By Delegates Douglas, Linch, Collins, Jenkins, Tillis,
Kime and Thomas)

[Passed March 10, 1995; in effect from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact section one, article eight, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, authorizing the promulgation of legislative rules by the division of highways.

Be it enacted by the Legislature of West Virginia:

That section one, 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.

1 The legislative rules filed by the division of highways
2 on the fifteenth day of February, one thousand nine
3 hundred ninety-five, under the authority of section
4 nineteen, article two-a, chapter seventeen of this code
5 (relating to acquisition, disposal, lease and management of
6 real property and appurtenant structures and relocation
7 assistance, 157 CSR 2, *et seq.*), are authorized.

CHAPTER 157

(Com. Sub. for S. B. 64—By Senators Manchin, Anderson, Boley,
Grubb and Macnaughtan)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules 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 commissioner of agriculture to promulgate legislative rules relating to West Virginia aquaculture farm rules, as modified and amended; authorizing the commissioner of agriculture to promulgate legislative rules relating to animal disease control, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to the inspection of nontraditional, domesticated animals, as amended; authorizing the commissioner of agriculture to promulgate legislative rules relating to the labeling of dairy products for rBST or rBGH, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to West Virginia fish processing rules, as modified; authorizing the secretary of state to promulgate legislative rules relating to the combined voter registration and driver licensing fund, as modified; authorizing the governor's committee on crime, delinquency and correction to promulgate legislative rules relating to the protocol

for law-enforcement response to domestic violence, as modified and amended; authorizing the West Virginia board of examiners for licensed practical nurses to promulgate legislative rules relating to fees for services rendered by the board, as modified; authorizing the West Virginia board of examiners for licensed practical nurses to promulgate legislative rules relating to policies regulating licensure of the licensed practical nurse, as modified; authorizing the board of medicine to promulgate legislative rules relating to fees for services rendered by the board of medicine, as modified; authorizing the board of examiners for registered professional nurses to promulgate legislative rules relating to continuing education, as modified; authorizing the board of examiners for registered professional nurses to promulgate legislative rules relating to requirements for licensure and registration, as modified; authorizing the board of examiners for registered professional nurses to promulgate legislative rules relating to policies and criteria for the evaluation and accreditation of colleges and departments or schools of nursing, as modified; and authorizing the real estate commission to promulgate legislative rules relating to requirements in licensing real estate brokers, associate brokers and salespersons and the conduct of a brokerage business, as modified.

Be it enacted by the Legislature of West Virginia:

That article nine, 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 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

- §64-9-1. Commissioner of agriculture.
- §64-9-2. Secretary of state.
- §64-9-3. Governor's committee on crime, delinquency and correction.
- §64-9-4. Board of examiners for licensed practical nurses.
- §64-9-5. Board of medicine.
- §64-9-6. Board of examiners for registered professional nurses.
- §64-9-7. Real estate commission.

§64-9-1. Commissioner of agriculture.

1 (a) The legislative rules filed in the state register on the
2 fifteenth day of August, one thousand nine hundred
3 ninety-four, modified by the commissioner of agriculture
4 to meet the objections of the legislative rule-making re-
5 view committee and refiled in the state register on the
6 fourteenth day of October, one thousand nine hundred
7 ninety-four, relating to the commissioner of agriculture
8 (West Virginia aquaculture farm rules, 61 CSR 23), are
9 authorized with the amendments set forth below:

10 On page 1, section 61-23-1, by striking out section 1.1
11 and substituting in lieu thereof the following:

12 "1.1 The Commissioner will inspect aquaculture pro-
13 duction on a voluntary basis for a period of three years.
14 At the end of this three year period the Aquaculture Farm
15 Rule shall be reviewed to determine whether the rule
16 should become mandatory. Aquaculture producers wish-
17 ing to participate in the voluntary inspection program
18 must apply in writing to the Commissioner. Once a pro-
19 ducer enters the voluntary program they will be required
20 to produce fish according to all of the provisions of this
21 rule for the remaining portion of the three year period.
22 The inspections will be conducted on a risk assessment
23 basis with the purpose of educating farmers and assuring
24 the production of wholesome, unspoiled and unadulterat-
25 ed fish and fishery products."

26 On page 4, section 61-23-3, by striking out section 3.1
27 and substituting in lieu thereof the following:

28 "3.1 All producers of fish participating in the volun-
29 tary inspection program outlined in this rule shall have
30 and implement a written Hazard Analysis Critical Control
31 Point Plan, approved by the commissioner, for each loca-
32 tion where fish are grown. The commissioner shall fur-
33 nish a model Hazard Analysis Critical Control Point Plan
34 to the producers for them to follow."

35 On page 5, section 61-23-3, by striking out section

36 3.4.

37 On page 6, section 61-23-4, by striking out all of
38 section 4.6 and substituting in lieu thereof the following:

39 "4.6 Septic tanks, home aeration units, vault privy, or
40 other sewage tanks shall not be located within 50 feet of a
41 well or groundwater supply used as an aquaculture water
42 source, or aquaculture production areas in order to pre-
43 vent fecal and other contamination of water where fish are
44 raised for human consumption, except that tanks or other
45 aquaculture production systems with a barrier preventing
46 possible contamination may be located closer."

47 On page 8, section 61-23-7, by striking out section 7.1
48 and substituting in lieu thereof the following:

49 "7.1 All fish transported for sale and/or processing by
50 producers participating in this voluntary program shall
51 be:"

52 On page 8, section 61-23-7, by striking out section 7.5
53 and substituting in lieu thereof the following:

54 "7.5 All shipments of human food fish to other pro-
55 ducers, wholesalers, retailers, and/or processors required to
56 operate under a HACCP plan shall be accompanied by a
57 written notification stating that any and all drugs, feed and
58 color additives, pesticides and/or medicated feeds have
59 been legally administered and withdrawal periods have
60 been followed. This notification shall include the name,
61 address, and telephone number of the grower; date of sale;
62 and the lot number of fish. This notification shall be
63 signed by the grower. Except that:"

64 On page 8, section 61-23-7, by striking out section
65 7.5.a. and substituting in lieu thereof the following:

66 "7.5.a. Shipments of fish to other producers before
67 the completion of a required withdrawal period shall be
68 accompanied by a written notification including the name
69 and dose of the drug, feed, color additive, pesticide, and/or
70 medicated feed; date administered and length of required

71 withdrawal period; date of sale; and lot number of the fish.
72 This notification shall be signed by the grower."

73 On page 9, section 61-23-9, by striking out section 9.1
74 and substituting in lieu the following:

75 "9.1 It is prohibited to:"

76 On page 10, section 61-23-10, by striking out section
77 61-23-10 in its entirety, and renumbering the remaining
78 sections.

79 On page 11, section 61-23-12, by striking out section
80 12.1.a and substituting in lieu thereof the following:

81 "12.1.a. Enter and inspect, during reasonable hours,
82 any aquaculture production area participating in the vol-
83 untary inspection program, where fish are produced, sold,
84 stored, or transported. The inspection includes, but is not
85 limited to, photographing, video taping, verifying, copying
86 and auditing computer files, records and papers relating to
87 the production of fish, as is necessary to determine com-
88 pliance with this rule and to investigate consumer com-
89 plaints. The inspection also includes, but is not limited to,
90 photographing, video taping, observing and verifying the
91 premises, vehicles, personnel and activities;"

92 On page 12, section 61-23-12, by striking out section
93 12.1.i.

94 On page 13, section 61-23-13, by striking out section
95 13.3.

96 And,

97 On page 13, section 61-23-13, by striking out section
98 13.4.

99 (b) The legislative rules filed in the state register on
100 the twenty-second day of July, one thousand nine hundred
101 ninety-four, modified by the commissioner of agriculture
102 to meet the objections of the legislative rule-making re-
103 view committee and refiled in the state register on the
104 ninth day of August, one thousand nine hundred

105 ninety-four, relating to the commissioner of agriculture
106 (animal disease control, 61 CSR 1), are authorized.

107 (c) The legislative rules filed in the state register on the
108 fifteenth day of August, one thousand nine hundred
109 ninety-four, modified by the commissioner of agriculture
110 to meet the objections of the legislative rule-making re-
111 view committee and refiled in the state register on the
112 eleventh day of October, one thousand nine hundred
113 ninety-four, relating to the commissioner of agriculture
114 (inspection of nontraditional, domesticated animals, 61
115 CSR 23D), are authorized.

116 (d) The legislative rules filed in the state register on
117 the fifteenth day of August, one thousand nine hundred
118 ninety-four, modified by the commissioner of agriculture
119 to meet the objections of the legislative rule-making re-
120 view committee and refiled in the state register on the
121 fourteenth day of October, one thousand nine hundred
122 ninety-four, relating to the commissioner of agriculture
123 (labeling of dairy products for rBST or rBGH, 61 CSR
124 4D), are authorized.

125 (e) The legislative rules filed in the state register on the
126 fifteenth day of August, one thousand nine hundred
127 ninety-four, modified by the commissioner of agriculture
128 to meet the objections of the legislative rule-making re-
129 view committee and refiled in the state register on the
130 fourteenth day of October, one thousand nine hundred
131 ninety-four, relating to the commissioner of agriculture
132 (West Virginia fish processing rules, 61 CSR 23D), are
133 authorized.

§64-9-2. Secretary of state.

1 The legislative rules filed in the state register on the
2 fifteenth day of August, one thousand nine hundred
3 ninety-four, modified by the secretary of state to meet the
4 objections of the legislative rule-making review committee
5 and refiled in the state register on the fourteenth day of
6 November, one thousand nine hundred ninety-four, relat-
7 ing to the secretary of state (combined voter registration
8 and driver licensing fund, 153 CSR 28), are authorized.

§64-9-3. Governor's committee on crime, delinquency and correction.

1 The legislative rules filed in the state register on the
2 second day of August, one thousand nine hundred
3 ninety-four, modified by the governor's committee on
4 crime, delinquency and correction to meet the objections
5 of the legislative rule-making review committee and re-
6 filed in the state register on the sixth day of September,
7 one thousand nine hundred ninety-four, relating to the
8 governor's committee on crime, delinquency and correc-
9 tion (protocol for law-enforcement response to domestic
10 violence, 149 CSR 3), are authorized.

§64-9-4. Board of examiners for licensed practical nurses.

1 (a) The legislative rules filed in the state register on the
2 fourteenth day of July, one thousand nine hundred
3 ninety-four, modified by the West Virginia board of ex-
4 aminers for licensed practical nurses to meet the objec-
5 tions of the legislative rule-making review committee and
6 refiled in the state register on the fifteenth day of August,
7 one thousand nine hundred ninety-four, relating to the
8 West Virginia board of examiners for licensed practical
9 nurses (fees for services rendered by the board, 10 CSR 4),
10 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-four, modified by the West Virginia board of ex-
14 aminers for licensed practical nurses to meet the objec-
15 tions of the legislative rule-making review committee and
16 refiled in the state register on the fifteenth day of August,
17 one thousand nine hundred ninety-four, relating to the
18 West Virginia board of examiners for licensed practical
19 nurses (policies regulating licensure of the licensed practi-
20 cal nurse, 10 CSR 2), are authorized.

§64-9-5. Board of medicine.

1 The legislative rules filed in the state register on the
2 fourteenth day of July, one thousand nine hundred
3 ninety-four, modified by the board of medicine to meet

4 the objections of the legislative rule-making review com-
5 mittee and refiled in the state register on the twelfth day of
6 October, one thousand nine hundred ninety-four, relating
7 to the board of medicine (fees for services rendered by the
8 board of medicine, 11 CSR 4), are authorized.

§64-9-6. Board of examiners for registered professional nurses.

1 (a) The legislative rules filed in the state register on the
2 fifteenth day of August, one thousand nine hundred
3 ninety-four, modified by the board of examiners for reg-
4 istered professional nurses to meet the objections of the
5 legislative rule-making review committee and refiled in the
6 state register on the twenty-eighth day of November, one
7 thousand nine hundred ninety-four, relating to the board
8 of examiners for registered professional nurses (continu-
9 ing education, 19 CSR 11), are authorized.

10 (b) The legislative rules filed in the state register on
11 the fifteenth day of August, one thousand nine hundred
12 ninety-four, modified by the board of examiners for reg-
13 istered professional nurses to meet the objections of the
14 legislative rule-making review committee and refiled in the
15 state register on the twenty-eighth day of November, one
16 thousand nine hundred ninety-four, relating to the board
17 of examiners for registered professional nurses (require-
18 ments for licensure and registration, 19 CSR 3), are autho-
19 rized.

20 (c) The legislative rules filed in the state register on the
21 fifteenth day of August, one thousand nine hundred
22 ninety-four, modified by the board of examiners for reg-
23 istered professional nurses to meet the objections of the
24 legislative rule-making review committee and refiled in the
25 state register on the twenty-eighth day of November, one
26 thousand nine hundred ninety-four, relating to the board
27 of examiners for registered professional nurses (policies
28 and criteria for the evaluation and accreditation of colleg-
29 es, departments or schools of nursing, 19 CSR 1), are au-
30 thorized.

§64-9-7. Real estate commission.

1 The legislative rules filed in the state register on the
2 fifteenth day of August, one thousand nine hundred
3 ninety-four, modified by the real estate commission to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the twelfth
6 day of October, one thousand nine hundred ninety-four,
7 relating to the real estate commission (requirements in
8 licensing real estate brokers, associate brokers, and sales-
9 persons and the conduct of brokerage business, 174 CSR
10 1), are authorized.

CHAPTER 158

(Com. Sub. for S. B. 112—By Senators Manchin, Anderson, Boley,
Grubb and Macnaughtan)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten, relating generally to the promulgation of administrative rules 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 division of labor to promulgate legislative rules relating to the regulation of trade, weights and measures, as modified; authorizing the division of labor to promulgate legislative rules relating to the West Virginia manufactured housing construction and safety standards board, as modified; autho-

rizing the division of natural resources to promulgate legislative rules relating to the recycling assistance fund grant program, as modified; authorizing the division of natural resources to promulgate legislative rules relating to West Virginia wildlife management areas, as modified and amended; authorizing the division of natural resources to promulgate legislative rules relating to special bear hunting regulations, as modified; authorizing the division of natural resources to promulgate legislative rules relating to wild boar hunting, as modified; authorizing the division of natural resources to promulgate legislative rules relating to special fishing, as modified and amended; authorizing the division of natural resources to promulgate legislative rules relating to rules governing public use of West Virginia state parks, state forests and state wildlife management areas under the division of natural resources, as modified and amended; and authorizing the division of natural resources to promulgate legislative rules relating to prohibitions when hunting and trapping, as modified and amended.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE
TO PROMULGATE LEGISLATIVE RULES.**

- §64-10-1. Division of labor.
§64-10-2. Division of natural resources.

§64-10-1. Division of labor.

1 (a) The legislative rules filed in the state register on the
2 fifteenth day of August, one thousand nine hundred
3 ninety-four, modified by the division of labor to meet the
4 objections of the legislative rule-making review committee
5 and refiled in the state register on the third day of Novem-
6 ber, one thousand nine hundred ninety-four, relating to
7 the division of labor (regulation of trade, weights and
8 measures, 42 CSR 22), are authorized.

9 (b) The legislative rules filed in the state register on

10 the fifteenth day of August, one thousand nine hundred
11 ninety-four, modified by the division of labor to meet the
12 objections of the legislative rule-making review committee
13 and refiled in the state register on the third day of Novem-
14 ber, one thousand nine hundred ninety-four, relating to
15 the division of labor (West Virginia manufactured housing
16 construction and safety standards board, 42 CSR 19), are
17 authorized.

§64-10-2. Division of natural resources.

1 (a) The legislative rules filed in the state register on the
2 fourteenth day of July, one thousand nine hundred
3 ninety-four, modified by the division of natural resources
4 to meet the objections of the legislative rule-making re-
5 view committee and refiled in the state register on the
6 eighth day of September, one thousand nine hundred
7 ninety-four, relating to the division of natural resources
8 (recycling assistance fund grant program, 58 CSR 43), are
9 authorized.

10 (b) The legislative rules filed in the state register on
11 the twelfth day of August, one thousand nine hundred
12 ninety-four, modified by the division of natural resources
13 to meet the objections of the legislative rule-making re-
14 view committee and refiled in the state register on the
15 fourteenth day of October, one thousand nine hundred
16 ninety-four, relating to the division of natural resources
17 (West Virginia wildlife management areas, 58 CSR 6), are
18 authorized with the following amendments:

19 On page four, section 6.4.3, before the word "No" by
20 inserting "Except for persons who are under sixteen years
21 of age and who have a valid West Virginia hunting li-
22 cense,";

23 And,

24 On page four, section 6.4.3, by deleting the capital
25 letter "N" and substituting in lieu thereof the lower case
26 "n."

27 (c) The legislative rules filed in the state register on the
28 twelfth day of August, one thousand nine hundred
29 ninety-four, modified by the division of natural resources

30 to meet the objections of the legislative rule-making re-
31 view committee and refiled in the state register on the
32 fourteenth day of October, one thousand nine hundred
33 ninety-four, relating to the division of natural resources
34 (special bear hunting regulations, 58 CSR 11C), are autho-
35 rized.

36 (d) The legislative rules filed in the state register on
37 the twelfth day of August, one thousand nine hundred
38 ninety-four, modified by the division of natural resources
39 to meet the objections of the legislative rule-making re-
40 view committee and refiled in the state register on the
41 fourteenth day of October, one thousand nine hundred
42 ninety-four, relating to the division of natural resources
43 (wild boar hunting regulations, 58 CSR 11G), are autho-
44 rized.

45 (e) The legislative rules filed in the state register on the
46 fifteenth day of August, one thousand nine hundred
47 ninety-four, modified by the division of natural resources
48 to meet the objections of the legislative rule-making re-
49 view committee and refiled in the state register on the
50 fourteenth day of October, one thousand nine hundred
51 ninety-four, relating to the division of natural resources
52 (special fishing rule, 58 CSR 21), are authorized with the
53 following amendment:

54 On page four, section 58-21-5, paragraph 5.1.1, by
55 deleting the numeral "15" and inserting in lieu thereof the
56 numeral "13".

57 (f) The legislative rules filed in the state register on the
58 second day of December, one thousand nine hundred
59 ninety-four, modified by the division of natural resources
60 to meet the objections of the legislative rule-making re-
61 view committee and refiled in the state register on the
62 sixteenth day of December, one thousand nine hundred
63 ninety-four, relating to the division of natural resources
64 (rules governing public use of West Virginia state parks,
65 state forests and state wildlife management areas under the
66 division of natural resources, 58 CSR 58), are authorized
67 with the following amendment:

68 On page five, section 2.23, line four, before the word

69 "chartered" by inserting the word "A" and by deleting the
70 letter "s" at the end of the word "foundations".

71 (g) The legislative rules filed in the state register on
72 the twelfth day of August, one thousand nine hundred
73 ninety-four, modified by the division of natural resources
74 to meet the objections of the legislative rule-making re-
75 view committee and refiled in the state register on the
76 fourteenth day of October, one thousand nine hundred
77 ninety-four, relating to the division of natural resources
78 (prohibitions when hunting and trapping, 58 CSR 11B)
79 are authorized with the following amendments:

80 On page two, by striking out section 3.5 and renum-
81 bering the remaining sections;

82 In section 3.7, after the word "net" by inserting the
83 word "bait" and after the word "any" by inserting the word
84 "deer";

85 And,

86 By striking out subsection 3.7.1 and renumbering the
87 remaining sections.

CHAPTER 159

(S. B. 238—By Senators Wooton, Dittmar, Buckalew, Yoder,
Ross, Oliverio, White and Wagner)

[Passed March 9, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter four 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 creating the misdemeanor offense of knowingly and willfully providing materially false information to the commission on special investigations or its personnel authorized to conduct investigations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COMMISSION ON SPECIAL INVESTIGATIONS.

§4-5-6. False statements to commission.

1 (a) A person is guilty of making a false statement to
2 the commission on special investigations when:

3 (1) Such person, with the intent to impede the com-
4 mission or to impede an investigator of the commission
5 acting in the lawful exercise of his or her official duties,
6 knowingly and willfully makes any false, fictitious or
7 fraudulent statement or representation, or makes or uses
8 any false writing or document knowing the same to con-
9 tain any false, fictitious or fraudulent statement or entry;

10 (2) Such statement, representation, writing or docu-
11 ment is made or given to the commission or an investiga-
12 tor of the commission acting in the lawful exercise of his
13 or her official duties; and

14 (3) The misrepresentation is material.

15 (b) The provisions of subsection (a) of this section are
16 not applicable to a person in the relation of husband and
17 wife, parent or grandparent, child or grandchild, brother
18 or sister, by consanguinity or affinity, of an individual
19 who is the subject of an investigation by the commission.

20 (c) Any person who violates the provisions of this
21 section is guilty of a misdemeanor, and, upon conviction
22 thereof, shall be fined not less than one hundred dollars
23 nor more than one thousand dollars, or confined in jail for
24 not more than one year, or both, in the discretion of the
25 court.

CHAPTER 160

(Com. Sub. for S. B. 255—By Senators Tomblin, Mr. President, and Bailey)

[Passed March 9, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to additional membership on the West Virginia library commission; the composition of the membership; and requiring geographic representation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PUBLIC LIBRARIES.

§10-1-12. State library commission.

1 There shall be a state library commission, known as
2 the "West Virginia library commission", which shall consist
3 of five members who shall be appointed by the governor,
4 by and with the advice and consent of the Senate, each for
5 a term of four years. Thereafter, on the first day of July,
6 one thousand nine hundred ninety-five, four additional
7 members shall be appointed: *Provided*, That for the four
8 new members added to the commission in the year one
9 thousand nine hundred ninety-five, one shall serve an
10 initial term of four years and three shall serve an initial
11 term of two years. No more than three members may
12 reside in the same congressional district. At least four
13 members of the commission shall be women and at least
14 four members shall be men. No member of the commis-
15 sion shall receive compensation for services rendered, nor
16 be engaged or interested in the publishing business.

17 The members of the commission in office on the date
18 this code takes effect shall, unless sooner removed, contin-
19 ue to serve until their respective terms expire and their
20 successors have been appointed and have qualified. On or
21 before the expiration of the terms for which said members
22 are appointed, the governor shall appoint their successors.

CHAPTER 161

(H. B. 2796—By Delegates Browning, Burke, Seacrist, Mezzatesta,
Kelley, Tomblin and Frederick)

[Passed March 10, 1995; in effect from passage.
Became law without Governor's signature.]

AN ACT to amend article twenty-two-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a, relating to deposit of lottery commission's share of video lottery net terminal income to state lottery fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10a. Lottery commission income to be deposited in state lottery fund.

1 Notwithstanding the provisions of subdivision one, sub-
2 section (c), section ten of this article, beginning on the first
3 day of July, one thousand nine hundred ninety-five and
4 continuing thereafter, the net terminal income received by
5 the commission shall be paid into the state lottery fund
6 created by section eighteen, article twenty-two of this
7 chapter, to be appropriated by the Legislature: *Provided,*
8 That income deposited pursuant to this section shall not be
9 subject to the provisions of subsections (b), (c), (d) or (e),
10 section eighteen, article twenty-two of this chapter.

CHAPTER 162

(Com. Sub. for S. B. 340—By Senators Schoonover and Love)

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six-a, relating to appointment of retired magistrates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. MAGISTRATE COURTS.

§50-1-6a. Temporary appointment of retired magistrates.

1 The West Virginia supreme court of appeals is autho-
2 rized and empowered to create a panel of senior magis-
3 trates to consist of, and to utilize the talent and experience
4 of, retired magistrates of this state. The supreme court of
5 appeals shall promulgate rules providing for such senior
6 magistrates to be assigned duties as needed and as feasible
7 toward the objective of reducing caseloads and providing
8 for replacement of magistrates who are unavailable: *Pro-*
9 *vided*, That reasonable payment shall be made to said
10 senior magistrates on a per diem basis: *Provided, howev-*
11 *er*, That the per diem and retirement compensation of a
12 senior magistrate shall not exceed the salary of a sitting
13 magistrate and allowances shall also be made for necessary
14 expenses pursuant to the travel regulations of the supreme
15 court of appeals.

CHAPTER 163

(S. B. 248—By Senators Bowman and Whitlow)

[Passed March 9, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine-a, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to raising the cap on the number of deputy clerks from fifty-four to fifty-seven.

Be it enacted by the Legislature of West Virginia:

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

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 circuit
4 court, the supreme court of appeals may by rule provide
5 for the appointment of magistrate court deputy clerks, not
6 to exceed fifty-seven in number. Such magistrate court
7 deputy clerks shall be appointed by the judge of the cir-
8 cuit court, or the chief judge thereof if there is more than
9 one judge of the circuit court, with such appointee to serve
10 at his will and pleasure under the immediate supervision of
11 the magistrate court clerk. Such magistrate court deputy
12 clerk shall have such duties, clerical or otherwise, as may
13 be assigned by the magistrate court clerk and as may be
14 prescribed by the rules of the supreme court of appeals or
15 the judge of the circuit court, or the chief judge thereof if
16 there is more than one judge of the circuit court. Such
17 magistrate court deputy clerks shall also have authority to
18 exercise the power and perform the duties of the magis-
19 trate court clerk as may be delegated or assigned by such
20 magistrate court clerk.

21 Such magistrate court deputy clerk shall not be a
22 member of the immediate family of any magistrate, mag-
23 istrate court clerk, magistrate assistant or circuit court
24 judge within the same county, shall not have been convict-
25 ed of a felony or any misdemeanor involving moral turpi-
26 tude and shall reside in the state of West Virginia. For the
27 purpose of this section, "immediate family" shall mean the
28 relationships of mother, father, sister, brother, child or
29 spouse.

30 Magistrate court deputy clerks shall be paid a monthly
31 salary by the state. Such salary shall be paid on the same
32 basis and in the same applicable amounts as for magistrate
33 assistants in each county as provided in section nine of this
34 article.

CHAPTER 164

(S. B. 431—By Senators Wooton, Anderson, Wledebusch, Ross, Bowman,
Buckalew, Scott, Dittmar and Wagner)

[Passed March 9, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections nine and ten, all relating to accounting procedures in magistrate offices; requiring magistrate officials to issue duplicate receipts on forms approved by the chief inspector; chief inspector to prescribe minimum requirements for such forms; requiring the deposit of funds in accordance with rules promulgated by the supreme court of appeals; and providing for the removal of magistrate officials who fail to comply with the prescribed accounting procedures.

Be it enacted by the Legislature of West Virginia:

That article three, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections nine and ten, all to read as follows:

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-9. Magistrate court officials to issue receipts of collections; deposit of funds.

§50-3-10. Removal of magistrate court official.

§50-3-9. Magistrate court officials to issue receipts of collections; deposit of funds.

1 (a) Any magistrate, magistrate court clerk, magistrate
2 assistant or magistrate deputy clerk who receives a fee,
3 cost, percentage, penalty, commission, allowance, bond,
4 deposit, surety or other cash payment or sum shall issue a
5 receipt to the payor thereof, in duplicate, on a form
6 approved by the chief inspector, in accordance with the
7 provisions of article nine, chapter six of this code. The
8 magistrate court official shall issue the original of such
9 receipt to the payor and shall retain the copy. The chief
10 inspector shall prescribe the minimum information to be
11 included on such receipt forms.

12 (b) All money collected shall be deposited in
13 accordance with rules promulgated by the supreme court
14 of appeals.

§50-3-10. Removal of magistrate court official.

1 If any magistrate, magistrate court clerk, magistrate
2 assistant or magistrate court deputy clerk shall fail to
3 comply with the provisions of this article, the chief
4 inspector may, in addition to any other remedies provided
5 by law, seek the removal from office of such official, in
6 accordance with provisions of section seven, article six,
7 chapter six of this code.

CHAPTER 165

(Com. Sub. for H. B. 2027—By Delegates Faircloth and Manuel)

[Passed March 2, 1995; in effect ninety days from passage. Approved by the Governor]

AN ACT to amend and reenact sections one, two and three,
article twelve-a, chapter seven of the code of West Virginia,

one thousand nine hundred thirty-one, as amended, relating to state and public roads; defining terms; establishment of maintenance associations along state or public roads in unincorporated areas; the installation of street lights as a permissible improvement by maintenance associations; requiring approval of the commissioner of highways for improvements to the state road system; authorizing petitions for state and public road maintenance, public hearings and notice requirements; right of appeal and requirement to post bond.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12A. MAINTENANCE ASSOCIATIONS.

§7-12A-1. Definitions.

§7-12A-2. Purpose of the maintenance association.

§7-12A-3. Petition to establish maintenance association.

§7-12A-1. Definitions.

1 In this article, the following terms shall have the
2 meanings ascribed to them:

3 (1) "Expressway" means a road that serves major
4 intrastate and interstate travel, including federal interstate
5 routes.

6 (2) "Feeder" means a road that serves community to
7 community travel or collects and feeds traffic to the
8 higher systems or both.

9 (3) "Maintenance association" means an association
10 established pursuant to the requirements of this article.

11 (4) "Maintenance association member" means any
12 person owning residential property that fronts on either
13 side of a road which is designated by a maintenance
14 association document.

15 (5) "Maintenance association documents" means
16 documents approved by the county commission as

17 meeting the requirements of this article and filed with the
18 clerk of the county commission.

19 (6) "Park and forest road" means a road that serves
20 travel within state parks, state forests and public hunting
21 and fishing areas.

22 (7) "Public roads" means all roads and bridges under
23 the control of the county commission or the governing
24 body of a municipality.

25 (8) "State local service road" means localized arterial
26 and spur roads which provide land access and socioeco-
27 nomic benefits to abutting properties.

28 (9) "State road" means and includes all roads
29 classified and prescribed as either expressway, trunkline,
30 feeder, park and forest or state local service roads.

31 (10) "State road system" means roads that are
32 functionally classified into five categories as follows: (1)
33 Expressway; (2) trunkline; (3) feeder; (4) state local
34 service; and (5) park and forest.

35 (11) "Trunkline" means a road that serves major city
36 to city travel.

§7-12A-2. Purpose of the maintenance association.

1 Maintenance associations may be established in any
2 county outside an incorporated area to protect the health,
3 safety and welfare of persons and the general public
4 located within the designated maintenance association
5 area. The maintenance association shall be created with
6 the objective of establishing and maintaining improve-
7 ments for the area designated in a petition filed pursuant
8 to section three of this article, which may include
9 constructing and maintaining shared streets, drainage
10 facilities, sidewalks, water and sewer systems, signs, street
11 lights and other improvements necessary for the pro-
12 tection of health, safety and welfare of the general public:
13 *Provided*, That such improvements made to the state road
14 system shall be made only as specified and approved by
15 the commissioner of highways.

§7-12A-3. Petition to establish maintenance association.

1 (a) A petition in writing may be made to the county
2 commission that duly verifies that sixty percent of the
3 persons owning property on both sides of any orphan
4 road, subdivision road, state road or public road in any
5 unincorporated area request the approval of the formation
6 of a maintenance association. The petition shall be
7 accompanied by the proposed maintenance association's
8 recordable documents that establish the association.

9 (b) Upon the filing of such petition and the proposed
10 maintenance association documents, the county commis-
11 sion shall fix a time and place for hearing protests and
12 shall require the petitioners to post notice of such hearing
13 in at least two conspicuous places on the state road, public
14 road, orphan road or subdivision road of the area affected,
15 and to give notice thereof by publication of such notice as
16 a Class I legal advertisement in compliance with the
17 provisions of article three, chapter fifty-nine of this code.
18 The publication area for such publication shall be the
19 county in which the maintenance association shall be
20 located. The hearing shall be held not less than ten nor
21 more than thirty days after the filing of such petition.

22 (c) At the time and place set for hearing protests, the
23 county commission may examine witnesses and consider
24 other evidence to show that:

25 (1) Said petition was filed in good faith;

26 (2) The signatures on the petition are genuine;

27 (3) The maintenance association document addresses
28 the maintenance association purpose; and

29 (4) The proposed maintenance association will result
30 in special benefits to all owners of residential property
31 abutting on said orphan road, subdivision road, state road
32 or public road.

33 The commission shall within ten days thereafter enter
34 a formal order stating its decision.

35 (d) Any owner of residential property abutting upon
36 said orphan road, subdivision road, state road or public
37 road aggrieved by such order shall have the right to review
38 the order on the record made before the county

39 commission by filing a petition with the clerk of the
40 circuit court within ten days after the entry of such order.
41 The owner shall give bond in an amount to be fixed by
42 the circuit court sufficient to pay costs or expenses
43 incurred by the court and the maintenance association
44 upon appeal if the order of the county commission is
45 affirmed. The circuit court shall proceed to review the
46 matter as in other appeals from the county commission.

CHAPTER 166

(Com. Sub. for H. B. 2578—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections eleven and eleven-a, article five of said chapter; and to further amend said article by adding thereto a new section, designated section eleven-c, all relating to definitions, assignment of rights, right of assignment to department of health and human resources to rights of recipients of medical assistance in certain cases, designation of damages in certain cases, requirement that department provide notice to perfect assignment, and right of the department of health and human resources to recover from the estates of recipients of medical assistance.

Be it enacted by the Legislature of West Virginia:

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

section, designated section eleven-c, all to read as follows:

Article

- 1. Legislative Purpose and Definitions.**
- 5. Miscellaneous Provisions.**

ARTICLE 1. LEGISLATIVE PURPOSE AND DEFINITIONS.

§9-1-2. Definitions.

1 The following words and terms when used in this
2 chapter shall have the meaning hereafter ascribed to them
3 unless the context clearly indicates a different meaning,
4 and any amendment of this section shall apply to any
5 verdict, settlement, compromise or judgment entered after
6 the effective date of the amendments to this section
7 enacted during the regular session of the Legislature, one
8 thousand nine hundred ninety-five.

9 (a) The term "department" means the state division of
10 human services.

11 (b) The term "commissioner" means the commissioner
12 of human services.

13 (c) The term "federal-state assistance" means and
14 includes (1) all forms of aid, care, assistance and services
15 to or on behalf of persons, which are authorized by, and
16 who are authorized to receive the same under and by
17 virtue of, subchapters one, four, five, ten, fourteen, sixteen,
18 eighteen and nineteen, chapter seven, Title 42, United
19 States Code, as those subchapters have heretofore been
20 and may hereafter be amended, supplemented and revised
21 by acts of Congress, and as those subchapters so amended,
22 supplemented and revised have heretofore been and may
23 hereafter be supplemented by valid rules and regulations
24 promulgated by authorized federal agents and agencies,
25 and as those subchapters so amended, supplemented and
26 revised have heretofore been and may hereafter be
27 supplemented by rules and regulations promulgated by
28 the state division of human services, which division rules
29 and regulations shall be consistent with federal laws, rules
30 and regulations, but not inconsistent with state law, and (2)

31 all forms of aid, care, assistance and services to persons,
32 which are authorized by, and who are authorized to
33 receive the same under and by virtue of, any act of
34 Congress, other than the federal Social Security Act, as
35 amended, for distribution through the state division of
36 human services to recipients of any form of aid, care,
37 assistance and services to persons designated or referred to
38 in (1) of this definition and to recipients of state assistance,
39 including by way of illustration, surplus food and food
40 stamps, which Congress has authorized the secretary of
41 agriculture of the United States to distribute to needy
42 persons.

43 (d) The term "federal assistance" means and includes
44 all forms of aid, care, assistance and services to or on
45 behalf of persons, which are authorized by, and who are
46 authorized to receive the same under and by virtue of, any
47 act of Congress for distribution through the state division
48 of human services, the cost of which is paid entirely out of
49 federal appropriations.

50 (e) The term "state assistance" means and includes all
51 forms of aid, care, assistance, services and general relief
52 made possible solely out of state, county and private
53 appropriations to or on behalf of indigent persons, which
54 are authorized by, and who are authorized to receive the
55 same under and by virtue of, state division of human
56 services' rules and regulations.

57 (f) The term "welfare assistance" means the three
58 classes of assistance administered by the state division of
59 human services, namely: Federal-state assistance, federal
60 assistance and state assistance.

61 (g) The term "indigent person" means any person who
62 is domiciled in this state and who is actually in need as
63 defined by department rules and regulations and has not
64 sufficient income or other resources to provide for such
65 need as determined by the state division of human
66 services.

67 (h) The term "domiciled in this state" means being

68 physically present in West Virginia accompanied by an
69 intention to remain in West Virginia for an indefinite
70 period of time, and to make West Virginia his or her
71 permanent home. The state division of human services
72 may by rules and regulations supplement the foregoing
73 definition of the term "domiciled in this state", but not in
74 such a manner as would be inconsistent with federal laws,
75 rules, and regulations applicable to and governing
76 federal-state assistance.

77 (i) The term "medical services" means medical,
78 surgical, dental and nursing services, and other remedial
79 services recognized by law, in the home, office, hospital,
80 clinic and any other suitable place, provided or prescribed
81 by persons permitted or authorized by law to give such
82 services; such services to include drugs and medical
83 supplies, appliances, laboratory, diagnostic and therapeutic
84 services, nursing home and convalescent care and such
85 other medical services and supplies as may be prescribed
86 by such persons.

87 (j) The term "general relief" means cash or its
88 equivalent in services or commodities expended for care
89 and assistance to an indigent person other than for care in
90 a county infirmary, child shelter or similar institution.

91 (k) The term "secretary" means the secretary of the
92 department of health and human resources.

93 (l) The term "estate" means all real and personal
94 property and other assets included within the individual's
95 estate as defined in the state's probate law.

96 (m) The term "services" means nursing facility
97 services, home and community-based services, and related
98 hospital and prescription drug services for which an
99 individual received medicaid medical assistance.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-11. Assignment of rights; right of subrogation by department of health and human resources to the rights of recipients of medical assistance; rules as to effect of subrogation.

§9-5-11a. Notice of action or claim.

§9-5-11c. Right of the department of health and human resources to recover medical assistance.

§9-5-11. Assignment of rights; right of subrogation by department of health and human resources to the rights of recipients of medical assistance; rules as to effect of subrogation.

1 (a) Submission of an application to the department of
2 health and human resources for medical assistance is, as a
3 matter of law, an assignment of the right of the applicant
4 or legal representative thereof, to recovery from personal
5 insurance or other sources, including, but not limited to,
6 liable third parties, to the extent of the cost of medical
7 services paid for by the medicaid program. This assign-
8 ment of rights does not extend to medicare benefits.

9 At the time the application is made, the department
10 shall include a statement along with such application that
11 explains that the applicant has assigned all such rights and
12 the legal implications of making such assignment as
13 provided in this section.

14 If medical assistance is paid or will be paid to a
15 provider of medical care on behalf of a recipient of
16 medical assistance because of any sickness, injury, disease
17 or disability, and another person is legally liable for such
18 expense, either pursuant to contract, negligence or
19 otherwise, the department of health and human resources
20 shall have a right to recover full reimbursement from any
21 award or settlement for such medical assistance from such
22 other person, or from the recipient of such assistance if he
23 has been reimbursed by the other person. The department
24 shall be legally assigned the rights of the recipient against
25 the person so liable, but only to the extent of the
26 reasonable value of the medical assistance paid and
27 attributable to the sickness, injury, disease or disability for
28 which the recipient has received damages. When an action
29 or claim is brought by a medical assistance recipient or by
30 someone on his or her behalf against a third party who
31 may be liable for the injury, disease, disability or death of

32 a medical assistance recipient, any settlement, judgment or
33 award obtained is subject to the claim of the department of
34 health and human resources for reimbursement of an
35 amount sufficient to reimburse the department the full
36 amount of benefits paid on behalf of the recipient under
37 the medical assistance program for the injury, disease,
38 disability or death of the medical assistance recipient. The
39 claim of the department of health and human resources
40 assigned by such recipient shall not exceed the amount of
41 medical expenses for the injury, disease, disability or death
42 of the recipient paid by the department on behalf of the
43 recipient. The right of subrogation created in this section
44 includes all portions of the cause of action, by either
45 settlement, compromise, judgment or award, notwithstand-
46 ing any settlement allocation or apportionment that
47 purports to dispose of portions of the cause of action not
48 subject to the subrogation. Any settlement, compromise,
49 judgment or award that excludes or limits the cost of
50 medical services or care shall not preclude the department
51 of health and human resources from enforcing its rights
52 under this section. The secretary may compromise, settle
53 and execute a release of any such claim, in whole or in
54 part.

55 (b) Nothing in this section shall be construed so as to
56 prevent the recipient of medical assistance from
57 maintaining an action for injuries received by him against
58 any other person and from including therein, as part of
59 the compensatory damages sought to be recovered, the
60 amount or amounts of his or her medical expenses, even
61 though such person received medical assistance in the
62 payment of such medical expenses, in whole or in part.

63 If the action be tried by a jury, the jury shall not be
64 informed as to the interest of the department of health and
65 human resources, if any, and such fact shall not be
66 disclosed to the jury at any time. The trial judge shall,
67 upon the entry of judgment on the verdict, direct that an
68 amount equal to the amount of medical assistance given
69 be withheld and paid over to the department of health and

70 human resources. Irrespective of whether the case be
71 terminated by judgment or by settlement without trial,
72 from the amount required to be paid to the department of
73 health and human resources there shall be deducted the
74 attorney fees attributable to such amount in accordance
75 with and in proportion to the fee arrangement made
76 between the recipient and his or her attorney of record so
77 that the department shall bear the pro rata portion of such
78 attorney fees. Nothing in this section shall preclude any
79 person who has received medical assistance from settling
80 any cause of action which he may have against another
81 person and delivering to the department of health and
82 human resources, from the proceeds of such settlement,
83 the sums received by him or her from the department or
84 paid by the department for his or her medical assistance.
85 If such other person is aware of or has been informed of
86 the interest of the department of health and human
87 resources in the matter, it shall be the duty of the person to
88 whose benefit the release inures to withhold so much of
89 the settlement as may be necessary to reimburse the
90 department to the extent of its interest in the settlement.
91 No judgment, award of or settlement in any action or
92 claim by a medical assistance recipient to recover damages
93 for injuries, disease or disability, in which the department
94 of health and human resources has interest, shall be
95 satisfied without first giving the department notice and
96 reasonable opportunity to establish its interest. The
97 department shall have sixty days from receipt of such
98 written notice to advise the recipient or his or her
99 representative in writing of the department's desire to
100 establish its interest through the assignment. If no such
101 written intent is received within the sixty-day period, then
102 the recipient may proceed and in the event of full
103 recovery forward to the department the portion of the
104 recovery proceeds less the department's share of attorney's
105 fees and costs expended in the matter. In the event of less
106 than full recovery the recipient and the department shall
107 agree as to the amount to be paid to the department for its
108 claim. If there is no recovery, the department shall under
109 no circumstances be liable for any costs or attorneys fees

110 expended in the matter. If, after being notified in writing
111 of a subrogation claim and possible liability of the
112 recipient, guardian, attorney or personal representative for
113 failure to subrogate the department, a recipient, his or her
114 guardian, attorney or personal representative disposes of
115 the funds representing the judgment, settlement or award,
116 without the written approval of the department, that person
117 shall be liable to the department for any amount that, as a
118 result of the disposition of the funds, is not recoverable by
119 the department. In the event that a controversy arises
120 concerning the subrogation claims by the department, an
121 attorney shall interplead, pursuant to rule twenty-two of
122 the rules of civil procedure, the portion of the recipient's
123 settlement that will satisfy the department exclusive of
124 attorneys fees and costs regardless of any contractual
125 arrangement between the client and the attorney.

126 (c) Nothing contained herein shall authorize the
127 department of health and human resources to institute a
128 class action or multiple plaintiff action against any
129 manufacturer, distributor or vendor of any product to
130 recover medical care expenditures paid for by the
131 medicaid program.

§9-5-11a. Notice of action or claim.

1 If either the medical assistance recipient or the
2 department of health and human resources brings an
3 action or claim against a third person, the recipient, his
4 attorney or such department shall, within thirty days of
5 filing the action, give to the other written notice of the
6 action or claim by certified mail. This notice shall contain
7 the name of the third person and the court in which the
8 action is brought. If the department of health and human
9 resources institutes said action, the notice shall advise the
10 recipient of their right to bring such action in their own
11 name, in which they may include as a part of their claim
12 the sums claimed by such department. Proof of such
13 notice shall be filed in said action subject to the notice and
14 intent procedure as outlined in section eleven of this
15 article. If an action or claim is brought by either the

16 recipient or the department of health and human
17 resources, the other may, at any time before trial, become
18 a party to the action, or shall consolidate his action or
19 claim with the other if brought independently: *Provided*,
20 That this consolidation or entry as a party does not delay
21 the proceedings.

§9-5-11c. Right of the department of health and human resources to recover medical assistance.

1 (a) Upon the death of a person who was fifty-five
2 years of age or older at the time the person received
3 welfare assistance consisting of nursing facility services,
4 home and community-based services, and related hospital
5 and prescription drug services, the department of health
6 and human resources, in addition to any other available
7 remedy, may file a claim or lien against the estate of the
8 recipient for the total amount of medical assistance
9 provided by medicaid for nursing facility services, home
10 and community-based services, and related hospital and
11 prescription drug services provided for the benefit of the
12 recipient. Claims so filed shall be classified as and
13 included in the class of debts due the state.

14 (b) The department may recover pursuant to
15 subsection (a) only after the death of the individual's
16 surviving spouse, if any and only after such time as the
17 individual has no surviving children under the age of
18 twenty-one, or when the individual has no surviving
19 children who meet the Social Security Act's definition of
20 blindness or permanent and total disability.

21 (c) The state shall have the right to place a lien upon
22 the property of individuals who are inpatients in a nursing
23 facility, intermediate care facility for the mentally
24 retarded, or other medical institution who, after notice and
25 an opportunity for a hearing, the state has deemed to be
26 permanently institutionalized. This lien shall be in an
27 amount equal to medicaid expenditures for services
28 provided by a nursing facility, intermediate care facility
29 for the mentally retarded or other medical institution, and

30 shall be rendered against the proceeds of the sale of
31 property except for a minimal amount reserved for the
32 individual's personal needs. Any such lien shall dissolve
33 upon that individual's discharge from the medical
34 institution. The secretary has authority to compromise or
35 otherwise reduce the amount of this lien in cases where
36 enforcement would create a hardship.

37 (d) No lien may be imposed on such individual's home
38 when the home is the lawful residence of: (1) The spouse
39 of the individual; (2) the individual's child who is under
40 the age of twenty-one; (3) the individual's child meets the
41 Social Security Act's definition of blindness or permanent
42 and total disability; or (4) the individual's sibling has an
43 equity interest in the home and was residing in the home
44 for a period of at least one year immediately before the
45 date of the individual's admission to a medical institution.

46 (e) The filing of a claim, pursuant to this section, shall
47 neither reduce nor diminish the general claims of the
48 department of health and human resources, except that
49 such department shall not receive double recovery for the
50 same expenditure. The death of the recipient shall neither
51 extinguish nor diminish any right of such department to
52 recover. Nothing in this section affects or prevents a
53 proceeding to enforce a lien pursuant to this section or a
54 proceeding to set aside a fraudulent conveyance.

55 (f) Any claim or lien imposed pursuant to this section
56 is effective for the full amount of medical assistance
57 provided by medicaid for nursing facility services, home
58 and community-based services, and related hospital and
59 prescription drug services. Said lien attaches and is
60 perfected automatically as of the beginning date of
61 medical assistance, the date when a recipient first receives
62 treatment for which the department of health and human
63 resources may be obligated to provide medical assistance.
64 A claim may be waived by such department, if such
65 department determines, pursuant to applicable federal law
66 and rules and regulations, that the claim will cause
67 substantial hardship to the surviving dependents of the
68 deceased.

69 (g) Upon the effective date of this section, the
70 attorney general, on behalf of the state of West Virginia,
71 shall commence an action in a court of competent
72 jurisdiction to test the validity, constitutionality, and the
73 ability of the Congress of the United States to mandate the
74 implementation of this section. This subsection does not
75 limit the right of others, including recipients, to intervene
76 in any litigation, nor does it limit the discretion of the
77 attorney general or appropriate counsel to seek affected
78 persons to act as parties to the litigation, either individually
79 or as a class.

CHAPTER 167

(Com. Sub. for H. B. 2033—By Delegates Linch, Pino, Trump and Staton)

[Passed March 11, 1995; in effect ninety days from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact sections three and four, article six-a, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section nine, all relating to the commitment of mentally ill, mentally retarded or addicted persons charged with a crime.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6A. COMMITMENT OF PERSONS CHARGED OR CONVICTED OF A CRIME.

§27-6A-3. Court jurisdiction over persons found not guilty by reason of mental illness, mental retardation or addiction.

§27-6A-4. Release from jurisdiction of the court; discharge.

§27-6A-9. Development of conditional release plans.

§27-6A-3. Court jurisdiction over persons found not guilty by reason of mental illness, mental retardation or addiction.

1 (a) After the entry of a judgment of not guilty by
2 reason of mental illness, mental retardation or addiction,
3 the court of record shall determine on the record the
4 offense of which the person otherwise would have been
5 convicted, and the maximum sentence he could have
6 received. The court shall commit such defendant to a
7 mental health facility under the jurisdiction of the
8 department of health, with the court retaining jurisdiction
9 over the defendant for the maximum sentence period.

10 (b) If the defendant is released from an inpatient
11 mental health facility while under the jurisdiction of the
12 court, the court may impose such conditions as are
13 necessary to protect the safety of the public.

§27-6A-4. Release from jurisdiction of the court; discharge.

1 (a) No later than thirty days prior to the release of a
2 defendant because of the expiration of the court's
3 jurisdiction, if the defendant's supervising physician
4 believes that the defendant's mental illness or mental
5 retardation or addiction causes the defendant to be
6 dangerous to self or others, the supervising physician shall
7 notify the prosecuting attorney in the county of the court
8 having jurisdiction of such opinion and the basis there-
9 for. Following this notification, the prosecuting attorney
10 shall file a civil commitment application against the
11 defendant, pursuant to article five of this chapter.

12 (b) The court may discharge a mentally ill or addicted
13 defendant from the court's period of jurisdiction prior to
14 the expiration of the period specified in this section only
15 when the court finds that the person is no longer mentally

16 ill or addicted and that the person is no longer a danger to
17 self or others. The court may discharge a mentally
18 retarded defendant from the court's period of jurisdiction
19 prior to the expiration of the period specified in this
20 section only when the court finds that the person is no
21 longer a danger to self or others. However, a defendant
22 may not be released from the jurisdiction of the court
23 when the defendant's mental illness is in remission solely
24 as a result of medication or hospitalization or other mode
25 of treatment if it can be determined within a reasonable
26 degree of medical certainty that without continued therapy
27 or hospitalization or other mode of treatment, the
28 defendant's mental illness will make him a danger to self
29 or others.

30 (c) Those persons committed under the provisions of
31 this article may be released or discharged from the
32 inpatient mental health facility only upon entry of an
33 order from the court of record which committed the
34 defendant finding that the defendant will not be a danger
35 to self or others if so released, based upon the evidence
36 introduced at the hearing.

37 (d) The court shall promptly conduct a hearing after
38 receipt of the physician's notification referred to in
39 subsection (a) of this section. The clerk shall notify the
40 prosecuting attorney and the victim or next of kin of the
41 victim of the offense for which the person was committed
42 of the hearing. The burden shall be on the victim or next
43 of kin to the victim to keep the court apprised of that
44 person's current mailing address.

§27-6A-9. Development of conditional release plans.

1 The department of health shall, on or before the first
2 day of the regular session of the Legislature in the year
3 one thousand nine hundred ninety-six, provide to the
4 president of the Senate and the speaker of the House of
5 Delegates a complete proposed plan for the implementat-
6 ion of a conditional release or outpatient status program
7 for persons committed to an inpatient mental health

8 facility due to having been judicially determined to be not
9 guilty by reason of insanity, incompetence to stand trial or
10 civilly committed after having been judicially determined
11 to be a danger to self or others.

CHAPTER 168

(S. B. 187—By Senators Miller, Bailey, Love, Anderson, Dittmar,
Blatnik, Whitlow, Ross, Helmick and Schoonover)

[Passed March 8, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eleven, twelve and twelve-a, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to establishing a three-year registration period for motorboats; establishing a fee of fifteen dollars for the three-year registration period; and providing that the assessor shall be furnished boat registration if the cost price of the vessel exceeds five hundred dollars or the cost of a motor exceeds two hundred fifty dollars.

Be it enacted by the Legislature of West Virginia:

That sections eleven, twelve and twelve-a, article seven, 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 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

PART II. MOTORBOATING.

- §20-7-11. Motorboats and other terms defined.
- §20-7-12. Motorboat identification numbers required; application for numbers; fee; displaying; reciprocity; change of ownership; conformity with United States regulations; records; renewal of certificate; transfer of interest, abandonment, etc.; change of address; unauthorized numbers; information to be furnished assessors.
- §20-7-12a. Payment of personal property taxes prerequisite to application for certificate or renewal of number; duties of assessors; schedule of motorboat values.

§20-7-11. Motorboats and other terms defined.

1 As used in this section and subsequent sections of this
2 article, unless the context clearly requires a different
3 meaning:

4 (1) "Vessel" means every description of watercraft,
5 other than a seaplane on the water, used or capable of
6 being used as a means of transportation on water;

7 (2) "Motorboat" means any vessel propelled by an
8 electrical, steam, gas, diesel or other fuel propelled or
9 driven motor, whether or not the motor is the principal
10 source of propulsion, but shall not include a vessel which
11 has a valid marine document issued by the bureau of cus-
12 toms of the United States government or any federal agen-
13 cy successor thereto;

14 (3) "Owner" means a person, other than a lienholder,
15 having the property in or title to a motorboat. The term
16 includes a person entitled to the use or possession of a
17 motorboat subject to an interest in another person, re-
18 served or created by agreement and securing payment or
19 performance of an obligation, but the term excludes a
20 lessee under a lease not intended as security;

21 (4) "Commissioner" means the commissioner of the
22 division of motor vehicles; and

23 (5) "Director" means the director of the division of
24 natural resources.

**§20-7-12. Motorboat identification numbers required; appli-
cation for numbers; fee; displaying; reciprocity;
change of ownership; conformity with United
States regulations; records; renewal of certifi-
cate; transfer of interest, abandonment, etc.;
change of address; unauthorized numbers;
information to be furnished assessors.**

1 Every motorboat, as herein defined, operating upon
2 public waters within the territorial limits of this state, shall
3 be numbered as herein provided:

4 (a) The owner of each motorboat requiring number-
5 ing by this state shall file an application for a number with

6 the commissioner on forms approved by the division of
7 motor vehicles. The application shall be signed by the
8 owner of the motorboat and shall be accompanied by a
9 fee of fifteen dollars for a three-year registration period if
10 propelled by a motor of three or more horsepower. The
11 fee may be prorated by the commissioner for periods of
12 less than three years. There shall be no fee for motorboats
13 propelled by motors of less than three horsepower. All
14 such fees, including those received under subdivision (b)
15 of this section, shall be deposited in the state treasury and
16 fifty percent shall be credited to the division of motor
17 vehicles and shall be used and paid out upon order of the
18 commissioner solely for the administration of the certifi-
19 cate of number system. The remaining fifty percent shall
20 be credited to the division of natural resources and shall
21 be used and paid out upon order of the director solely for
22 the enforcement and safety education of the state boating
23 system. Upon receipt of the application in approved form,
24 the commissioner shall enter the same upon the records of
25 the division and issue to the applicant a number awarded
26 to the motorboat and the name and address of the owner.
27 The owner shall paint on or attach to each side of the bow
28 of the motorboat the identification number in the manner
29 as may be prescribed by rules of the commissioner in
30 order that it may be clearly visible. The number shall be
31 maintained in legible condition. The certificate of num-
32 ber shall be pocket size and shall be available at all times
33 for inspection on the motorboat for which issued, whenev-
34 er the motorboat is in operation.

35 (b) In order to permit a motorboat sold to a purchaser
36 by a dealer to be operated pending receipt of the certifi-
37 cate of number from the commissioner, the commissioner
38 may deliver to dealers, upon application therefor and
39 payment of one dollar for each, temporary certificates of
40 number to in turn be issued to purchasers of motorboats.
41 Every person who is issued a temporary certificate by a
42 dealer shall, under the provisions of subdivision (a) of this
43 section, apply for a certificate of number no later than ten
44 days from the date of issuance of the temporary certifi-
45 cate. A temporary certificate shall expire upon receipt of
46 the certificate, upon rescission of the contract to purchase

47 the motorboat in question or upon the expiration of forty
48 days from the date of issuance, whichever shall first occur.
49 It is unlawful for any dealer to issue any temporary certifi-
50 cate knowingly containing any misstatement of fact or
51 knowingly to insert any false information on the face
52 thereof. The commissioner may by rule prescribe addi-
53 tional requirements upon the dealers and purchasers as are
54 consistent with the effective administration of this section.

55 (c) The owner of any motorboat already covered by a
56 number in full force and effect which has been awarded to
57 it pursuant to then operative federal law or a federally
58 approved numbering system of another state shall record
59 the number prior to operating the motorboat on the waters
60 of this state in excess of the sixty-day reciprocity period
61 provided for in section fourteen of this article. The recor-
62 dation shall be in the manner and pursuant to procedure
63 required for the award of a number under subdivision (a)
64 of this section, except that an additional or substitute num-
65 ber shall not be issued.

66 (d) Should the ownership of a motorboat change, a
67 new application form with fee shall be filed with the com-
68 missioner and a new certificate of number shall be award-
69 ed in the same manner as provided for in an original
70 award of number.

71 (e) In the event that an agency of the United States
72 government shall have in force an overall system of identi-
73 fication numbering for motorboats within the United
74 States, the numbering system employed pursuant to this
75 article by the division of motor vehicles shall be in conform-
76 ity therewith.

77 (f) All records of the director made or kept pursuant
78 to this section shall be transferred to the commissioner and
79 shall be maintained as public records.

80 (g) The license shall be valid for a maximum period
81 of three years. If at the expiration of that period owner-
82 ship has remained unchanged, the owner shall, upon appli-
83 cation and payment of the proper fee, be granted a renew-
84 al of the certificate of number for an additional three-year
85 period.

86 (h) The owner shall furnish the commissioner notice
87 of the transfer of all or any part of an interest, other than
88 the creation of a security interest, in a motorboat num-
89 bered in this state pursuant to subdivisions (a) and (b) of
90 this section, or of the destruction or abandonment of the
91 motorboat, within fifteen days thereof. The transfer, de-
92 struction or abandonment shall terminate the certificate of
93 number for the motorboat, except that in the case of a
94 transfer of a part interest which does not affect the owner's
95 right to operate the motorboat, the transfer shall not termi-
96 nate the certificate of number.

97 (i) Any holder of a certificate of number shall notify
98 the commissioner within fifteen days if his or her address
99 no longer conforms to the address appearing on the certifi-
100 cate and shall, as a part of the notification, furnish the
101 commissioner with his or her new address. The commis-
102 sioner may provide rules for the surrender of the certifi-
103 cate bearing the former address and its replacement with a
104 certificate bearing the new address or for the alteration of
105 an outstanding certificate to show the new address of the
106 holder.

107 (j) No number other than the number awarded to a
108 motorboat or granted reciprocity pursuant to this article
109 shall be painted, attached or otherwise displayed on either
110 side of the bow of the motorboat.

111 (k) It shall be the duty of the commissioner on or
112 before the thirtieth day of August of each year, commenc-
113 ing with the year one thousand nine hundred eighty, to
114 forward to the assessor of each county a list of the names
115 and addresses of all persons, firms and corporations own-
116 ing vessels and operating the same or other boats regis-
117 tered with the commissioner under the provisions of this
118 article. In furnishing this information to each county
119 assessor, the commissioner shall include the information as
120 to make and model of the vessels and other equipment
121 required to be registered for use by said owner or operator
122 thereof under the provisions of this article: *Provided,*
123 That the commissioner need not furnish the information
124 to the assessor if the cost price of the vessel does not ex-
125 ceed five hundred dollars or the cost of the motor does

126 not exceed two hundred fifty dollars.

127 (l) No person may operate an unlicensed motorboat
128 upon any waters of this state without first acquiring the
129 certificate of number or license as required by law.

§20-7-12a. Payment of personal property taxes prerequisite to application for certificate or renewal of number; duties of assessors; schedule of motorboat values.

1 Certificates of number and renewals therefor shall not
2 be issued or furnished by the division of motor vehicles,
3 or any other officer charged with the duty, unless the
4 applicant therefor furnishes the receipt hereinafter provid-
5 ed to show full payment of the personal property taxes for
6 the calendar year which immediately precedes the calen-
7 dar year in which application is made on all motorboats
8 which were listed with the division of motor vehicles in the
9 applicant's name on the tax day for the former calendar
10 year. If the applicant contends that any motorboat so
11 listed was not subject to personal property taxation for that
12 year, he or she shall furnish the information and evidence
13 as the commissioner of motor vehicles may require to
14 substantiate his or her contention.

15 The assessor shall require any person having a duty to
16 make a return of property for taxation to him or her to
17 furnish information identifying each motorboat subject to
18 the numbering provisions of this article. When the prop-
19 erty taxes on the motorboat have been paid, the officer to
20 whom the payment was made shall deliver to the person
21 paying the taxes a written or printed receipt therefor, and
22 shall retain for his or her records a duplicate of the re-
23 ceipt. The assessor and sheriff, respectively, shall see that
24 the assessment records and the receipts contain informa-
25 tion adequately identifying the motorboat as registered
26 under the provisions of this article. The officer receiving
27 payment shall sign each receipt in his or her own hand-
28 writing.

29 The assessors shall commence their duties hereunder
30 during the tax year one thousand nine hundred
31 eighty-nine and the division of motor vehicles shall com-

32 mence its duties hereunder as of the first day of January,
33 one thousand nine hundred ninety.

34 The state tax commissioner shall annually compile a
35 schedule of motorboat values, based on the lowest values
36 shown in a nationally accepted used motorboat guide,
37 which schedule shall be furnished to each assessor and
38 shall be used by him or her as a guide in placing the
39 assessed values on all motorboats in his or her county.

CHAPTER 169

(H. B. 2418—By Delegates J. Martin, Love, Michael, Nesbitt, Harrison,
Kominar and Stalnaker)

[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article two, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article one of said chapter, relating to repeal of provisions relating to the state road commission and transfer of powers and duties of that commission to the commissioner of highways.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEFINITIONS.

§17-1-2. "Commission"; "road commission"; "state road commission."

1 The words and terms "commission," "road com-
2 mission" or "state road commission," when used in this
3 chapter, shall refer to and mean the West Virginia com-
4 missioner of highways, created by section one, article
5 two-a of this chapter. Whenever reference is made to the
6 "commission," "road commission" or "state road
7 commission," the power or duty prescribed shall apply to
8 the West Virginia commissioner of highways, unless the
9 context clearly requires a different meaning.

CHAPTER 170

(S. B. 310—By Senators Whitlow, Miller, Love, Dittmar, Oliverio,
Plymale, Schoonover, Buckalew and Dugan)

[Passed March 11, 1995; 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, relating to motor vehicle administration; original and renewal of registration; registration plates generally; relating to special license plates; providing a scenic license plate; authorizing persons holding the distinguished purple heart medal, qualified disabled veterans, survivors of the Pearl Harbor attack, qualified former prisoners of war and holders of the congressional medal of honor to be issued two registration plates; and setting the fees and costs thereof.

Be it enacted by the Legislature of West Virginia:

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

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

§17A-3-14. Registration plates generally; 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, trail-
3 er, semitrailer or other motor vehicle.

4 (b) Registration plates issued by the division shall meet
5 the following requirements:

6 (1) Every registration plate shall be of reflectorized
7 material and have displayed upon it the registration num-
8 ber assigned to the vehicle for which it is issued; the name

9 of this state, which may be abbreviated; and the year num-
10 ber for which it is issued or the date of expiration of the
11 plate.

12 (2) Every registration plate and the required letters
13 and numerals on the plate shall be of sufficient size to be
14 plainly readable from a distance of one hundred feet dur-
15 ing 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 shall
19 begin with number two.

20 (c) The division shall not issue, permit to be issued or
21 distribute any special registration plates except as follows:

22 (1) The governor shall be issued two registration
23 plates, on one of which shall be imprinted the numeral one
24 and on the other the word one.

25 (2) State officials and judges may be issued special
26 registration plates as follows:

27 (A) Upon appropriate application, there shall be issued
28 to the secretary of state, state superintendent of free
29 schools, auditor, treasurer, commissioner of agriculture
30 and the attorney general, the members of both houses of
31 the Legislature, including the elected officials thereof, the
32 justices of the supreme court of appeals of West Virginia,
33 the representatives and senators of the state in the Con-
34 gress of the United States, the judges of the United States
35 district courts for the state of West Virginia and the judges
36 of the United States court of appeals for the fourth circuit,
37 if any of the judges are residents of West Virginia, a spe-
38 cial registration plate for a Class A motor vehicle owned
39 by the official or his or her spouse: *Provided*, That the
40 division shall not issue more than two plates for each offi-
41 cial.

42 (B) Each plate issued pursuant to this subdivision shall
43 bear any combination of letters and numbers not to ex-
44 ceed an amount determined by the commissioner and a
45 designation of the office. Each plate shall supersede the
46 regular numbered plate assigned to the official or his or

47 her spouse during the official's term of office and while
48 the motor vehicle is owned by the official or his or her
49 spouse.

50 (C) An annual fee of fifteen dollars shall be charged
51 for every registration plate issued pursuant to this subdivi-
52 sion, which is in addition to all other fees required by this
53 chapter.

54 (3) Members of the national guard forces may be
55 issued special registration plates as follows:

56 (A) Upon receipt of an application on a form pre-
57 scribed by the division and receipt of written evidence
58 from the chief executive officer of the army national
59 guard or air national guard, as appropriate, or the com-
60 manding officer of any United States armed forces reserve
61 unit that the applicant is a member thereof, the division
62 shall issue to any member of the national guard of this
63 state or a member of any reserve unit of the United States
64 armed forces a special registration plate designed by the
65 commissioner for any number of Class A motor vehicles
66 owned by the member.

67 (B) An initial application fee of ten dollars shall be
68 charged for each special registration plate issued pursuant
69 to this subdivision, which is in addition to all other fees
70 required by this chapter. All initial application fees col-
71 lected by the division shall be deposited into a special
72 revolving fund to be used in the administration of this
73 section.

74 (4) Specially arranged registration plates may be is-
75 sued as follows:

76 (A) Upon appropriate application, any owner of a
77 motor vehicle subject to Class A registration, or a motor-
78 cycle subject to Class G registration, as defined by this
79 article, may request that the division issue a registration
80 plate bearing specially arranged letters or numbers with
81 the maximum number of letters or numbers to be deter-
82 mined by the commissioner. The division shall attempt to
83 comply with the request wherever possible.

84 (B) The commissioner shall promulgate rules in accor-

85 dance with the provisions of chapter twenty-nine-a of this
86 code regarding the orderly distribution of the plates:
87 *Provided*, That for purposes of this subdivision, the regis-
88 tration plates requested and issued shall include all plates
89 bearing the numbers two through two thousand.

90 (C) An annual fee of fifteen dollars shall be charged
91 for each special registration plate issued pursuant to this
92 subdivision, which is in addition to all other fees required
93 by this chapter.

94 (5) Honorably discharged veterans may be issued
95 special registration plates as follows:

96 (A) Upon appropriate application, there shall be issued
97 to any honorably discharged veteran, of any branch of the
98 armed services of the United States, a special registration
99 plate for any number of vehicles titled in the name of the
100 qualified applicant with an insignia designed by the com-
101 missioner of the division of motor vehicles.

102 (B) A special initial application fee of ten dollars shall
103 be charged in addition to all other fees required by law.
104 This special fee is to compensate the division of motor
105 vehicles for additional costs and services required in the
106 issuing of the special registration and shall be collected by
107 the division and deposited in a special revolving fund to
108 be used for the administration of this section: *Provided*,
109 That nothing in this section shall be construed to exempt
110 any veteran from any other provision of this chapter.

111 (C) Special registration plates issued pursuant to this
112 subdivision are not transferable to any other person. Any
113 special registration issued under this subdivision termi-
114 nates upon the death of the registered owner of the special
115 registration plate.

116 (6) Disabled veterans may be issued special registra-
117 tion plates as follows:

118 (A) Upon appropriate application, there shall be issued
119 to any disabled veteran, who is exempt from the payment
120 of registration fees under the provisions of this chapter, a
121 registration plate for a vehicle titled in the name of the
122 qualified applicant which bears the letters "DV" in red and

123 also the regular identification numerals in red.

124 (B) Special registration plates issued pursuant to this
125 subdivision are not transferable to any other person. Any
126 special registration issued under this subdivision termi-
127 nates upon the death of the registered owner of the special
128 registration plate.

129 (C) A qualified disabled veteran may obtain a second
130 disabled veteran license plate as described in this section
131 for use on a passenger vehicle titled in the name of the
132 qualified applicant. An annual fee of fifteen dollars, in
133 addition to all other fees required by this chapter, shall be
134 charged for the second 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 issued
138 to any armed service person holding the distinguished
139 purple heart medal for persons wounded in combat a
140 registration plate for a vehicle titled in the name of the
141 qualified applicant bearing letters or numbers. The regis-
142 tration plate shall be designed by the commissioner of
143 motor vehicles and shall denote that those individuals who
144 are granted this special registration plate are recipients of
145 the purple heart. All letterings shall be in purple where
146 practical.

147 (B) Registration plates issued pursuant to this subdivi-
148 sion are exempt from all registration fees otherwise re-
149 quired by the provisions of this chapter.

150 (C) Special registration plates issued pursuant to this
151 subdivision are not transferable to any other person. Any
152 special registration issued under this subdivision termi-
153 nates upon the death of the registered owner of the special
154 registration plate.

155 (D) A recipient of the purple heart medal may obtain
156 a second purple heart medal license plate as described in
157 this section for use on a passenger vehicle titled in the
158 name of the qualified applicant. An annual fee of fifteen
159 dollars, in addition to all other fees required by this chap-
160 ter, shall be charged for the second plate.

161 (8) Survivors of the attack on Pearl Harbor may be
162 issued special registration plates as follows:

163 (A) Upon appropriate application, the owner of a
164 motor vehicle who was enlisted in any branch of the
165 armed services that participated in and survived the attack
166 on Pearl Harbor on the seventh day of December, one
167 thousand nine hundred forty-one, shall be issued a special
168 registration plate for a vehicle titled in the name of the
169 qualified applicant. The registration plate shall be de-
170 signed by the commissioner of motor vehicles.

171 (B) Registration plates issued pursuant to this subdivi-
172 sion are exempt from the payment of all registration fees
173 otherwise required by the provisions of this chapter.

174 (C) Special registration plates issued pursuant to this
175 subdivision are not transferable to any other person. Any
176 special registration issued under this subdivision termi-
177 nates upon the death of the registered owner of the special
178 registration plate.

179 (D) A survivor of the attack on Pearl Harbor may
180 obtain a second survivors of the attack on Pearl Harbor
181 license plate as described in this section for use on a pas-
182 senger vehicle titled in the name of the qualified applicant.
183 An annual fee of fifteen dollars, in addition to all other
184 fees required by this chapter, shall be charged for the
185 second plate.

186 (9) Nonprofit charitable and educational organizations
187 may be issued special registration plates as follows:

188 (A) Nonprofit charitable and educational organiza-
189 tions may design a logo or emblem for inclusion on a
190 special registration plate and submit the logo or emblem
191 to the commissioner for approval and authorization. Up-
192 on the approval and authorization, the nonprofit charitable
193 and educational organizations may market the special
194 registration plate to organization members and the general
195 public.

196 (B) Approved nonprofit charitable and educational
197 organizations may accept and collect applications for
198 special registration plates from owners of Class A motor

199 vehicles together with a special annual fee of fifteen dol-
200 lars, which is in addition to all other fees required by this
201 chapter. The applications and fees shall be submitted to
202 the division of motor vehicles with the request that the
203 division issue a registration plate bearing a combination of
204 letters or numbers with the organizations' logo or emblem,
205 with the maximum number of letters or numbers to be
206 determined by the commissioner.

207 (C) The commissioner shall promulgate rules in accor-
208 dance with the provisions of chapter twenty-nine-a of this
209 code regarding the procedures for and approval of special
210 registration plates issued pursuant to this subdivision.

211 (D) The commissioner shall set an appropriate fee to
212 defray the administrative costs associated with designing
213 and manufacturing special registration plates for a non-
214 profit charitable or educational organization. The non-
215 profit charitable or educational organization shall collect
216 this fee and forward it to the division for deposit in a spe-
217 cial revolving fund to pay the administrative costs. The
218 nonprofit charitable or educational organization may also
219 collect a fee for marketing the special registration plates.

220 (10) Specified emergency or volunteer registration
221 plates may be issued as follows:

222 (A) Any owner of a motor vehicle who is a resident of
223 the state of West Virginia and who is a certified paramedic
224 or emergency medical technician, a member of a volun-
225 teer fire company or a paid fire department, a member of
226 the state fire commission, the state fire marshal, the state
227 fire marshal's assistants, the state fire administrator and
228 voluntary rescue squad members may apply for a special
229 license plate for any number of Class A vehicles titled in
230 the name of the qualified applicant which bears the insig-
231 nia of the profession, group or commission. Any insignia
232 shall be designed by the commissioner. License plates
233 issued pursuant to this subdivision shall bear the requested
234 insignia in addition to the registration number issued to
235 the applicant pursuant to the provisions of this article.

236 (B) Each application submitted pursuant to this subdivi-
237 sion shall be accompanied by an affidavit signed by the

238 fire chief or department head of the applicant stating that
239 the applicant is justified in having a registration with the
240 requested insignia; proof of compliance with all laws of
241 this state regarding registration and licensure of motor
242 vehicles; and payment of all required fees.

243 (C) Each application submitted pursuant to this subdi-
244 vision shall be accompanied by payment of a special ini-
245 tial application fee of ten dollars, which is in addition to
246 any other registration or license fee required by this chap-
247 ter. All special fees shall be collected by the division and
248 deposited into a special revolving fund to be used for the
249 purpose of compensating the division of motor vehicles
250 for additional costs and services required in the issuing of
251 such special registration and for the administration of this
252 section.

253 (11) Special scenic registration plates:

254 (A) Upon appropriate application, the commissioner
255 shall issue a special registration plate displaying a scenic
256 design of West Virginia no later than the first day of Janu-
257 ary, one thousand nine hundred ninety-six. This special
258 plate shall display the words "Wild Wonderful" as a slogan.

259 (B) A special one-time initial application fee of ten
260 dollars shall be charged in addition to all other fees re-
261 quired by this chapter. All initial application fees collect-
262 ed by the division shall be deposited into a special revolv-
263 ing fund to be used in the administration of this chapter.

264 (d) The commissioner shall promulgate rules in accor-
265 dance with the provisions of chapter twenty-nine-a of this
266 code regarding the proper forms to be used in making
267 application for the special license plates authorized by this
268 section.

269 (e) Nothing in this section shall be construed to re-
270 quire a charge for a free prisoner of war license plate or a
271 free recipient of the congressional medal of honor license
272 plate for a vehicle titled in the name of the qualified appli-
273 cant as authorized by other provisions of this code: *Pro-*
274 *vided*, That the registration plates are not transferable to
275 any person, and the registration plates terminate upon the

276 death of the registered owner of the special registration
277 plate. Qualified former prisoners of war and recipients of
278 the congressional medal of honor may obtain a second
279 special registration plate for use on a passenger vehicle
280 titled in the name of the qualified applicant. An annual
281 fee of fifteen dollars, in addition to all other fees required
282 by this chapter, shall be charged for the second special
283 plate.

284 (f) Special ten-year registration plates may be issued
285 as follows:

286 (1) The commissioner may issue or renew for a period
287 of no more than ten years any registration plate exempted
288 from registration fees pursuant to any provision of this
289 code or any restricted use antique motor vehicle license
290 plate authorized by section three-a, article ten of this chap-
291 ter: *Provided*, That the provisions of this subsection shall
292 not apply to any person who has had a special registration
293 suspended for failure to maintain motor vehicle liability
294 insurance as required by section three, article two-a, chap-
295 ter seventeen-d of this code or failure to pay personal
296 property taxes as required by section three-a of this arti-
297 cle.

298 (2) An initial nonrefundable fee shall be charged for
299 each special registration plate issued pursuant to this sub-
300 section, which is the total amount of fees required by sec-
301 tion fifteen, article ten of this chapter, section three, article
302 three of this chapter or section three-a, article ten of this
303 chapter for the period requested.

304 (3) Special registration plates issued pursuant to this
305 subsection are not transferable to any other person. Any
306 special registration issued under this subsection terminates
307 upon the death of the registered owner of the special reg-
308 istration plate.

309 (g) The provisions of this section shall not be con-
310 strued to exempt any registrant from maintaining motor
311 vehicle liability insurance as required by section three,
312 article two-a, chapter seventeen-d of this code or from
313 paying personal property taxes on any motor vehicle as
314 required by section three-a of this article.

315 (h) The commissioner may, in his or her discretion,
316 issue a registration plate of reflectorized material suitable
317 for permanent use on motor vehicles, trailers and semi-
318 trailers, together with appropriate devices to be attached
319 thereto to indicate the year for which the vehicles have
320 been properly registered or the date of expiration of the
321 registration. The design and expiration of the plates shall
322 be determined by the commissioner.

323 (i) Any license plate issued or renewed pursuant to this
324 chapter, which is paid for by a check that is returned for
325 nonsufficient funds, shall be void without further notice to
326 the applicant. The applicant may not reinstate the regis-
327 tration until the returned check is paid by the applicant in
328 cash, money order or certified check and all applicable
329 fees assessed as a result thereof have been paid.

CHAPTER 171

(S. B. 209—By Senators Miller, Love, Bailey and Whitlow)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article ten of said chapter, all relating to motor vehicle registration; repealing the requirement that certain trucks be registered for one of twelve registration periods; repealing provisions regarding allocations of registration periods for trucks and other motor vehicles; establishing a three-year registration period of Class T and Class R vehicles; and payment of fees for multiyear registration.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, be amended and reenacted; and that section three, article ten of said chapter be amended and reenacted, all to read as follows:

Article

3. **Original and Renewal of Registration; Issuance of Certificates of Title.**

10. **Fees for Registration, Licensing, etc.**

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

§17A-3-16. Expiration of registration and certificates of title.

1 (a) Every vehicle registration under this chapter and
2 every registration card and registration plate issued here-
3 under shall expire at midnight on the last day of the
4 month designated by the commissioner: *Provided*, That
5 the commissioner may extend the period during which
6 said registration plates may be used.

7 Certificates of title need not be renewed annually but
8 shall remain valid until canceled by the division for cause
9 or upon a transfer of any interest shown therein.

10 (b) Notwithstanding the provisions of this section or of
11 any provision of this chapter, the commissioner shall
12 adopt a staggered registration system whereby the registra-
13 tion of Class A motor vehicles shall be for a period of
14 twelve consecutive calendar months, the expiration dates
15 thereof to be staggered throughout the year.

16 (1) On or after the first day of July, one thousand nine
17 hundred seventy-eight, all Class A motor vehicles as de-
18 fined in section one, article ten of this chapter, shall be
19 registered for a period of twelve consecutive calendar
20 months. There hereby are established twelve registration
21 periods, each of which shall start on the first day of each
22 calendar month of the year and shall end on the last day
23 of the twelfth month from date of beginning. The period
24 ending on the thirty-first day of January shall be designat-
25 ed the first period; that ending on the twenty-eighth
26 (twenty-ninth) day of February shall be designated the
27 second; that ending on the thirty-first day of March shall

28 be designated the third; that ending on the thirtieth day of
29 April shall be designated the fourth; that ending on the
30 thirty-first day of May shall be designated the fifth; that
31 ending on the thirtieth day of June shall be designated the
32 sixth; that ending on the thirty-first day of July shall be
33 designated the seventh; that ending on the thirty-first day
34 of August shall be designated the eighth; that ending on
35 the thirtieth day of September shall be designated the
36 ninth; that ending on the thirty-first day of October shall
37 be designated the tenth; that ending on the thirtieth day of
38 November shall be designated the eleventh; and that end-
39 ing on the thirty-first day of December shall be designated
40 the twelfth.

41 (2) All Class A motor vehicles, which are operated for
42 the first time upon the public highways of this state to and
43 including the fifteenth day of any given month shall be
44 subject to registration and payment of fee for the
45 twelve-month period commencing the first day of the
46 month of operation. All Class A motor vehicles operated
47 for the first time upon the public highways of this state on
48 and after the sixteenth day of any given month shall be
49 subject to registration and payment of fee for the
50 twelve-month period commencing the first day of the
51 month of the next following calendar month.

52 (c) On or before the first day of July, one thousand
53 nine hundred ninety-six, all Class T and Class R vehicles
54 shall be registered for a maximum period of three years or
55 portion thereof based on the number of years remaining
56 in the three-year period designated by the commissioner.

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-3. Registration fees for vehicles equipped with pneumatic tires.

1 The following registration fees for the classes indicat-
2 ed shall be paid to the division for the registration of vehi-
3 cles subject to registration hereunder when equipped with
4 pneumatic tires:

5 (a) Registration fees for the following classes shall be

6 paid to the division annually:

7 (1) *Class A.* — The registration fee for all motor vehi-
8 cles of this class is as follows:

9 (A) For motor vehicles of a weight of three thousand
10 pounds or less — twenty-five dollars.

11 (B) For motor vehicles of a weight of three thousand
12 one pounds to four thousand pounds — thirty dollars.

13 (C) For motor vehicles of a weight in excess of four
14 thousand pounds — thirty-six dollars.

15 (D) For motor vehicles designed as trucks with de-
16 clared gross weights of four thousand pounds or less —
17 twenty-five dollars.

18 (E) For motor vehicles designed as trucks with de-
19 clared gross weights of four thousand one pounds to eight
20 thousand pounds — thirty dollars.

21 For the purpose of determining the weight, the actual
22 weight of the vehicle shall be taken: *Provided*, That for
23 vehicles owned by churches, or by trustees for churches,
24 which vehicles are regularly used for transporting parish-
25 ioners to and from church services, no license fee shall be
26 charged, but notwithstanding such exemption, the certifi-
27 cate of registration and license plates shall be obtained the
28 same as other cards and plates under this article.

29 (2) *Class B, Class E and Class K.* — The registration
30 fee for all motor vehicles of these three classes is as fol-
31 lows:

32 (A) For declared gross weights of eight thousand one
33 pounds to sixteen thousand pounds — twenty-eight dol-
34 lars plus five dollars for each one thousand pounds or
35 fraction thereof that the gross weight of such vehicle or
36 combination of vehicles exceeds eight thousand pounds.

37 (B) For declared gross weights greater than sixteen
38 thousand pounds, but less than fifty-five thousand pounds
39 — seventy-eight dollars and fifty cents plus ten dollars for
40 each one thousand pounds or fraction thereof that the

41 gross weight of such vehicle or combination of vehicles
42 exceeds sixteen thousand pounds.

43 (C) For declared gross weights of fifty-five thousand
44 pounds or more — seven hundred thirty-seven dollars and
45 fifty cents plus fifteen dollars and seventy-five cents for
46 each one thousand pounds or fraction thereof that the
47 gross weight of such vehicle or combination of vehicles
48 exceeds fifty-five thousand pounds.

49 (3) *Class C and Class L.* — The registration fee for all
50 vehicles of these two classes is seventeen dollars and fifty
51 cents except that semitrailers, full trailers, pole trailers and
52 converter gear registered as Class C and Class L may be
53 registered for a period of ten years at a fee of one hun-
54 dred dollars.

55 (4) *Class G.* — The registration fee for each motorcy-
56 cle is eight dollars.

57 (5) *Class H.* — The registration fee for all vehicles for
58 this class operating entirely within the state is five dollars;
59 and for vehicles engaged in interstate transportation of
60 persons, the registration fee is the amount of the fees pro-
61 vided by this section for Class B, Class E and Class K re-
62 duced by the amount that the mileage of such vehicles
63 operated in states other than West Virginia bears to the
64 total mileage operated by such vehicles in all states under
65 a formula to be established by the division of motor vehi-
66 cles.

67 (6) *Class J.* — The registration fee for all motor vehi-
68 cles of this class is eighty-five dollars. Ambulances and
69 hearses used exclusively as such are exempt from the
70 above special fees.

71 (7) *Class S.* — The registration fee for all vehicles of
72 this class is seventeen dollars and fifty cents.

73 (8) *Class U.* — The registration fee for all vehicles of
74 this class is fifty-seven dollars and fifty cents.

75 (9) *Class Farm Truck.* — The registration fee for all
76 motor vehicles of this class is as follows:

77 (A) For farm trucks of declared gross weights of eight
78 thousand one pounds to sixteen thousand pounds — thirty
79 dollars.

80 (B) For farm trucks of declared gross weights of six-
81 teen thousand one pounds to twenty-two thousand pounds
82 — sixty dollars.

83 (C) For farm trucks of declared gross weights of
84 twenty-two thousand one pounds to twenty-eight thousand
85 pounds — ninety dollars.

86 (D) For farm trucks of declared gross weights of
87 twenty-eight thousand one pounds to thirty-four thousand
88 pounds — one hundred fifteen dollars.

89 (E) For farm trucks of declared gross weights of
90 thirty-four thousand one pounds to forty-four thousand
91 pounds — one hundred sixty dollars.

92 (F) For farm trucks of declared gross weights of
93 forty-four thousand one pounds to fifty-four thousand
94 pounds — two hundred five dollars.

95 (G) For farm trucks of declared gross weights of
96 fifty-four thousand one pounds to sixty-four thousand
97 pounds — two hundred fifty dollars.

98 (b) Registration fees for the following classes shall be
99 paid to the division for a maximum period of three years,
100 or portion thereof based on the number of years remain-
101 ing in the three-year period designated by the commis-
102 sioner:

103 (1) *Class R.* — The annual registration fee for all vehi-
104 cles of this class is twelve dollars.

105 (2) *Class T.* — The annual registration fee for all vehi-
106 cles of this class is eight dollars.

107 (c) The fees paid to the division for a multiyear regis-
108 tration provided for by this chapter shall be the same as
109 the annual registration fee established by this section and
110 any other fee required by this chapter multiplied by the
111 number of years for which the registration is issued.

CHAPTER 172

(Com. Sub. for S. B. 274—By Senators Schoonover and Love)

[Passed March 11, 1995; in effect July 1, 1995.
Became law without Governor's signature.]

AN ACT to amend and reenact section twenty-three, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to license plates; authorizing issuance of unlimited license plates to drug and violent crime task forces for vehicles involved in undercover work; authorizing issuance of twenty Class A license plates for vehicles used by the criminal investigation division of the department of tax and revenue; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That section twenty-three, 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-3-23. Registration plates to state, county, municipal and other governmental vehicles; use for undercover activities.

1 Any motor vehicle designed to carry passengers,
2 owned or leased by the state of West Virginia, or any of its
3 departments, bureaus, commissions or institutions, except
4 vehicles used by the governor, treasurer, vehicles operated
5 by the department of public safety, not to exceed six vehi-
6 cles operated by conservation officers of the division of
7 natural resources, not to exceed ten vehicles operated by
8 the arson investigators of the office of state fire marshal
9 and not to exceed sixteen vehicles operated by inspectors
10 of the office of the alcohol beverage control commission-
11 er, shall not be operated or driven by any person unless it
12 shall have displayed and attached to the front thereof, in
13 the same manner as regular motor vehicle registration

14 plates are attached, a plate of the same size as the regular
15 registration plate, with white lettering on a green back-
16 ground bearing the words "West Virginia" in one line and
17 the words "State Car" in another line, and the lettering for
18 the words "State Car" shall be of sufficient size to be plain-
19 ly readable from a distance of one hundred feet during
20 daylight.

21 Such vehicle shall also have attached to the rear a plate
22 bearing a number and such other words and figures as the
23 commissioner of motor vehicles shall prescribe. The rear
24 plate shall also be green with the number in white.

25 On registration plates issued to vehicles owned by
26 counties, the color shall be white on red with the word
27 "County" on top of the plate and the words "West Virginia"
28 on the bottom. On any registration plates issued to a city
29 or municipality, the color shall be white on blue with the
30 word "City" on top, and the words "West Virginia" on the
31 bottom. The colors may not be reversed and shall be of
32 reflectorized material. The registration plates issued to
33 counties, municipalities and other governmental agencies
34 authorized to receive colored plates hereunder shall be
35 affixed to both the front and rear of such vehicles.

36 The commissioner is authorized to designate the col-
37 ors and design of any other registration plates that are
38 issued without charge to any other agency in accordance
39 with the motor vehicle laws.

40 Upon application and payment of fees, the commis-
41 sioner is authorized to issue a maximum of five Class A
42 license plates per applicant to be used by county sheriffs
43 and municipalities on law-enforcement vehicles while
44 engaged in undercover investigations.

45 The commissioner is authorized to issue an unlimited
46 number of license plates per applicant to authorized drug
47 and violent crime task forces in the state of West Virginia
48 when the chairperson of the control group of a drug and
49 violent crime task force signs a written affidavit stating that
50 the vehicle or vehicles for which the plates are being re-
51 quested will be used only for official undercover work
52 conducted by such drug and violent crime task force.

53 The commissioner is authorized to issue twenty Class
54 A license plates to the criminal investigation division of
55 the department of tax and revenue for use by its
56 investigators.

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

59 The commissioner of motor vehicles shall have a
60 sufficient number of both front and rear plates produced
61 to attach to all state-owned cars. The numbered
62 registration plates for such vehicles shall start with the
63 number "five hundred" and the commissioner shall issue
64 consecutive numbers for all state-owned cars.

65 It shall be the duty of each office, department, bureau,
66 commission or institution furnished any such vehicle to
67 have such plates affixed thereto prior to the operation of
68 such vehicle by any official or employee.

69 Any person who violates the provisions of this section
70 shall be guilty of a misdemeanor, and, upon conviction
71 thereof, shall be fined not less than fifty dollars nor more
72 than one hundred dollars.

73 Magistrates shall have concurrent jurisdiction with
74 circuit and criminal courts for the enforcement of this
75 section.

CHAPTER 173

(Com. Sub. for H. B. 2099—By Delegates Farris, Beane and Kelley)

[Passed March 11, 1995; in effect ninety days from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact sections two, three and five, article four-a, chapter seventeen-a of the code of West Virginia,

one thousand nine hundred thirty-one, as amended, all relating to modifying the method by which liens may be perfected against vehicles held as inventory by a registered dealer holding title by assignment; providing for notice to purchasers for value or lien creditors; providing for notice to state and federal governmental agencies, creditors and purchasers; exceptions; and making certain technical revisions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO BE SHOWN ON CERTIFICATE OF TITLE; NOTICE TO CREDITORS AND PURCHASERS.

§17A-4A-2. Liens and encumbrances subsequently created.

§17A-4A-3. Notice of lien; noninventory lien created by voluntary act of the owner not shown on certificate of title void as to subsequent purchasers and lien creditors; exceptions.

§17A-4A-5. Priority of liens shown on certificate.

§17A-4A-2. Liens and encumbrances subsequently created.

1 (a) Liens or encumbrances placed on vehicles by the
2 voluntary act of the owner after the original issue of title
3 to be properly recorded must be shown on the certificate
4 of title. In such cases, the owner or lienholder shall file
5 application with the department on a blank furnished for
6 that purpose, setting forth the lien or liens and such infor-
7 mation and evidence of the lien in connection therewith as
8 the department may deem necessary. Such information
9 shall include the name and address of the lienholder, the
10 kind of and nature of the lien, the date thereof, and the
11 amount thereby secured. However, only the name and
12 address of the lienholder shall be endorsed on the title
13 certificate with the endorsement of the fact of such lien as
14 hereinafter provided. The department, if satisfied that it is
15 proper that the same be recorded, and upon surrender of
16 the certificate of title covering the vehicle, shall thereupon

17 issue a new certificate of title, showing the liens or encum-
18 brances in the order of their filing being according to the
19 date, hour and minute of receipt by the department of the
20 application for same. For the purpose of recording a
21 subsequent lien on a certificate of title, the subsequent
22 lienholder shall make a written request upon the lienhold-
23 er in possession of the certificate of title, accompanied by
24 proof of the existence of the subsequent lien, stating his
25 need to have possession of the certificate of title for the
26 purpose of having his lien recorded thereon by the divi-
27 sion of motor vehicles. Thereupon, the lienholder in
28 possession of the certificate shall within a reasonable time,
29 not to exceed ten days from the receipt of said written
30 request, deliver the certificate of title to the requesting
31 subsequent lienholder.

32 Upon delivery of the certificate of title, the subsequent
33 lienholder shall immediately forward it and the lienhold-
34 er's own application to the division of motor vehicles for
35 the filing of the lien and for the recording of the same on
36 the certificate of title. Upon issuing the new certificate, the
37 department shall thereupon send or deliver it to the holder
38 of the first lien.

39 (b) The provisions of subsection (a) of this section
40 shall not apply to vehicles held as inventory for sale by a
41 registered dealer holding title by assignment entered upon
42 a certificate of title. Any lien or encumbrance placed on
43 such vehicles by the voluntary act of the owner shall be
44 created and perfected in accordance with the provisions of
45 article nine, chapter forty-six of this code.

**§17A-4A-3. Notice of lien; noninventory lien created by vol-
untary act of the owner not shown on certificate
of title void as to subsequent purchasers and lien
creditors; exceptions.**

1 (a) A certificate of title, when issued by the depart-
2 ment showing a lien or encumbrance, shall be deemed
3 from and after the filing with the department of the appli-
4 cation therefor adequate notice to the state and its agen-

5 cies, boards and commissions, to the United States govern-
6 ment and its agencies, boards and commissions, to credi-
7 tors and to purchasers that a lien against the vehicle exists
8 and the recording of such reservation of title, lien or en-
9 cumbrance in the county wherein the purchaser or debtor
10 resides or elsewhere is not necessary and shall not be re-
11 quired or have any effect. Notwithstanding any other
12 provision of this code to the contrary, and subject to the
13 provisions of subsection (b) of this section and of section
14 four of this article, any lien or encumbrance placed upon
15 a vehicle by the voluntary act of the owner but not shown
16 on such certificate of title shall be void as to any purchaser
17 for value or lien creditor, who, in either case, without no-
18 tice of such lien or encumbrance, purchases such vehicle
19 or acquires by attachment, levy or otherwise a lien there-
20 upon.

21 (b) The creation and perfection of a lien against a
22 vehicle held as inventory for sale by a registered dealer
23 holding title by assignment in accordance with the provi-
24 sions of article nine, chapter forty-six of this code shall be
25 deemed adequate notice to the state and its agencies,
26 boards and commissions, to the United States government
27 and its agencies, boards and commissions, to creditors and
28 to purchasers that a lien against the vehicle exists, subject
29 to the provisions of section three hundred seven, article
30 nine, chapter forty-six of this code, except that any lien or
31 encumbrance on such a vehicle shall not be effective
32 against the rights of any purchaser for value who purchas-
33 es such vehicle primarily for personal, family, household
34 or agricultural purposes unless such lien or encumbrance
35 is recorded on the certificate of title or specified on the
36 bill of sale.

§17A-4A-5. Priority of liens shown on certificate.

1 The liens shown upon a certificate of title issued by
2 the department pursuant to applications for same shall
3 have priority over any other liens against such vehicle,
4 however created and recorded, except as otherwise provid-
5 ed in this article.

CHAPTER 174

(H. B. 2648—By Delegates Wallace, Rowe, Givens, Compton,
Osborne and Ball)

[Passed March 11, 1995; in effect ninety days from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact section three, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicle dealer licenses; separate certificates required for each business when engaging in more than one business; civil penalties; and promulgation of rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS, ETC.

PART II. LICENSE CERTIFICATE PROVISIONS.

§17A-6-3. License certificate required; engaging in more than one business; established place of business required; civil penalties.

1 (a) No person shall engage or represent or advertise
2 that he or she is engaged or intends to engage in the busi-
3 ness of new motor vehicle dealer, used motor vehicle deal-
4 er, house trailer dealer, trailer dealer, recreational vehicle
5 dealer, motorcycle dealer, used parts dealer, or wrecker or
6 dismantler, in this state, unless and until he or she first
7 obtains a license certificate therefor as provided in this
8 article, which license certificate remains unexpired,
9 unsuspended and unrevoked. Any person desiring to
10 engage in more than one such business must, subject to
11 the provisions of section five of this article, apply for and
12 obtain a separate license certificate for each such business.

13 (b) Except for the qualification contained in subdivi-

14 sion (17), subsection (a), section one of this article with
15 respect to a new motor vehicle dealer, each place of busi-
16 ness of a new motor vehicle dealer, used motor vehicle
17 dealer, house trailer dealer, trailer dealer, recreational vehi-
18 cle dealer, motorcycle dealer, used parts dealer and wreck-
19 er or dismantler, must be an established place of business
20 as defined for such business in said section one.

21 (c) Any person who violates this section shall, in
22 addition to any other penalty prescribed by law, be subject
23 to a civil penalty levied by the commissioner in an amount
24 not to exceed one thousand dollars for the first violation,
25 two thousand dollars for the second violation, and five
26 thousand dollars for every subsequent violation.

27 (d) The commissioner shall promulgate rules, in
28 accordance with the provisions of chapter twenty-nine-a of
29 this code, establishing procedures whereby persons against
30 whom such civil penalties are to be assessed shall be af-
31 farded all due process required pursuant to the provisions
32 of the West Virginia constitution.

CHAPTER 175

(S. B. 188—By Senators Miller, Bailey and Love)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, three-a, eight and twelve, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twelve, article one, chapter seventeen-e of said code, all relating to changing the driver's license, commercial driver's license and identification card renewal cycle to five years; causing such renewals to expire on the last day of the month in which the licensee's or identification cardholder's birthday occurs; setting fees for original issuance and renewals thereof; and making provisions for

operators, junior operators and commercial driver's licenses.

Be it enacted by the Legislature of West Virginia:

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

Chapter

17B. Motor Vehicle Driver's Licenses.

17E. Uniform Commercial Driver's License Act.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.

§17B-2-3a. Junior driver's license.

§17B-2-8. Issuance and contents of licenses; fees.

§17B-2-12. Expiration of licenses; renewal; renewal fees.

§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 ex-
2 empted, 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 license
7 under the provisions of this code for the type or class of
8 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 otherwise
12 provided by law, shall not be required to obtain any other
13 license to exercise such privilege by any county, municipi-

14 pality or local board or body having authority to adopt
15 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 classes
18 of vehicle or vehicles the licensee may operate in accor-
19 dance with the provisions of this code, federal law or rule.

20 (c) Driver's licenses issued by the division shall be
21 classified in the following manner:

22 (1) Class A, B or C license shall be issued to those
23 persons eighteen years of age or older with two years
24 driving experience and who have qualified for the com-
25 mercial driver's license established by chapter seventeen-e
26 of this code and the federal Commercial Motor Vehicle
27 Safety Act of 1986, Title XII of public law 99870 and
28 subsequent rules, and have paid the required fee.

29 (2) Class D license shall be issued to those persons
30 eighteen years and older with one year driving experience
31 who operate motor vehicles other than those types of vehi-
32 cles which require the operator to be licensed under the
33 provisions of chapter seventeen-e of this code and federal
34 law and rule and whose primary function or employment
35 is the transportation of persons or property for compensa-
36 tion or wages and have paid the required fee. For the
37 purposes of the regulation of the operation of a motor
38 vehicle, wherever the term chauffeur's license is used in
39 this code, it shall be construed to mean the Class A, B, C or
40 D license described in this section or chapter seventeen-e
41 of this code or federal law or rule: *Provided*, That anyone
42 who is not required to be licensed under the provisions of
43 chapter seventeen-e of this code and federal law or rule
44 and who operates a motor vehicle which is registered or
45 which is required to be registered as a Class A motor vehi-
46 cle as that term is defined in section three, article ten,
47 chapter seventeen-a of this code with a gross vehicle
48 weight rating of less than eight thousand one pounds, is
49 not required to obtain a Class D license.

50 (3) Class E license shall be issued to those persons who
51 have qualified under the provisions of this chapter and
52 who are not required to obtain a Class A, B, C or D license
53 and who have paid the required fee. The Class E license
54 may be endorsed under the provisions of section seven-b
55 of this article for motorcycle operation.

56 (4) Class F license shall be issued to those persons who
57 successfully complete the motorcycle examination proce-
58 dure provided for by this chapter and have paid the re-
59 quired fee, but who do not possess a Class A, B, C and D
60 or E driver's license.

61 (d) No person, except those hereinafter expressly
62 exempted, shall drive any motorcycle upon a street or
63 highway in this state or upon any subdivision street, as
64 used in article twenty-four, chapter eight of this code,
65 when the use of such subdivision street is generally used
66 by the public unless the person has a valid motorcycle
67 license or a valid license which has been endorsed under
68 section seven-b of this article for motorcycle operation or
69 has a valid motorcycle instruction permit.

70 (e) (1) A nonoperator identification card may be is-
71 sued to any person who:

72 (A) Is a resident of this state in accordance with the
73 provisions of section one-a, article three, chapter
74 seventeen-a of this code;

75 (B) Does not have a valid driver's license;

76 (C) Has reached the age of sixteen years;

77 (D) Has paid the required fee of ten dollars: *Provid-*
78 *ed*, That such fee is not required if the applicant is
79 sixty-five years or older or is legally blind; and

80 (E) Presents a birth certificate or other proof of age
81 and identity acceptable to the division with a completed
82 application on a form furnished by the division.

83 (2) The nondriver identification card shall contain the

84 same information as a driver's license except that such
85 identification card shall be clearly marked as identification
86 card. The identification card shall expire every four
87 years. It may be renewed on application and payment of
88 the fee required by this section.

89 (A) After the thirtieth day of June, one thousand nine
90 hundred ninety-six, every identification card issued to
91 persons who have attained their twenty-first birthday shall
92 expire on the last day of the month in which the appli-
93 cant's birthday occurs in those years in which the appli-
94 cant's age is evenly divisible by five. Except as provided
95 in paragraph (B) of this subdivision, no identification card
96 may be issued for less than three years nor more than
97 seven years and such identification card shall be renewed
98 in the month in which the applicant's birthday occurs and
99 shall be valid for a period of five years expiring in the
100 month in which the applicant's birthday occurs and in a
101 year in which the applicant's age is evenly divisible by
102 five.

103 (B) Every identification card issued to persons who
104 have not attained their twenty-first birthday shall expire on
105 the last day of the month in the year in which the appli-
106 cant attains the age of twenty-one years.

107 (3) The identification card shall be surrendered to the
108 division when the holder is issued a driver's license. The
109 division may issue an identification card to an applicant
110 whose privilege to operate a motor vehicle has been re-
111 fused, canceled, suspended or revoked under the provi-
112 sions of this code.

§17B-2-3a. Junior driver's license.

1 (a) In accordance with rules established by the com-
2 missioner and with the provisions hereinafter set forth in
3 this section, a junior driver's license may be issued to any
4 person between the ages of sixteen and eighteen years, if
5 the person is in compliance with section eleven, article
6 eight, chapter eighteen of this code and is not otherwise
7 disqualified by law. Application for a junior driver's li-

8 cense shall be on a form prescribed by the commissioner.
9 A junior driver's license may be issued upon the appli-
10 cant's successful completion of all examinations and driv-
11 ing tests required by law for the issuance of a driver's
12 license to a person eighteen years of age or older. The
13 commissioner may impose reasonable conditions or re-
14 strictions on the operation of a motor vehicle by a person
15 holding a junior driver's license and the conditions or
16 restrictions shall be printed on the license.

17 (b) In addition to all other provisions of this chapter
18 for which a driver's license may be revoked, suspended or
19 canceled, whenever a person holding a junior driver's
20 license operates a motor vehicle in violation of the condi-
21 tions or restrictions set forth on the license, or has a record
22 of two convictions for moving violations of the traffic
23 regulations and laws of the road, which convictions have
24 become final, the junior driver's license of the person shall
25 be permanently revoked, with like effect as if the person
26 had never held a junior driver's license: *Provided*, That a
27 junior driver's license shall be revoked upon one final
28 conviction for any offense described in section five, article
29 three of this chapter. Under no circumstances shall such a
30 license be revoked for convictions of offenses in violation
31 of any regulation or law governing the standing or park-
32 ing of motor vehicles.

33 (c) A junior driver's license shall be suspended for
34 noncompliance with the provisions of section eleven, arti-
35 cle eight, chapter eighteen of this code, and may be rein-
36 stated upon compliance.

37 (d) A person whose junior driver's license has been
38 revoked, or has been suspended without reinstatement,
39 shall not thereafter receive a junior driver's license, but the
40 person, upon attaining the age of eighteen, shall be eligi-
41 ble, unless otherwise disqualified by law, for examination
42 and driver testing for a regular driver's license. If a person
43 has had his or her junior driver's license revoked for a
44 violation pursuant to section one or two, article five-a,
45 chapter seventeen-c of this code or any offense specified

46 in subsection (6), section five, article three of this chapter,
47 or has been adjudicated delinquent upon a charge which
48 would be a crime under the provisions of section two,
49 article five, chapter seventeen-c of this code if committed
50 by an adult, the person shall be disqualified for examina-
51 tion and driver testing for a regular driver's license until
52 that person: (1) Has attained the age of eighteen years;
53 (2) has successfully completed the safety and treatment
54 program provided for in section three, article five-a, chap-
55 ter seventeen-c of this code; and (3) has had his or her
56 junior driver's license revoked or suspended for the appli-
57 cable statutory period of revocation or suspension or a
58 period of time equal to the period of revocation or sus-
59 pension which would have been imposed pursuant to sec-
60 tion two of said article if the person had a regular driver's
61 license at the time of the violation.

62 (e) No person shall receive a junior driver's license
63 unless the application therefor is accompanied by a writ-
64 ing, duly acknowledged, consenting to the issuance of the
65 junior driver's license and executed by the parents of the
66 applicant; or if only one parent is living, then by such
67 parent; or if the parents be living separate and apart, by
68 the one to whom the custody of the applicant was award-
69 ed; or if there is a guardian entitled to the custody of the
70 applicant, then by the guardian.

71 (f) Upon attaining the age of eighteen years, a person
72 holding an unrevoked, unsuspended or reinstated junior
73 driver's license shall be entitled to exercise all the privileg-
74 es of a regular driver's license without further examination
75 or driver testing.

§17B-2-8. Issuance and contents of licenses; fees.

1 (a) The division shall, upon payment of the required
2 fee, issue to every applicant qualifying therefor a driver's
3 license, which shall indicate the type or general class or
4 classes of vehicle or vehicles the licensee may operate in
5 accordance with this chapter or chapter seventeen-e of this
6 code, or motorcycle-only license. Each license shall con-

7 tain a coded number assigned to the licensee, the full
8 name, date of birth, residence address, a brief description
9 and a color photograph of the licensee and either a fac-
10 simile of the signature of the licensee or a space upon
11 which the signature of the licensee shall be written with
12 pen and ink immediately upon receipt of the license. No
13 license shall be valid until it has been so signed by the
14 licensee: *Provided*, That the commissioner may issue a
15 valid without-photo license for applicants temporarily out
16 of state. A driver's license which is valid for operation of a
17 motorcycle shall contain a motorcycle endorsement. The
18 division shall use such process or processes in the issuance
19 of licenses that will, insofar as possible, prevent any alter-
20 ation, counterfeiting, duplication, reproduction, forging or
21 modification of, or the superimposition of a photograph
22 on, such license.

23 (b) The fee for the issuance of a Class E driver's li-
24 cense shall be ten dollars and fifty cents. The fee for
25 issuance of a Class D driver's license shall be twenty-five
26 dollars and fifty cents. Fifty cents of each such fee shall
27 be deposited in the "combined voter registration and driv-
28 er's licensing fund", established pursuant to the provisions
29 of section twenty-two-a, article two, chapter three of this
30 code. The one-time only additional fee for adding a mo-
31 torcycle endorsement to a driver's license shall be five
32 dollars. The fee for issuance of a motorcycle-only license
33 shall be ten dollars. The fees for the motorcycle endorse-
34 ment or motorcycle-only license shall be paid into a spe-
35 cial fund in the state treasury known as the motorcycle
36 safety fund as established in section seven, article one-d of
37 this chapter.

38 (c) After the thirtieth day of June, one thousand nine
39 hundred ninety-six, the fee for the issuance of a Class E
40 driver's license shall be two dollars and fifty cents per year
41 for each year such license is issued to be valid. The fee
42 for issuance of a Class D driver's license shall be six dol-
43 lars and twenty-five cents per year for each year such
44 license is issued to be valid. An additional fee of fifty

45 cents shall be collected from the applicant at the time of
46 original issuance or each renewal and such additional fee
47 shall be deposited in the "combined voter registration and
48 driver's licensing fund", established pursuant to the provi-
49 sions of section twenty-two-a, article two, chapter three of
50 this code. The one-time only additional fee for adding a
51 motorcycle endorsement to a driver's license shall be five
52 dollars.

53 The fee for issuance of a motorcycle-only license shall
54 be two dollars and fifty cents for each year for which the
55 motorcycle license is to be valid. The fees for the motor-
56 cycle endorsement or motorcycle-only license shall be
57 paid into a special fund in the state treasury known as the
58 motorcycle safety fund as established in section seven,
59 article one-d of this chapter.

§17B-2-12. Expiration of licenses; renewal; renewal fees.

1 (a) Every driver's license shall expire four years from
2 the date of its issuance, except that the driver's license of
3 any person in the armed forces shall be extended for a
4 period of six months from the date the person is separated
5 under honorable circumstances from active duty in the
6 armed forces.

7 (b) After the thirtieth day of June, one thousand nine
8 hundred ninety-six, the following shall apply:

9 (1) Every driver's license issued to persons who have
10 attained their twenty-first birthday shall expire on the last
11 day of the month in which the applicant's birthday occurs
12 in those years in which the applicant's age is evenly divisi-
13 ble by five. Except as provided in the following subdivi-
14 sions, no driver's license may be issued for less than three
15 years nor more than seven years and such driver's license
16 shall be renewed in the month in which the applicant's
17 birthday occurs and shall be valid for a period of five
18 years, expiring in the month in which the applicant's birth-
19 day occurs and in a year in which the applicant's age is
20 evenly divisible by five.

21 (2) Every driver's license issued to persons who have
22 not attained their twenty-first birthday shall expire on the
23 last day of the month in the year in which the applicant
24 attains the age of twenty-one years.

25 (3) The driver's license of any person in the armed
26 forces shall be extended for a period of six months from
27 the date the person is separated under honorable circum-
28 stances from active duty in the armed forces.

29 (c) A person who allows his or her driver's license to
30 expire may apply to the division for renewal thereof.
31 Application shall be made upon a form furnished by the
32 division and shall be accompanied by payment of the fee
33 required by section eight of this article plus an additional
34 fee of five dollars. The commissioner shall determine
35 whether such person qualifies for a renewed license and
36 may, in the commissioner's discretion, renew any expired
37 license without examination of the applicant.

38 (d) Each renewal of a driver's license shall contain a
39 new color photograph of the licensee. By first class mail
40 to the address last known to the division, the commissioner
41 shall notify each person who holds a valid driver's license
42 of the expiration date of the license. The notice shall be
43 mailed at least thirty days prior to the expiration date of
44 the license and shall include a renewal application form.

CHAPTER 17E. UNIFORM COMMERCIAL DRIVER'S LICENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-12. Classifications, endorsements and restrictions.

1 Commercial driver's licenses may be issued, with the
2 following classifications, endorsements and restrictions;
3 the holder of a valid commercial driver's license may drive
4 all vehicles in the class for which that license is issued, and
5 all lesser classes of vehicles and vehicles which require an
6 endorsement, unless the proper endorsement appears on
7 the license:

8 (a) *Classifications.* —

9 (1) Class A - Any combination of vehicles with a gross
10 combined vehicle weight rating of twenty-six thousand
11 one pounds or more, provided the gross vehicle weight
12 rating of the vehicle(s) being towed is in excess of ten
13 thousand pounds.

14 (2) Class B - Any single vehicle with a gross vehicle
15 weight rating of twenty-six thousand one pounds or more,
16 and any such vehicle towing a vehicle not in excess of ten
17 thousand pounds.

18 (3) Class C - Any single vehicle or combination vehi-
19 cle with a gross vehicle weight rating of less than
20 twenty-six thousand one pounds or any such vehicle tow-
21 ing a vehicle with a gross vehicle weight rating not in ex-
22 cess of ten thousand pounds comprising:

23 (A) Vehicles designed to transport sixteen or more
24 passengers, including the driver; and

25 (B) Vehicles used in the transportation of hazardous
26 materials which requires the vehicle to be placarded under
27 49 C.F.R., part 172, sub-part F.

28 (b) *Endorsements and restrictions.* —

29 The commissioner upon issuing a commercial driver's
30 license shall have the authority to impose such endorse-
31 ments or restrictions as the commissioner may determine
32 to be appropriate to assure the safe operation of a motor
33 vehicle, and to comply with the federal Motor Vehicle Act
34 of 1986 and federal rules implementing such act.

35 (c) *Applicant record check.* — Before issuing a com-
36 mercial driver's license, the commissioner must obtain
37 driving record information through the commercial driv-
38 er's license information system, the national driver register
39 and from each state in which the person has been com-
40 mercially licensed.

41 (d) *Notification of license issuance.* — Within ten days

42 after issuing a commercial driver's license, the commis-
43 sioner shall notify the commercial driver's license infor-
44 mation system of that fact, providing all information re-
45 quired to ensure identification of the person.

46 (e) *Expiration of license.* —

47 (1) The commercial driver's license shall expire four
48 years from date of issuance.

49 (2) After the thirtieth day of June, one thousand nine
50 hundred ninety-six, the following shall apply:

51 (A) Every commercial driver's license issued to per-
52 sons who have attained their twenty-first birthday shall
53 expire on the last day of the month in which the appli-
54 cant's birthday occurs in those years in which the appli-
55 cant's age is evenly divisible by five. Except as provided
56 in paragraph (B) of this subdivision, no commercial driv-
57 er's license may be issued for less than three years nor
58 more than seven years and such commercial driver's li-
59 cense shall be renewed in the month in which the appli-
60 cant's birthday occurs and shall be valid for a period of
61 five years, expiring in the month in which the applicant's
62 birthday occurs and in a year in which the applicant's age
63 is evenly divisible by five.

64 (B) Every commercial driver's license issued to per-
65 sons who have not attained their twenty-first birthday shall
66 expire on the last day of the month in the year in which
67 the applicant attains the age of twenty-one years.

68 (3) Commercial driver's licenses held by any person in
69 the armed forces which expire while that person is on
70 active duty shall remain valid for thirty days from the date
71 on which that person reestablishes residence in West Vir-
72 ginia.

73 (4) Any person applying to renew a commercial driv-
74 er's license which has been expired for two years or more
75 must follow the procedures for an initial issuance of a
76 commercial driver's license, including the testing provi-
77 sions.

78 (f) *License renewal procedures.* — When applying for
79 renewal of a commercial driver's license, the applicant
80 must complete the application form and provide updated
81 information and required certifications. If the applicant
82 wishes to retain a hazardous materials endorsement, the
83 written test for a hazardous materials endorsement must be
84 taken and passed.

CHAPTER 176

(S. B. 16—By Senators Wooton, Anderson, Bowman, Buckalew,
Deem, Dittmar, Miller, Oliverio, Ross, Scott,
Wagner, White, Wiedebusch and Yoder)

[Passed February 6, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to driving under the influence of alcohol, controlled substances or drugs; establishing certain crimes; prescribing penalties therefor; and making technical revisions to clarify the applicability of vehicle alcohol test and lock program.

Be it enacted by the Legislature of West Virginia:

That section two, article five, 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 5. SERIOUS TRAFFIC OFFENSES.

§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 sub-
5 stance; or

6 (C) He is under the influence of any other drug; or

7 (D) He is under the combined influence of alcohol
8 and any controlled substance or any other drug; or

9 (E) He has an alcohol concentration in his or her
10 blood of ten hundredths of one percent or more, by
11 weight; and

12 (2) When so driving does any act forbidden by law or
13 fails to perform any duty imposed by law in the driving of
14 such vehicle, which act or failure proximately causes the
15 death of any person within one year next following such
16 act or failure; and

17 (3) Commits such act or failure in reckless disregard
18 of the safety of others, and when the influence of alcohol,
19 controlled substances or drugs is shown to be a contribut-
20 ing cause to such death, shall be guilty of a felony, and,
21 upon conviction thereof, shall be imprisoned in the peni-
22 tentiary for not less than one nor more than ten years and
23 shall be fined not less than one thousand dollars nor more
24 than three thousand dollars.

25 (b) Any person who:

26 (1) Drives a vehicle in this state while:

27 (A) He is under the influence of alcohol; or

28 (B) He is under the influence of any controlled sub-
29 stance; or

30 (C) He is under the influence of any other drug; or

31 (D) He is under the combined influence of alcohol
32 and any controlled substance or any other drug; or

33 (E) He has an alcohol concentration in his or her
34 blood of ten hundredths of one percent or more, by
35 weight; and

36 (2) When so driving does any act forbidden by law or
37 fails to perform any duty imposed by law in the driving of
38 such vehicle, which act or failure proximately causes the
39 death of any person within one year next following such
40 act or failure, is guilty of a misdemeanor, and, upon con-
41 viction thereof, shall be confined in jail for not less than
42 ninety days nor more than one year and shall be fined not
43 less than five hundred dollars nor more than one thousand
44 dollars.

45 (c) Any person who:

46 (1) Drives a vehicle in this state while:

47 (A) He is under the influence of alcohol; or

48 (B) He is under the influence of any controlled sub-
49 stance; or

50 (C) He is under the influence of any other drug; or

51 (D) He is under the combined influence of alcohol
52 and any controlled substance or any other drug; or

53 (E) He has an alcohol concentration in his or her
54 blood of ten hundredths of one percent or more, by
55 weight; and

56 (2) When so driving does any act forbidden by law or
57 fails to perform any duty imposed by law in the driving of
58 such vehicle, which act or failure proximately causes bodi-
59 ly injury to any person other than himself, is guilty of a
60 misdemeanor, and, upon conviction thereof, shall be con-
61 fined in jail for not less than one day nor more than one
62 year, which jail term shall include actual confinement of
63 not less than twenty-four hours, and shall be fined not less
64 than two hundred dollars nor more than one thousand
65 dollars.

66 (d) Any person who:

67 (1) Drives a vehicle in this state while:

68 (A) He is under the influence of alcohol; or

69 (B) He is under the influence of any controlled sub-
70 stance; or

71 (C) He is under the influence of any other drug; or

72 (D) He is under the combined influence of alcohol
73 and any controlled substance or any other drug; or

74 (E) He has an alcohol concentration in his or her
75 blood of ten hundredths of one percent or more, by
76 weight;

77 (2) Is guilty of a misdemeanor, and, upon conviction
78 thereof, shall be confined in jail for not less than one day
79 nor more than six months, which jail term shall include
80 actual confinement of not less than twenty-four hours, and
81 shall be fined not less than one hundred dollars nor more
82 than five hundred dollars.

83 (e) Any person who, being an habitual user of narcotic
84 drugs or amphetamine or any derivative thereof, drives a
85 vehicle in this state, is guilty of a misdemeanor, and, upon
86 conviction thereof, shall be confined in jail for not less
87 than one day nor more than six months, which jail term
88 shall include actual confinement of not less than
89 twenty-four hours, and shall be fined not less than one
90 hundred dollars nor more than five hundred dollars.

91 (f) Any person who:

92 (1) Knowingly permits his or her vehicle to be driven
93 in this state by any other person who is:

94 (A) Under the influence of alcohol; or

95 (B) Under the influence of any controlled substance;
96 or

97 (C) Under the influence of any other drug; or

98 (D) Under the combined influence of alcohol and any
99 controlled substance or any other drug; or

100 (E) Has an alcohol concentration in his or her blood
101 of ten hundredths of one percent or more, by weight;

102 (2) Is guilty of a misdemeanor, and, upon conviction
103 thereof, shall be confined in jail for not more than six
104 months and shall be fined not less than one hundred dol-
105 lars nor more than five hundred dollars.

106 (g) Any person who:

107 Knowingly permits his or her vehicle to be driven in
108 this state by any other person who is an habitual user of
109 narcotic drugs or amphetamine or any derivative thereof,
110 is guilty of a misdemeanor, and, upon conviction thereof,
111 shall be confined in jail for not more than six months and
112 shall be fined not less than one hundred dollars nor more
113 than five hundred dollars.

114 (h) Any person under the age of twenty-one years
115 who drives a vehicle in this state while he or she has an
116 alcohol concentration in his or her blood of two hun-
117 dredths of one percent or more, by weight, but less than
118 ten hundredths of one percent, by weight, shall, for a first
119 offense under this subsection, be guilty of a misdemeanor,
120 and, upon conviction thereof, shall be fined not less than
121 twenty-five dollars nor more than one hundred dollars.
122 For a second or subsequent offense under this subsection,
123 such person is guilty of a misdemeanor, and, upon convic-
124 tion thereof, shall be confined in jail for twenty-four
125 hours, and shall be fined not less than one hundred dollars
126 nor more than five hundred dollars. A person who is
127 charged with a first offense under the provisions of this
128 subsection may move for a continuance of the proceed-
129 ings from time to time to allow the person to participate in
130 the vehicle alcohol test and lock program as provided for
131 in section three-a, article five-a of this chapter. Upon
132 successful completion of the program, the court shall
133 dismiss the charge against the person and expunge the
134 person's record as it relates to the alleged offense. In the
135 event the person fails to successfully complete the pro-
136 gram, the court shall proceed to an adjudication of the
137 alleged offense. A motion for a continuance under this
138 subsection shall not be construed as an admission or be
139 used as evidence.

140 A person arrested and charged with an offense under
141 the provisions of subsection (a), (b), (c), (d), (e), (f) or (g)
142 of this section may not also be charged with an offense
143 under this subsection arising out of the same transaction
144 or occurrence.

145 (i) A person violating any provision of subsection (b),
146 (c), (d), (e), (f) or (g) of this section shall, for the second
147 offense under this section, be guilty of a misdemeanor,
148 and, upon conviction thereof, shall be confined in jail for
149 a period of not less than six months nor more than one
150 year, and the court may, in its discretion, impose a fine of
151 not less than one thousand dollars nor more than three
152 thousand dollars.

153 (j) A person violating any provision of subsection (b),
154 (c), (d), (e), (f) or (g) of this section shall, for the third or
155 any subsequent offense under this section, be guilty of a
156 felony, and, upon conviction thereof, shall be imprisoned
157 in the penitentiary for not less than one nor more than
158 three years, and the court may, in its discretion, impose a
159 fine of not less than three thousand dollars nor more than
160 five thousand dollars.

161 (k) For purposes of subsections (i) and (j) of this sec-
162 tion relating to second, third and subsequent offenses, the
163 following types of convictions shall be regarded as convic-
164 tions under this section:

165 (1) Any conviction under the provisions of subsection
166 (a), (b), (c), (d), (e) or (f) of the prior enactment of this
167 section for an offense which occurred on or after the first
168 day of September, one thousand nine hundred eighty-one,
169 and prior to the effective date of this section;

170 (2) Any conviction under the provisions of subsection
171 (a) or (b) of the prior enactment of this section for an
172 offense which occurred within a period of five years im-
173 mediately preceding the first day of September, one thou-
174 sand nine hundred eighty-one; and

175 (3) Any conviction under a municipal ordinance of
176 this state or any other state or a statute of the United States

177 or of any other state of an offense which has the same
178 elements as an offense described in subsection (a), (b), (c),
179 (d), (e), (f) or (g) of this section, which offense occurred
180 after the tenth day of June, one thousand nine hundred
181 eighty-three.

182 (l) A person may be charged in a warrant or indict-
183 ment or information for a second or subsequent offense
184 under this section if the person has been previously arrest-
185 ed for or charged with a violation of this section which is
186 alleged to have occurred within the applicable time peri-
187 ods for prior offenses, notwithstanding the fact that there
188 has not been a final adjudication of the charges for the
189 alleged previous offense. In such case, the warrant or
190 indictment or information must set forth the date, location
191 and particulars of the previous offense or offenses. No
192 person may be convicted of a second or subsequent of-
193 fense under this section unless the conviction for the pre-
194 vious offense has become final.

195 (m) The fact that any person charged with a violation
196 of subsection (a), (b), (c), (d) or (e) of this section, or any
197 person permitted to drive as described under subsection
198 (f) or (g) of this section, is or has been legally entitled to
199 use alcohol, a controlled substance or a drug shall not
200 constitute a defense against any charge of violating sub-
201 section (a), (b), (c), (d), (e), (f) or (g) of this section.

202 (n) For purposes of this section, the term "controlled
203 substance" shall have the meaning ascribed to it in chapter
204 sixty-a of this code.

205 (o) The sentences provided herein upon conviction for
206 a violation of this article are mandatory and shall not be
207 subject to suspension or probation: *Provided*, That the
208 court may apply the provisions of article eleven-a, chapter
209 sixty-two of this code to a person sentenced or committed
210 to a term of one year or less. An order for home deten-
211 tion by the court pursuant to the provisions of article
212 eleven-b, chapter sixty-two of this code may be used as an
213 alternative sentence to any period of incarceration re-
214 quired by this section.

CHAPTER 177

(S. B. 224—By Senators Miller, Whitlow and Deem)

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and three, article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing fines and penalties for violations of railroad crossing stop laws for motor vehicle drivers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. SPECIAL STOPS REQUIRED.

§17C-12-1. Obedience to signal indicating approach of train.

§17C-12-3. Certain vehicles must stop at all railroad grade crossings.

§17C-12-1. Obedience to signal indicating approach of train.

1 (a) Whenever any person driving a vehicle approaches
 2 a railroad grade crossing under any of the circumstances
 3 stated in this section, the driver of such vehicle shall stop
 4 within fifty feet but not less than fifteen feet from the
 5 nearest rail of such railroad and shall not proceed until he
 6 can do so safely. The foregoing requirements shall apply
 7 when:

8 (1) A clearly visible electric or mechanical signal de-
 9 vice gives warning of the immediate approach of a rail-
 10 road train;

11 (2) A crossing gate is lowered or when a human flag-
 12 man gives or continues to give a signal of the approach or
 13 passage of a railroad train;

14 (3) A railroad train approaching within approximately
15 one thousand five hundred feet of the highway crossing
16 emits a signal audible from such distance and such rail-
17 road train, by reason of its speed or nearness to such
18 crossing, is an immediate hazard;

19 (4) Any approaching railroad train is plainly visible
20 and is in hazardous proximity to such crossing.

21 (b) No person shall drive any vehicle through, around
22 or under any crossing gate or barrier at a railroad crossing
23 while such gate or barrier is closed or is being opened or
24 closed.

25 (c) Any person failing to comply with the require-
26 ments of this section is guilty of a misdemeanor, and,
27 upon conviction thereof, shall be fined one hundred dol-
28 lars or imprisoned for not more than ten days. The com-
29 missioner shall promulgate rules to further penalize those
30 convicted of violating this section by levying three points
31 against the violator's driver's license record: *Provided*,
32 That if the electric or mechanical signal device is malfunc-
33 tioning, this subsection shall not apply.

§17C-12-3. Certain vehicles must stop at all railroad grade crossings.

1 (a) The driver of any motor vehicle carrying passen-
2 gers for hire, or of any bus, or of any vehicle required to
3 be placarded under 49 CFR part 172 carrying explosive
4 substances, flammable liquids or hazardous materials as a
5 cargo or part of a cargo, or of any vehicle owned by an
6 employer which, in carrying on such employer's business
7 or in carrying employees to and from work, is carrying
8 more than six employees of such employer, before cross-
9 ing at grade any track or tracks of a railroad, shall stop
10 such vehicle within fifty feet but not less than fifteen feet
11 from the nearest rail of such railroad and while so stopped
12 shall listen and look in both directions along such track
13 for any approaching train and for signals indicating the
14 approach of a train, except as hereinafter provided, and
15 shall not proceed until he can do so safely. After stopping

16 as required herein and upon proceeding when it is safe to
17 do so the driver of any said vehicle shall cross only in
18 such gear of the vehicle that there will be no necessity for
19 changing gears while traversing such crossing and the
20 driver shall not shift gears while crossing the track or
21 tracks.

22 (b) No stop need be made at any such crossing where
23 a police officer or a traffic-control signal directs traffic to
24 proceed.

25 (c) This section shall not apply at street railway grade
26 crossings within a business or residence district.

27 (d) Any person driving a vehicle that requires a com-
28 mercial driver's license who fails to comply with the re-
29 quirements of this section is guilty of a misdemeanor, and,
30 upon conviction thereof, shall be fined one hundred dol-
31 lars or imprisoned for not more than ten days. The com-
32 missioner shall promulgate rules to further penalize those
33 convicted of violating this section by levying three points
34 against the violator's driver's license record: *Provided,*
35 That if the electric or mechanical signal device is malfunc-
36 tioning, this subsection shall not apply.

CHAPTER 178

(Com. Sub. for S. B. 8—By Senator Bailey)

[Passed February 15, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicles; traffic regulations, laws of the road; equipment; requiring head lamps to be in use at certain times; and requiring certain vehicles to have head lamps lighted at all times.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. EQUIPMENT.**§17C-15-2. When lighted lamps are required.**

1 Every vehicle other than a school bus, motorcycle,
2 motor-driven cycle or moped operated upon a highway
3 within this state at any time from sunset to sunrise, or
4 during fog, smoke, rain or other unfavorable atmospheric
5 conditions, or at any other time when there is not
6 sufficient light to render clearly discernible persons and
7 vehicles on the highway at a distance of five hundred feet
8 ahead, shall display lighted head lamps and illuminating
9 devices as hereinafter respectively required for different
10 classes of vehicles, subject to exceptions with respect to
11 parked vehicles as provided for in subsection (c), section
12 fifteen of this article. Every school bus, motorcycle,
13 motor-driven cycle and moped shall display lighted head
14 lamps at all times when upon the highway.

CHAPTER 179

(Com. Sub. for H. B. 2080—By Delegate Love)

[Passed March 11, 1995; in effect ninety days from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact section twenty-six, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to flashing warning lights on vehicles; and allowing flashing lights on hazardous material response vehicles, industrial fire brigade vehicles, Class A vehicles of out-of-state residents who are active members of West Virginia emergency services, and rural newspaper delivery vehicles.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. EQUIPMENT.**§17C-15-26. Special restrictions on lamps.**

1 (a) Any lighted lamp or illuminating device upon a
2 motor vehicle other than head lamps, spot lamps, auxiliary
3 lamps or flashing front-direction signals which projects a
4 beam of light of an intensity greater than three hundred
5 candlepower shall be so directed that no part of the beam
6 will strike the level of the roadway on which the vehicle
7 stands at a distance of more than seventy-five feet from
8 the vehicle.

9 (b) No person shall drive or move any vehicle or
10 equipment upon any highway with any lamp or device
11 thereon displaying other than a white or amber light visi-
12 ble from directly in front of the center thereof except as
13 authorized by subsection (d) of this section.

14 (c) Except as authorized in subsections (d) and (f) of
15 this section and authorized in section nineteen of this
16 article, flashing lights are prohibited on motor vehicles:
17 *Provided*, That any vehicle as a means for indicating right
18 or left turn, or any vehicle as a means of indicating the
19 same is disabled or otherwise stopped for an emergency
20 may have blinking or flashing lights.

21 (d) Notwithstanding any other provisions of this chap-
22 ter, the following colors of flashing warning lights are
23 restricted for the use of the type of vehicle designated:

24 (1) Blue flashing warning lights are restricted to police
25 vehicles. Authorization for police vehicles shall be desig-
26 nated by the chief administrative official of each police
27 department.

28 (2) Except for standard vehicle equipment authorized
29 by section nineteen of this article, red flashing warning
30 lights are restricted to ambulances; firefighting vehicles;
31 hazardous material response vehicles; industrial fire bri-
32 gade vehicles; school buses; Class A vehicles, as defined
33 by section one, article ten, chapter seventeen-a of this
34 code, of those firefighters who are authorized by their fire
35 chiefs to have such lights; Class A vehicles of members of
36 ambulance services or duly chartered rescue squads who

37 are authorized by their respective chiefs to have such
38 lights; and Class A vehicles of out-of-state residents who
39 are active members of West Virginia fire departments,
40 ambulance services or duly chartered rescue squads who
41 are authorized by their respective chiefs to have such
42 lights. Red flashing warning lights attached to such Class
43 A vehicles shall be operated only when responding to or
44 engaged in handling an emergency requiring the attention
45 of such firefighters, members of such ambulance services,
46 or chartered rescue squads.

47 (3) The use of red flashing warning lights shall be
48 authorized as follows:

49 (A) Authorization for all ambulances shall be desig-
50 nated by the department of health and human resources
51 and the sheriff of the county of residence.

52 (B) Authorization for all fire department vehicles shall
53 be designated by the fire chief and the state fire marshal's
54 office.

55 (C) Authorization for all hazardous material response
56 vehicles and industrial fire brigades shall be designated by
57 the chief of the fire department and the state fire marshal's
58 office.

59 (D) Authorization for all rescue squad vehicles not
60 operating out of a fire department shall be designated by
61 the squad chief, the sheriff of the county of residence and
62 the department of health and human resources.

63 (E) Authorization for school buses shall be designated
64 as set out in section twelve, article fourteen, chapter
65 seventeen-c.

66 (F) Authorization for firefighters to operate Class A
67 vehicles shall be designated by their fire chiefs and the
68 state fire marshal's office.

69 (G) Authorization for members of ambulance services
70 or any other emergency medical service personnel to
71 operate Class A vehicles shall be designated by their chief
72 official, the department of health and human resources
73 and the sheriff of the county of residence.

74 (H) Authorization for members of duly chartered
75 rescue squads not operating out of a fire department to
76 operate Class A vehicles shall be designated by their squad
77 chiefs, the sheriff of the county of residence and the de-
78 partment of health and human resources.

79 (I) Authorization for out-of-state residents operating
80 Class A vehicles who are active members of a West Virgin-
81 ia fire department, ambulance services or duly chartered
82 rescue squads shall be designated by their respective
83 chiefs.

84 (4) Yellow flashing warning lights are restricted to the
85 following:

86 (A) All other emergency vehicles, including tow trucks
87 and wreckers, authorized by this chapter and by section
88 twenty-seven of this article;

89 (B) Postal service vehicles and rural mail carriers, as
90 authorized in section nineteen of this article;

91 (C) Rural newspaper delivery vehicles;

92 (D) Flag car services;

93 (E) Vehicles providing road service to disabled vehi-
94 cles;

95 (F) Service vehicles of a public service corporation;

96 (G) Snow removal equipment; and

97 (H) School buses.

98 (5) The use of yellow flashing warning lights shall be
99 authorized as follows:

100 (A) Authorization for tow trucks, wreckers, rural news-
101 paper delivery vehicles, flag car services, vehicles provid-
102 ing road service to disabled vehicles, service vehicles of a
103 public service corporation and postal service vehicles shall
104 be designated by the sheriff of the county of residence.

105 (B) Authorization for snow removal equipment shall
106 be designated by the commissioner of the division of
107 highways.

108 (C) Authorization for school buses shall be
109 designated as set out in section twelve, article fourteen,
110 chapter seventeen-c.

111 (e) Notwithstanding the foregoing provisions of this
112 section, any vehicle belonging to a county board of
113 education may be equipped with a white flashing
114 strobotron warning light. This strobe light may be
115 installed on the roof of a school bus not to exceed
116 one-third the body length forward from the rear of the
117 roof edge. The light shall have a single clear lens emitting
118 light three hundred sixty degrees around its vertical axis
119 and may not extend above the roof more than six and
120 one-half inches. A manual switch and a pilot light must
121 be included to indicate the light is in operation.

122 (f) It shall be unlawful for flashing warning lights of
123 an unauthorized color to be installed or used on a vehicle
124 other than as specified in this section, except that a police
125 vehicle may be equipped with either or both blue or red
126 warning lights.

CHAPTER 180

(Com. Sub. for H. B. 2272—By Delegate Love)

[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article five-a, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to expanding the availability of the motor vehicle test and lock program to additional persons whose licenses to operate a motor vehicle have been suspended or revoked for offenses related to driving under the influence of alcohol, controlled substances or drugs; authority of commissioner to allow use of extra devices; and exception for test and lock participants at job site.

Be it enacted by the Legislature of West Virginia:

That section three-a, article five-a, 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 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND REVOCATION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES OR DRUGS.

§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 for
3 persons whose licenses have been revoked pursuant to this
4 article or the provisions of article five of this chapter.
5 Such program shall include the establishment of a users
6 fee for persons participating in the program which shall be
7 paid in advance and deposited into the driver's re-
8 habilitation fund. Except where specified otherwise, the
9 use of the term "program" in this section refers to the
10 motor vehicle alcohol test and lock program. The
11 commissioner of the division of motor vehicles shall
12 propose legislative rules for promulgation in accordance
13 with the provisions of chapter twenty-nine-a of this code
14 for the purpose of implementing the provisions of this
15 section. Such rules shall also prescribe those requirements
16 which, in addition to the requirements specified by this
17 section for eligibility to participate in the program, the
18 commissioner determines must be met to obtain the
19 commissioner's approval to operate a motor vehicle
20 equipped with a motor vehicle alcohol test and lock
21 system. For purposes of this section, a "motor vehicle
22 alcohol test and lock system" means a mechanical or
23 computerized system which, in the opinion of the
24 commissioner, prevents the operation of a motor vehicle
25 when, through the system's assessment of the blood
26 alcohol content of the person operating or attempting to

27 operate the vehicle, such person is determined to be under
28 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 of
31 this chapter is eligible to participate in the program when
32 such person's minimum revocation period as specified by
33 subsection (c) of this section has expired and such person
34 is enrolled in or has successfully completed the safety and
35 treatment program or presents proof to the commissioner
36 within sixty days of receiving approval to participate by
37 the commissioner that he or she is enrolled in a safety and
38 treatment program: *Provided*, That no person whose
39 license has been revoked pursuant to the provisions of
40 section one-a of this article for conviction of an offense
41 defined in subsections (a) or (b), section two, article five of
42 this chapter, or pursuant to the provisions of subsections
43 (f) or (g), section two of this article, shall be eligible for
44 participation in the program: *Provided, however*, That any
45 person whose license is revoked pursuant to this article or
46 pursuant to article five of this chapter for an act which
47 occurred either while participating in or after successfully
48 completing the program shall not again be eligible to
49 participate in such program.

50 (2) Any person whose license has been suspended
51 pursuant to the provisions of subsection (1), section two of
52 this article for driving a motor vehicle while under the age
53 of twenty-one years with an alcohol concentration in his
54 or her blood of two hundredths of one percent or more,
55 by weight, but less than ten hundredths of one percent, by
56 weight, is eligible to participate in the program after thirty
57 days have elapsed from the date of the initial suspension,
58 during which time the suspension was actually in effect:
59 *Provided*, That in the case of a person under the age of
60 eighteen, the person shall be eligible to participate in the
61 program after thirty days have elapsed from the date of
62 the initial suspension, during which time the suspension
63 was actually in effect, or after the person's eighteenth
64 birthday, whichever is later. Before the commissioner

65 approves a person to operate a motor vehicle equipped
66 with a motor vehicle alcohol test and lock system, the
67 person must agree to thereafter comply with the following
68 conditions:

69 (A) If not already enrolled, the person will enroll in
70 and complete the educational program provided for in
71 subsection (c), section three of this article at the earliest
72 time that placement in the educational program is
73 available, unless good cause is demonstrated to the
74 commissioner as to why placement should be postponed;

75 (B) The person will pay all costs of the educational
76 program, any administrative costs and all costs assessed for
77 any suspension hearing.

78 (3) Notwithstanding the provisions of this section to
79 the contrary, no person eligible to participate in the
80 program shall operate a motor vehicle unless approved to
81 do so by the commissioner.

82 (c) For purposes of this section, "minimum revocation
83 period" means the portion which has actually expired of
84 the period of revocation imposed by the commissioner
85 pursuant to this article or the provisions of article five of
86 this chapter upon a person eligible for participation in the
87 program as follows:

88 (1) For a person whose license has been revoked for a
89 first offense for six months pursuant to the provisions of
90 section one-a of this article for conviction of an offense
91 defined in section two, article five of this chapter, or
92 pursuant to subsection (i), section two of this article, the
93 minimum period of revocation before such person is
94 eligible for participation in the test and lock program is
95 thirty days, and the minimum period for the use of the
96 ignition interlock device is five months, or that period
97 described in subdivision (1), subsection (e) of this section,
98 whichever period is greater;

99 (2) For a person whose license has been revoked for a
100 first offense pursuant to section seven, article five of this

101 chapter, refusal to submit to a designated secondary
102 chemical test, the minimum period of revocation before
103 such person is eligible for participation in the test and lock
104 program is thirty days, and the minimum period for the
105 use of the ignition interlock device is nine months, or the
106 period set forth in subdivision (1), subsection (e) of this
107 section, whichever period is greater;

108 (3) For a person whose license has been revoked for a
109 second offense pursuant to the provisions of section one-a
110 of this article for conviction of an offense defined in
111 section two, article five of this chapter, or pursuant to
112 section two of this article, the minimum period of
113 revocation before such person is eligible for participation
114 in the test and lock program is nine months, and the
115 minimum period for the use of the ignition interlock
116 device is eighteen months, or that period set forth in
117 subdivision (2), subsection (e) of this section, whichever
118 period is greater;

119 (4) For a person whose license has been revoked for
120 any other period of time pursuant to the provisions of
121 section one-a of this article for conviction of an offense
122 defined in section two, article five of this chapter, or
123 pursuant to section two of this article or pursuant to
124 section seven, article five of this chapter, the minimum
125 period of revocation is eighteen months, and the minimum
126 period for the use of the ignition interlock device is two
127 years, or that period set forth in subdivision (3), subsection
128 (e) of this section, whichever period is greater;

129 (5) An applicant for the test and lock program must
130 not have been convicted of any violation of section three,
131 article four, chapter seventeen-b of this code, for driving
132 while the applicant's driver's license was suspended or
133 revoked, within the two-year period preceding the date of
134 application for admission to the test and lock program;

135 (6) The commissioner is hereby authorized to allow
136 individuals in the test and lock program an additional
137 device or devices if such is necessary for employment

138 purposes.

139 (d) Upon permitting an eligible person to participate
140 in the program, the commissioner shall issue to such
141 person, and such person shall be required to exhibit on
142 demand, a driver's license which shall reflect that such
143 person is restricted to the operation of a motor vehicle
144 which is equipped with an approved motor vehicle alcohol
145 test and lock system.

146 (e) Any person who has completed the safety and
147 treatment program and who has not violated the terms
148 required by the commissioner of such person's
149 participation in the motor vehicle alcohol test and lock
150 program shall be entitled to the restoration of such
151 person's driver's license upon the expiration of:

152 (1) One hundred eighty days of the full revocation
153 period imposed by the commissioner for a person
154 described in subdivision (1) or (2), subsection (c) of this
155 section;

156 (2) The full revocation period imposed by the
157 commissioner for a person described in subdivision (3),
158 subsection (c) of this section;

159 (3) One year from the date a person described in
160 subdivision (4), subsection (c) of this section is permitted
161 to operate a motor vehicle by the commissioner.

162 (f) A person whose license has been suspended
163 pursuant to the provisions of subsection (l), section two of
164 this article, who has completed the educational program,
165 and who has not violated the terms required by the
166 commissioner of such person's participation in the motor
167 vehicle alcohol test and lock program shall be entitled to
168 the reinstatement of his or her driver's license six months
169 from the date the person is permitted to operate a motor
170 vehicle by the commissioner. When a license has been
171 reinstated pursuant to this subsection, the records ordering
172 the suspension, records of any administrative hearing,
173 records of any blood alcohol test results and all other

174 records pertaining to the suspension shall be expunged by
175 operation of law: *Provided*, That a person shall be entitled
176 to expungement under the provisions of this subsection
177 only once. The expungement shall be accomplished by
178 physically marking the records to show that such records
179 have been expunged, and by securely sealing and filing
180 the records. Expungement shall have the legal effect as if
181 the suspension never occurred. The records shall not be
182 disclosed or made available for inspection, and in response
183 to a request for record information, the commissioner
184 shall reply that no information is available. Information
185 from the file may be used by the commissioner for
186 research and statistical purposes so long as the use of such
187 information does not divulge the identity of the person.

188 (g) In addition to any other penalty imposed by this
189 code, any person who operates a motor vehicle not
190 equipped with an approved motor vehicle alcohol test and
191 lock system during such person's participation in the
192 motor vehicle alcohol test and lock program is guilty of a
193 misdemeanor, and, upon conviction thereof, shall be
194 confined in the county jail for a period not less than one
195 month nor more than six months and fined not less than
196 one hundred dollars nor more than five hundred dollars.
197 Any person who assists another person required by the
198 terms of such other person's participation in the motor
199 vehicle alcohol test and lock program to use a motor
200 vehicle alcohol test and lock system in any effort to
201 bypass the system is guilty of a misdemeanor, and, upon
202 conviction thereof, shall be confined in the county jail not
203 more than six months and fined not less than one hundred
204 dollars nor more than one thousand dollars: *Provided*,
205 That notwithstanding any provision of this code to the
206 contrary, a person enrolled and participating in the test
207 and lock program may operate a motor vehicle solely at
208 his or her job site, if such is a condition of his or her
209 employment.

CHAPTER 181

(H. B. 2216—By Delegates Pino, Manuel, Collins and Beane)

[Passed March 6, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one, chapter seventeen-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the creation of an exemption to the requirement of obtaining a commercial driver's license for operators of off-road construction and mining equipment.

Be it enacted by the Legislature of West Virginia:

That section eight, 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:

§17E-1-8. Exemptions to the commercial driver's license requirements.

1 (a) *Farmers.* — Bona fide farmers or farm vehicle
2 drivers, as defined, operating a vehicle otherwise covered
3 by the commercial driver's license requirements may be
4 exempted from the provisions of this article only if the
5 vehicle used is:

6 (1) Driven by a farmer or farm vehicle driver;

7 (2) Used only to transport either agricultural products,
8 farm machinery, farm supplies, to or from a farm;

9 (3) Not used in the operation of a common or contract
10 motor carrier; and

11 (4) Used within one hundred fifty miles of the
12 qualifying farm.

13 Farmers who wish to be exempted from the
14 commercial driver's license requirements must apply to the
15 division of motor vehicles for a certificate of exemption.

16 (b) *Military personnel.* — Military personnel,

17 including the national guard and reserve, will be exempt
18 from the provisions of this article, only:

19 (1) When in uniform; and

20 (2) Operating equipment owned by the United States
21 department of defense, except during declared emer-
22 gencies or disaster situations; and

23 (3) On duty; and

24 (4) In possession of a valid classified military driver's
25 license for the class of vehicle being driven.

26 (c) *Fire fighting and rescue equipment.* — Operators
27 of vehicles authorized to hold an "authorized emergency
28 vehicle permit" for use of red signal lights only are
29 exempt from the provisions of this article while the
30 "authorized emergency vehicle permit" is in force.
31 Vehicles in this class include, but are not limited to,
32 firefighters and rescue equipment:

33 (1) Owned and operated by state, county and
34 municipal fire departments;

35 (2) Owned and operated by state, county and
36 municipal civil defense organizations;

37 (3) Owned and operated by a manufacturer engaged
38 in a type of business that requires firefighter equipment to
39 protect the safety of their plants and its employees;

40 (4) Owned and operated by volunteer fire depart-
41 ments.

42 (d) *Operators of off-road construction and mining*
43 *equipment.*— Operators of equipment which, by its design,
44 appearance and function, is not intended for use on a
45 public road, including, without limitation, motorscrapers,
46 backhoes, motorgraders, compactors, excavators, tractors,
47 trenches and bulldozers, will be exempt from the
48 provisions of this article: *Provided*, That the exemption
49 recognized by this subsection shall not be construed to
50 permit the operation of such equipment on any public
51 road except such operation as may be required for a
52 crossing of such road: *Provided, however*, That no such

53 equipment may be operated on a public road for a dis-
54 tance exceeding five hundred feet from the place where
55 such equipment entered upon the public road.

56 (e) The Commercial Motor Vehicles Safety Act of
57 1986 exempts vehicles used exclusively for personal use
58 such as recreation vehicles and rental trucks used only to
59 transport the driver's personal or household property.

CHAPTER 182

(Com. Sub. for S. B. 211—By Senators Manchin, Helmick, Kimble and Walker)

[Passed March 9, 1995; in effect July 1, 1995. Approved by the Governor.]

AN ACT to amend and reenact section seven, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article thirteen, chapter eight of said code by adding thereto a new section, designated section twenty-two-c, all relating to the "Prompt Pay Act of 1995"; requiring counties, municipalities and their agencies to pay for purchases of services and commodities within sixty days; exception; requiring payment of interest in event of late payment; specifying effective date of said requirements; specifying method of calculating interest; requiring amount of interest to be deducted from account of agency responsible for late payment; and requiring processing of invoices and requisitions within certain time periods.

Be it enacted by the Legislature of West Virginia:

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

Chapter

7. County Commissions and Officers.
8. Municipal Corporations.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**ARTICLE 5. FISCAL AFFAIRS.****§7-5-7. Payment of legitimate uncontested invoices; interest on late payments; "Prompt Pay Act of 1995".**

1 (a) Any properly registered and qualified vendor who
2 supplies services or commodities to any county, or agency
3 thereof, shall be entitled to prompt payment upon presen-
4 tation to that county or agency of a legitimate uncontested
5 invoice.

6 (b) (1) Except as provided in subdivision (2) of this
7 subsection, for purchases of services or commodities made
8 on or after the first day of July, one thousand nine hun-
9 dred ninety-five, a check shall be issued in payment there-
10 of within sixty days after a legitimate uncontested invoice
11 is received by the county or agency receiving the services
12 or commodities. Any check issued after such sixty days
13 shall include interest at the current rate, as determined by
14 the state tax commissioner under the provisions of section
15 seventeen-a, article ten, chapter eleven of this code, which
16 interest shall be calculated from the sixty-first day after
17 the invoice was received by the county or agency until the
18 date on which the check is mailed to the vendor: *Provided*,
19 That this section shall not apply if payment cannot be
20 made within the sixty-day period because of unforeseen
21 budgetary constraints.

22 (2) For purposes of this subsection, an invoice shall be
23 deemed to be received by a county, or agency thereof, on
24 the date on which the invoice is marked as received by the
25 county or agency, or the date of the postmark made by
26 the United States postal service as evidenced on the enve-
27 lope in which the invoice is mailed, whichever is earlier,
28 unless the vendor can provide sufficient evidence that the
29 invoice was received by the county or agency on an earlier
30 date: *Provided*, That in the event an invoice is received by
31 a county, or agency thereof, prior to the date on which the
32 commodities or services covered by the invoice are deliv-
33 ered and accepted or fully performed and accepted, the

34 invoice shall be deemed to be received on the date on
35 which the commodities or services covered by the invoice
36 were actually delivered and accepted or fully performed
37 and accepted.

38 (c) The sheriff shall deduct the amount of any interest
39 due for late payment of an invoice from any appropriate
40 account of the agency responsible for the late payment:
41 *Provided*, That if two or more agencies are responsible for
42 the late payment, the sheriff shall deduct the amount of
43 interest due on a pro rata basis.

44 (d) The county or agency initially receiving a legiti-
45 mate uncontested invoice shall process the invoice for
46 payment within ten days from its receipt. Failure to com-
47 ply with the requirements of this subsection shall render
48 the county or agency liable for payment of the interest
49 mandated by this section when there is a failure to
50 promptly pay a legitimate uncontested invoice: *Provided*,
51 That a county agency shall not be liable for payment of
52 interest owed by another county agency under this sec-
53 tion.

54 (e) Any other county agency charged by law with
55 processing a county agency's requisition for payment of a
56 legitimate uncontested invoice shall either process the
57 claim or reject it for good cause within ten days after the
58 agency receives it. Failure to comply with the require-
59 ments of this subsection shall render the county agency
60 liable for payment of the interest mandated by this section
61 when there is a failure to promptly pay a legitimate un-
62 contested invoice: *Provided*, That a county agency shall
63 not be liable for payment of interest owed by another
64 county agency under this section.

65 (f) For purposes of this section, the term "agency"
66 means any agency, department, board, office, bureau,
67 commission, authority or any other entity of county gov-
68 ernment.

69 (g) This section may be cited as the "Prompt Pay Act
70 of 1995".

CHAPTER 8. MUNICIPAL CORPORATIONS.**ARTICLE 13. TAXATION AND FINANCE.****§8-13-22c. Payment of legitimate uncontested invoices; interest on late payments; "Prompt Pay Act of 1995".**

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

6 (b) (1) Except as provided in subdivision (2) of this
7 subsection, for purchases of services or commodities made
8 on or after the first day of July, one thousand nine hun-
9 dred ninety-five, a check shall be issued in payment there-
10 of within sixty days after a legitimate uncontested invoice
11 is received by the municipality or agency receiving the
12 services or commodities. Any check issued after the sixty
13 days shall include interest at the current rate, as deter-
14 mined by the state tax commissioner under the provisions
15 of section seventeen-a, article ten, chapter eleven of this
16 code, which interest shall be calculated from the sixty-first
17 day after the invoice was received by the municipality or
18 agency until the date on which the check is mailed to the
19 vendor: *Provided*, That this section shall not apply if
20 payment cannot be made within the sixty-day period be-
21 cause of unforeseen budgetary constraints.

22 (2) For purposes of this subsection, an invoice shall be
23 deemed to be received by a municipality or agency on the
24 date on which the invoice is marked as received by the
25 municipality or agency, or the date of the postmark made
26 by the United States postal service as evidenced on the
27 envelope in which the invoice is mailed, whichever is earli-
28 er, unless the vendor can provide sufficient evidence that
29 the invoice was received by the municipality or agency on
30 an earlier date: *Provided*, That in the event an invoice is
31 received by a municipality or agency prior to the date on
32 which the commodities or services covered by the invoice
33 are delivered and accepted or fully performed and accept-

34 ed, the invoice shall be deemed to be received on the date
35 on which the commodities or services covered by the in-
36 voice were actually delivered and accepted or fully per-
37 formed and accepted.

38 (c) The municipal treasurer shall deduct the amount of
39 any interest due for late payment of an invoice from any
40 appropriate account of the agency responsible for the late
41 payment: *Provided*, That if two or more agencies are
42 responsible for the late payment, the municipal treasurer
43 shall deduct the amount of interest due on a pro rata basis.

44 (d) The municipality or agency initially receiving a
45 legitimate uncontested invoice shall process the invoice for
46 payment within ten days from its receipt. Failure to com-
47 ply with the requirements of this subsection shall render
48 the municipality or agency liable for payment of the inter-
49 est mandated by this section when there is a failure to
50 promptly pay a legitimate uncontested invoice: *Provided*,
51 That a municipality or agency shall not be liable for pay-
52 ment of interest owed by another municipal agency under
53 this section.

54 (e) Any other municipality or agency charged by law
55 with processing a municipal agency's requisition for pay-
56 ment of a legitimate uncontested invoice shall either pro-
57 cess the claim or reject it for good cause within ten days
58 after such municipality or agency receives it. Failure to
59 comply with the requirements of this subsection shall
60 render the municipal agency liable for payment of the
61 interest mandated by this section when there is a failure to
62 promptly pay a legitimate uncontested invoice: *Provided*,
63 That a municipal agency shall not be liable for payment
64 of interest owed by another municipal agency under this
65 section.

66 (f) For purposes of this section, the phrase "municipal
67 agency" means any agency, department, board, office,
68 bureau, commission, authority or any other entity of a
69 municipal corporation.

70 (g) This section may be cited as the "Prompt Pay Act
71 of 1995".

CHAPTER 183

(H. B. 2832—By Delegates Kiss, Browning, Farris, Pettit,
Walters, Miller and Border)

[Passed March 11, 1995; in effect ninety days from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact section twenty-two, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty-two-a, all relating to the investment of funds of municipal firemen and policemen pension funds, restrictions on investments, performance evaluations and reporting requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-22. Investment of funds; exercise of judgment in making investments; actuarial studies required; annual report.

§8-22-22a. Restrictions on investments.

§8-22-22. Investment of funds; exercise of judgment in making investments; actuarial studies required; annual report.

1 The board of trustees may invest a portion or all of
2 the fund assets in the state consolidated fund or the con-
3 solidated pension fund. The board of trustees shall keep
4 as an available sum for the purpose of making regular
5 retirement, disability retirement, death benefit, payments
6 and administrative expenses in an estimated amount not to
7 exceed payments for a period of ninety days. The board
8 of trustees, in acquiring, investing, reinvesting, exchanging,
9 retaining, selling and managing property for the benefit of
10 the fund shall exercise judgment and care under fiduciary
11 duty which persons of prudence, discretion, and intelli-
12 gence exercise in the management of their own affairs, not
13 in regard to speculation, but in regard to the permanent
14 disposition of their funds, considering the probable total
15 return as well as the preservation of principal. Within the
16 limitations of the foregoing standard, the board of trustees
17 is authorized in its sole discretion to invest and reinvest
18 any funds received by it and not invested in the consoli-
19 dated fund or the consolidated pension fund in the follow-
20 ing:

21 (a) Any direct obligation of, or obligation guaranteed
22 as to the payment of both principal and interest by, the
23 United States of America;

24 (b) Any evidence of indebtedness issued by any Unit-
25 ed States government agency guaranteed as to the pay-
26 ment of both principal and interest, directly or indirectly,
27 by the United States of America including, but not limited
28 to, the following: Government national mortgage associa-
29 tion, federal land banks, federal national mortgage associa-
30 tion, federal home loan banks, federal intermediate credit
31 banks, banks for cooperatives, Tennessee valley authority,
32 United States postal service, farmers home administration,
33 export-import bank, federal financing bank, federal home
34 loan mortgage corporation, student loan marketing associ-
35 ation and federal farm credit banks;

36 (c) Readily marketable (i.e. traded on a national secu-
37 rities exchange) debt securities having a Standard & Poor
38 rating of A (or equivalent to Moody's rating) or higher,

39 excluding municipal securities;

40 (d) Any evidence of indebtedness that is secured by a
41 first lien deed of trust or mortgage upon real property
42 situated within this state, if the payment thereof is substan-
43 tially insured or guaranteed by the United States of Amer-
44 ica or any agency thereof;

45 (e) Repurchase agreements issued by any bank, trust
46 company, national banking association or savings institu-
47 tions which mature in less than one year and are fully
48 collateralized, no reverse repurchase agreements shall be
49 allowed;

50 (f) Interest bearing deposits including certificates of
51 deposit and passbook savings accounts that are FDIC in-
52 sured;

53 (g) *Equity*. — Common stocks, securities convertible
54 into common stocks, or warrants and rights to purchase
55 such securities: *Provided*, That each shall be listed on the
56 NYSE, ASE or are traded on the National OTC Market
57 and listed on the NASDAQ National Market;

58 (h) The board of trustees of each fund may delegate
59 investment authority to equity mutual funds managers
60 and/or professional registered investment advisors who are
61 registered with the Securities and Exchange Commission,
62 in addition to being registered with the Investment Advi-
63 sors Act of 1940 and appropriate state regulatory agen-
64 cies, if applicable, who also manage assets in excess of
65 seventy-five million dollars.

§8-22-22a. Restrictions on investments.

1 Moneys invested as permitted by section twenty-two
2 of this article are subject to the following restrictions and
3 condition contained in this section:

4 (a) Fixed income securities shall at no time exceed ten
5 percent of the total assets of the pension fund, which are
6 issued by one issuer, other than the United States govern-
7 ment or agencies thereof, whereas this limit shall not ap-
8 ply;

9 (b) At no time shall the equity portion of the portfo-
10 lio exceed fifty percent of the total portfolio. Further-
11 more, the debit or equity securities of any one company
12 or association shall not exceed five percent with a maxi-
13 mum of fifteen percent in any one industry;

14 (c) Notwithstanding any other provisions of this arti-
15 cle, any investments in equities under subsections (g) and
16 (h), section twenty-two of this article shall be subject to the
17 following additional guidelines:

18 (1) Equity mutual funds shall be no sales load (front
19 or back) and no contingent deferred sales charges shall be
20 allowed. The total annual operating expense ratio shall
21 not exceed one and three-quarter percent for any mutual
22 fund;

23 (2) The stated investment policy requires one hun-
24 dred percent of the equities of the portfolio be that of
25 securities which are listed on the New York Stock Ex-
26 change, the American Stock Exchange, or the NASDAQ
27 National Market;

28 (3) Equity mutual funds may be only of the follow-
29 ing fund description stated purpose: growth funds, growth
30 and income funds, equity income funds, index funds;
31 utilities, funds, balanced funds and flexible portfolio
32 funds;

33 (4) The equity value of investments shall not exceed
34 twenty-five percent of the total portfolio for the first
35 twelve months from enactment of these articles; thereafter
36 no more than five percent of the total portfolio be invested
37 in equity securities per calendar quarter up to the maxi-
38 mum of fifty percent.

39 (d) The board of trustees of each fund shall obtain an
40 independent performance evaluation of the funds at least
41 annually and such evaluation shall consist of comparisons
42 with other funds having similar investment objectives for
43 performance results with appropriate market indices;

44 (e) Each entity conducting business for each pension

45 fund, shall fully disclose all fees and costs of transactions
46 conducted on a quarterly basis. Entities conducting busi-
47 ness in mutual funds for and on behalf of each pension
48 fund, shall timely file revised prospectus and normal quar-
49 terly and annual Securities Exchange Commission report-
50 ing documents with the board of trustees of each pension
51 fund.

CHAPTER 184

(Com. Sub. for S. B. 465—By Senators Yoder, Ross and Helmick)

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixty, article twenty-four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing an alternative notice requirement for petitioners appealing decisions of the board of zoning appeals.

Be it enacted by the Legislature of West Virginia:

That section sixty, article twenty-four, 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 24. PLANNING AND ZONING.

§8-24-60. Notice to adverse parties.

1 (a) Upon filing a petition for a writ of certiorari with
2 the clerk of the circuit court of the county in which the
3 premises affected are located, the petitioner shall cause a
4 notice to be issued and served by the sheriff of the county
5 upon the adverse party or parties, if any, as shown by the
6 record of the appeal in the office of the board of zoning
7 appeals and upon the chairman or secretary of the board
8 of zoning appeals.

9 The adverse party or parties shall be any property
10 owner whom or which the record of the board of zoning
11 appeals shows to have appeared at the hearing before the
12 board in opposition to the petitioner. If the record shows
13 a written remonstrance or other document opposing the
14 request of petitioner containing the names of more than
15 three property owners, the petitioner shall be required to
16 cause notice to be issued and served upon the three prop-
17 erty owners whose names first appear upon the remon-
18 strance or document. Notice to the other parties named in
19 the remonstrance or document shall not be required.

20 The notice shall state that a petition for a writ of cer-
21 tiorari has been filed in the circuit court of the county
22 asking for a review of the decision or order of the board
23 of zoning appeals, shall designate the premises affected
24 and shall specify the date of the decision or order com-
25 plained of.

26 Service of the notice by the sheriff on the chairman or
27 secretary of the board of zoning appeals shall constitute
28 notice to the board and to the municipality or county and
29 to any official or board thereof charged with the enforce-
30 ment of the zoning ordinance and no further summons or
31 notice with reference to the filing of such petition shall be
32 necessary.

33 (b) As an alternative to the requirements for notice
34 prescribed in subsection (a) of this section, notice shall be
35 sufficient upon a showing that the chairman or secretary
36 of the board of zoning appeals and all adjacent landown-
37 ers to the subject property have received personal service
38 of process of the notice containing information as re-
39 quired by said subsection. As to all other interested par-
40 ties, notice shall be sufficient if, by Class III-O legal adver-
41 tisement, notice containing information as required by
42 said subsection is published in the county or counties
43 wherein the subject property is located.

CHAPTER 185

(H. B. 2230—By Mr. Speaker, Mr. Chambers, and
Delegates Leach and Smirl)

[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article twenty-seven, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the threshold for purchases that must be made by competitive sealed bid.

Be it enacted by the Legislature of West Virginia:

That section twenty-three, article twenty-seven, 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 27. INTERGOVERNMENTAL RELATIONS — URBAN
MASS TRANSPORTATION SYSTEMS.**

**§8-27-23. Competitive bids; publication of solicitation for
sealed bids.**

1 A purchase of or contract for all supplies, equipment
2 and materials and a contract for the construction of
3 facilities by any authority, when the expenditure required
4 exceeds the sum of ten thousand dollars, shall be based on
5 competitive sealed bids: *Provided*, That there are
6 specifically excepted from the aforesaid requirement
7 purchases of and contracts for replacement parts for urban
8 mass transportation vehicles previously purchased by the
9 authority. The bids shall be obtained by public notice
10 published as a Class I legal advertisement in compliance
11 with the provisions of article three, chapter fifty-nine of
12 this code, and the publication area for the publication shall
13 be the service area of the authority. The publication shall

14 be made at least fourteen days before the final date for
15 submitting bids. In addition to the publication, the notice
16 may also be published by any other advertising medium
17 the authority may deem advisable, and the authority may
18 also solicit sealed bids by sending requests by mail to
19 prospective suppliers and by posting notice on a bulletin
20 board in the office of such authority.

CHAPTER 186

(Com. Sub. for H. B. 2042—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-six-a, relating to the West Virginia commission for national and community service; creating commission and specifying membership on the commission; providing for expense reimbursement of members; specifying powers, duties and responsibilities of commission; and providing for termination date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26A. WEST VIRGINIA COMMISSION FOR NATIONAL AND COMMUNITY SERVICE.

- §5-26A-1. Findings, purposes and intent.
- §5-26A-2. Continuation of West Virginia commission for national and community service; support and assistance to commission.
- §5-26A-3. Members.
- §5-26A-4. Duties and responsibilities.
- §5-26A-5. Powers.
- §5-26A-6. Termination date.

§5-26A-1. Findings, purposes and intent.

1 The Legislature hereby finds and declares:

2 (a) The National and Community Service Trust Act of
3 1993, P. L. 103-82, was enacted to foster civic
4 responsibility and to enable the citizens of the various
5 states to participate in, for the benefit of their
6 communities, various volunteer and other service
7 programs including, but not limited to, community corps
8 programs, youth corps programs, school and
9 campus-based programs, professional corps programs,
10 americorps programs, national senior service corps
11 programs and VISTA programs.

12 (b) The National and Community Service Trust Act of
13 1993, P. L. 103-82, created the corporation for national
14 and community service for the purpose of assisting the
15 various states in the creation and operation of a statewide
16 commission that would have as its purpose the
17 encouragement, coordination and assistance of the efforts
18 of individuals or other entities from both the public and
19 private sectors to create or participate in local community
20 service programs.

21 (c) The corporation for national and community
22 service assists a state's commission by and through a grant
23 to the commission that is equal to a percentage of the
24 commission's administrative costs.

25 (d) The deadline for the creation of a state
26 commission was the first day of January, one thousand
27 nine hundred ninety-four, if the state commission was to
28 receive an administrative grant in the corporation for

29 national and community service's fiscal year beginning in
30 the calendar year one thousand nine hundred ninety-four.

31 (e) The West Virginia commission for national and
32 community service was created by an executive order of
33 the governor of the state of West Virginia made on the
34 twenty-eighth day of January, one thousand nine hundred
35 ninety-four, but the executive order contemplated the
36 enactment of legislation continuing the state commission
37 in the next session of the Legislature.

38 (f) The West Virginia commission for national and
39 community service has striven to develop a coordinated,
40 unified plan in response to the National and Community
41 Service Trust Act of 1993, P. L. 103-82, and to meet the
42 social, environmental, educational and public safety needs
43 of the state of West Virginia by instilling in its citizens a
44 greater sense of pride in, and responsibility for, their
45 communities.

46 (g) The Legislature intends to continue the West
47 Virginia commission for national and community service
48 for the purpose of complying with the provisions of the
49 National and Community Service Trust Act of 1993, P. L.
50 103-82, and for the purpose of meeting the social,
51 environmental, educational and public safety needs of the
52 state of West Virginia by and through promotion and
53 coordination of community outreach initiatives.

**§5-26A-2. Continuation of West Virginia commission for
national and community service; support and
assistance to commission.**

1 (a) The West Virginia commission for national and
2 community service is hereby continued as a state
3 commission within the meaning of, and in accordance
4 with, the provisions of the National and Community
5 Service Act of 1990, as amended by the National and
6 Community Service Trust Act of 1993, and the provisions
7 of any rules or regulations promulgated under the act.

8 (b) By executive order, the governor shall provide for
9 any administrative support to the West Virginia
10 commission for national and community service as the
11 governor may deem to be necessary.

12 (c) All agencies of the state shall provide such
13 assistance and information to the West Virginia
14 commission for national and community service as is
15 necessary to ensure a fully coordinated effort throughout
16 the state relating to the promotion of national and
17 community volunteer service.

§5-26A-3. Members.

1 (a) The West Virginia commission for national and
2 community service shall have no fewer than fifteen and no
3 more than twenty-five voting members to be appointed by
4 the governor.

5 (b) The voting membership of the West Virginia
6 commission for national and community service shall
7 include:

8 (1) At least one individual with expertise in the
9 educational and developmental needs of the state's
10 disadvantaged youth;

11 (2) At least one individual with experience in
12 promoting the involvement of older adults in national or
13 community service and volunteer programs;

14 (3) A representative of a community-based agency
15 operating within the state;

16 (4) The secretary of the department of education and
17 arts created pursuant to section two, article one, chapter
18 five-f of this code or a designee;

19 (5) The state superintendent of schools or a designee;

20 (6) A representative of a county or municipal
21 government;

22 (7) A representative of a local labor organization;

23 (8) A representative of a for-profit business operating
24 within the state; and

25 (9) An individual whose age is between the age of
26 sixteen years and twenty-five years, inclusive, who has
27 been, or remains, a participant or a supervisor in a
28 volunteer or service program.

29 (c) The membership of the West Virginia commission
30 for national and community service shall include a
31 representative of the corporation for national and
32 community service who shall serve as a member in a
33 nonvoting, ex officio capacity.

34 (d) No more than twenty-five percent of the voting
35 membership of the West Virginia commission for national
36 and community service may be individuals who are
37 employed by the state or its agencies, except that the
38 membership may include additional employees of the
39 state or its agencies in a nonvoting, ex officio capacity.

40 (e) No member of the West Virginia commission for
41 national and community service may vote on an issue
42 affecting organizations for which the member has served
43 as a staff person or as a volunteer at any time during the
44 twelve-month period before the member's appointment to
45 the commission.

46 (f) No more than fifty percent plus one of the
47 members of the West Virginia commission for national
48 and community service may be members of the same
49 political party.

50 (g) To the extent possible, the membership of the West
51 Virginia commission for national and community service
52 shall reflect the diversity of the state's population.

53 (h) Members of the West Virginia commission for
54 national and community service who were appointed
55 under the executive order of the governor entered on the

56 twenty-eighth day of January, one thousand nine hundred
57 ninety-four, shall continue as members of the commission
58 for a term of three years, except that the governor shall
59 designate eight members who shall serve for a term of two
60 years and shall also designate an additional eight members
61 who shall serve for a term of one year. Additional
62 appointments by the governor under the provisions of this
63 section and appointments by the governor upon the
64 expiration of a member's term shall be made for a term of
65 three years. Appointments of members by the governor
66 to serve for an unexpired term shall be for the remainder
67 of the unexpired term. Members may be reappointed.

68 (i) The voting members of the West Virginia
69 commission for national and community service shall
70 annually elect a voting member to serve as the chair of the
71 commission.

72 (j) The members of the West Virginia commission for
73 national and community service shall meet at the call of
74 the chair, who shall be obligated to call a meeting at the
75 request of a simple majority of the members or as
76 necessary to ensure that the members have met at least
77 twice in each calendar year of the commission's operation.

78 (k) The members of the West Virginia commission for
79 national and community service shall serve without
80 compensation, except that the members of the commission
81 who are not state employees shall be reimbursed for their
82 actual and necessary expenses incurred in discharging
83 their duties and responsibilities as members of the
84 commission.

§5-26A-4. Duties and responsibilities.

1 The West Virginia commission for national and
2 community service shall have the duties and
3 responsibilities set forth in the provisions of the National
4 and Community Service Act of 1990, as amended by the
5 National and Community Service Trust Act of 1993, and
6 the provisions of any rules or regulations promulgated
7 under the act. The duties and responsibilities include:

- 8 (a) Advising and assisting the governor in the
9 development and implementation of a comprehensive
10 statewide plan for promoting volunteer involvement and
11 citizen participation in programs which are designed to
12 serve the needs of the citizens of the state and its
13 communities;
- 14 (b) Fulfilling federal program administration
15 requirements, including the provision of health care and
16 child care for program participants;
- 17 (c) Submitting annual state applications for the federal
18 funding of the americorps programs that are selected by
19 the commission;
- 20 (d) Integrating americorps programs, existing VISTA
21 and national senior service corps programs, and K-12
22 learn and serve programs into the state's strategic service
23 plan;
- 24 (e) Conducting local outreach to develop a
25 comprehensive and inclusive state service plan;
- 26 (f) Coordinating with existing programs for service
27 and volunteerism in order to prevent unnecessary
28 competition for private sources of funding;
- 29 (g) Providing technical assistance to service and
30 volunteer programs, including the development of training
31 methods and curriculum materials;
- 32 (h) Developing a statewide recruitment and placement
33 system for individuals who are interested in community
34 service opportunities;
- 35 (i) Preparing quarterly reports on progress for
36 submission to the governor and preparing an annual
37 report for submission to the governor and the Legislature
38 on or before the first day of January of each year which
39 shall detail the commission's activities for the preceding
40 year; and
- 41 (j) Serving as the state's liaison to national and state
42 entities or other organizations which also promote national
43 and community service and volunteerism.

§5-26A-5. Powers.

1 (a) The West Virginia commission for national and
2 community service may apply for and accept funds,
3 grants, gifts and services from local government, the state
4 or the federal government, or any of their agencies, or
5 from any other public or private source and is authorized
6 to use funds derived from these sources to defray adminis-
7 trative costs and implement programs to fulfill the com-
8 mission's duties and responsibilities.

9 (b) The West Virginia commission for national and
10 community service shall accept on behalf of the governor
11 any reports that relate to community service and
12 volunteerism issues and that are required to be submitted
13 to the governor by the provisions of the code of West
14 Virginia.

§5-26A-6. Termination date.

1 Pursuant to the provisions of article ten, chapter four
2 of this code, the West Virginia commission for national
3 and community service shall continue to exist until the
4 first day of July, one thousand nine hundred ninety-seven,
5 to allow for the completion of a preliminary performance
6 review by the joint committee on government operations.

CHAPTER 187

(S. B. 212—By Senator Dittmar)

[Passed March 8, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article one, chap-
ter twenty of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to law enforcement
and the amount that may be spent on outside legal services.

Be it enacted by the Legislature of West Virginia:

That section thirteen, 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.

§20-1-13. Law enforcement and legal services.

1 The director shall select and designate a competent
2 and qualified person to be department law-enforcement
3 officer, who shall have the title of chief conservation offi-
4 cer and who shall be responsible for the prompt, orderly
5 and effective enforcement of all of the provisions of this
6 chapter. Under the supervision of the director and subject
7 to personnel qualifications and requirements otherwise
8 prescribed in this chapter, the chief conservation officer
9 shall be responsible for the selection, training, assignment,
10 distribution and discipline of conservation officers and the
11 effective discharge of their duties in carrying out the
12 law-enforcement policies, practices and programs of the
13 department in compliance with the provisions of article
14 seven of this chapter and other controlling laws. Except as
15 otherwise provided in this chapter, he or she and his or her
16 conservation officers are hereby authorized to enter into
17 and upon private lands and waters to investigate com-
18 plaints and reports of conditions, conduct, practices and
19 activities considered to be adverse to and violative of the
20 provisions of this chapter and to execute writs and war-
21 rants and make arrests thereupon.

22 The attorney general and his or her assistants and the
23 prosecuting attorneys of the several counties shall render
24 to the director, without additional compensation, such
25 legal services as the director may require of them in the
26 discharge of his or her duties and the execution of his or
27 her powers under and his or her enforcement of the provi-
28 sions of this chapter. The director, in an emergency and
29 with prior approval of the attorney general, may employ
30 an attorney to act in proceedings wherein criminal charges
31 are brought against personnel of the department because
32 of action in line of duty. For such attorney services, a

33 reasonable sum, not exceeding two thousand five hundred
34 dollars, may be expended by the director in any one case.

35 The director, if he or she deems the action necessary,
36 may request the attorney general to appoint an assistant
37 attorney general, who shall perform, under the supervision
38 and direction of the attorney general, the duties as may be
39 required of him or her by the director. The attorney gen-
40 eral, in pursuance of the request, may select and appoint
41 an assistant attorney general to serve at the will and plea-
42 sure of the attorney general, and the assistant shall receive
43 a salary to be paid out of any funds made available for
44 that purpose by the Legislature to the department.

CHAPTER 188

(S. B. 434—By Senator Dittmar)

[Passed March 11, 1995; in effect ninety days from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact section fifty, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one-a and one-c, article seven of said chapter, all relating to wildlife resources; issuance of permits for collection of wildlife for scientific or education purposes; promulgation of rules; conservation officers being excluded from coverage of wage and hour laws; promulgation of rules; salary increase based on length of service; rank; salary schedule; base pay; and exceptions.

Be it enacted by the Legislature of West Virginia:

That section fifty, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one-a and one-c, article seven of said chapter be amended and reenacted, all to read as follows:

Article**2. Wildlife Resources.****7. Law Enforcement, Motorboating, Litter.****ARTICLE 2. WILDLIFE RESOURCES.****§20-2-50. Permit to hunt, kill, etc., wildlife for scientific or propagation purposes.**

1 The director may issue a permit to a person to hunt,
2 kill, take, capture or maintain in captivity wildlife exclu-
3 sively for scientific purposes, but not for any commercial
4 purposes. Any person desiring to collect or procure any
5 wildlife, including any body tissue, organ or other portion
6 thereof, eggs, nesting materials or other materials from the
7 habitat of such wildlife shall be required to make applica-
8 tion to the director for a scientific collecting permit. The
9 director shall promulgate rules in accordance with the
10 provisions of chapter twenty-nine-a of this code regarding
11 the issuance of the permits. A permit may be issued only
12 upon written application to the director setting forth at
13 least:

14 (1) The number and kind of wildlife to be taken;

15 (2) The purpose and manner of taking;

16 (3) The name, residence, profession and educational
17 or scientific affiliation of the person applying for the
18 permit; and

19 (4) The geographic location where the collection or
20 procurement is planned to take place.

21 No charge shall be made for this permit: *Provided,*
22 That no permit shall be issued for the purpose of killing
23 deer and bear.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-1a. Conservation officers excluded from coverage under wage and hour laws; regulation; salary increase based on length of service.

§20-7-1c. Conservation officers, ranks, salary schedule, base pay, exceptions.

§20-7-1a. Conservation officers excluded from coverage under wage and hour laws; regulation; salary increase based on length of service.

1 (a) Effective the first day of January, one thousand
2 nine hundred ninety, each conservation officer shall re-
3 ceive and be entitled to an increase in salary based on
4 length of service, including that heretofore and hereafter
5 served as a conservation officer as follows: For five years
6 of service with the department, a conservation officer shall
7 receive a salary increase of three hundred dollars per year
8 payable during his or her next three years of service and a
9 like increase at three-year intervals thereafter, with these
10 increases to be cumulative: *Provided*, That for purposes
11 of calculating a salary increase, a maximum of twenty-five
12 years of service shall be applicable. A salary increase shall
13 be based upon years of service as of the first day of July
14 of each year and may not be recalculated until the first
15 day of July of the following year.

16 Conservation officers in service at the time the amend-
17 ment to this section becomes effective shall be given credit
18 for prior service and shall be paid such salaries as the same
19 length of service will entitle them to receive under the
20 provisions hereof.

21 (b) The director shall promulgate rules regarding
22 overtime pay for conservation officers in accordance with
23 chapter twenty-nine-a of this code: *Provided*, That such
24 rules shall provide for the awarding of one and one-half
25 hours compensatory time for each hour of overtime in
26 lieu of cash overtime compensation.

27 (c) This section does not apply to special or emer-
28 gency conservation officers appointed under the authority
29 of section one of this article.

§20-7-1c. Conservation officers, ranks, salary schedule, base pay, exceptions.

1 (a) Notwithstanding any provision of this code to the
2 contrary, the ranks within the law-enforcement section of

3 the division of natural resources shall be colonel, lieuten-
 4 ant colonel, major, captain, lieutenant, sergeant, conserva-
 5 tion officer and conservation officer-in-training. Each
 6 such officer while in uniform shall wear the insignia of
 7 rank as provided by the chief conservation officer.

8 (b) Conservation officers shall be paid the minimum
 9 annual salaries based on the following schedule:

10 ANNUAL SALARY SCHEDULE (BASE PAY)

11 SUPERVISORY AND NONSUPERVISORY RANKS

12 Conservation Officer-In-Training	\$ 21,725
13 (first year)	
14 Conservation Officer (second year)	\$ 23,914
15 Conservation Officer (third year)	\$ 24,186
16 Conservation Officer (fourth year)	\$ 24,398
17 Conservation Officer (after fifth year)	\$ 25,976
18 Conservation Officer (after tenth year)	\$ 27,554
19 Conservation Officer (after fifteenth year)	\$ 28,954
20 Sergeant	\$ 32,577
21 Lieutenant	\$ 35,397
22 Captain	\$ 37,683
23 Major	\$ 39,966
24 Lieutenant Colonel	\$ 42,008
25 Colonel	

26 Conservation officers in service at the time the amend-
 27 ment to this section becomes effective shall be given credit
 28 for prior service and shall be paid such salaries as the same
 29 length of service will entitle them to receive under the
 30 provisions hereof.

31 (c) This section does not apply to special or emergen-
32 cy conservation officers appointed under the authority of
33 section one of this article.

34 (d) Nothing in this section shall prohibit other pay
35 increases as provided for under section two, article five,
36 chapter five of this code.

CHAPTER 189

(S. B. 223—By Senator Dittmar)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifty-a, relating to licensing wildlife damage control agents; authority of agents; imposition, collection and deposit of fees; and promulgation of rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-50a. Wildlife damage control agents; licensing.

1 The director may issue a license to a person to act as a
2 wildlife damage control agent. Unless otherwise prohibit-
3 ed by law, any person licensed as a wildlife damage con-
4 trol agent, acting pursuant to the license and subject to the
5 rules promulgated by the director, is authorized to take
6 and dispose of wildlife found by the wildlife damage con-
7 trol agent to be creating a nuisance in or around homes,
8 businesses and other places where the presence of wildlife

9 may be a nuisance. The director is authorized to impose
10 and collect fees when issuing this license and the fees shall
11 be deposited in the nongame wildlife fund. The director
12 shall promulgate rules, pursuant to article three, chapter
13 twenty-nine-a of this code, governing the issuance and use
14 of the license and setting fees.

CHAPTER 190

(Com. Sub. for S. B. 447—By Senators Yoder, Ross, Dittmar and Grubb)

[Passed March 9, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twelve, relating generally to the creation, conveyance, acceptance, duration and validity of conservation and preservation easements; creating the "Conservation and Preservation Easements Act"; defining the purpose of such act; defining the terms used in the act; outlining the procedure for the creation and transfer of conservation and preservation easements; describing who may bring judicial actions; actions the court may take with regard to certain easements; grounds for the validity of the easements; the applicability of the article; and the construction of the article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. CONSERVATION AND PRESERVATION EASEMENTS.

§20-12-1. Short title.

§20-12-2. Purpose of article.

§20-12-3. Definitions.

§20-12-4. Creation, transfer and duration.

§20-12-5. Judicial and related actions.

§20-12-6. Validity.

§20-12-7. Applicability.

§20-12-8. Uniformity of application and construction.

§20-12-1. Short title.

1 This article shall be known and may be cited as the
2 "Conservation and Preservation Easements Act".

§20-12-2. Purpose of article.

1 The West Virginia Legislature recognizes the impor-
2 tance and significant public benefit of conservation and
3 preservation easements in its ongoing efforts to protect the
4 natural, historic, agricultural, open-space and scenic re-
5 sources of this state.

§20-12-3. Definitions.

1 The following words and phrases when used in this
2 article have the meanings given to them in this section
3 unless the context clearly indicates otherwise:

4 (a) "Conservation easement" means a nonpossessory
5 interest of a holder in real property, whether appurtenant
6 or in gross, imposing limitations or affirmative obligations,
7 the purposes of which include, but are not limited to, re-
8 taining or protecting for the public benefit the natural,
9 scenic or open-space values of real property; assuring its
10 availability for agricultural, forest, recreational or
11 open-space use; protecting natural resources and wildlife;
12 maintaining or enhancing land, air or water quality; or
13 preserving the historical, architectural, archaeological or
14 cultural aspects of real property.

15 (b) "Holder" means:

16 (1) A governmental body empowered to hold an inter-
17 est in real property under the laws of this state or the Unit-
18 ed States.

19 (2) A charitable corporation, charitable association or
20 charitable trust registered with the secretary of state and
21 exempt from taxation pursuant to Section 501(c)(3) of the
22 Internal Revenue Code of 1986 (Public Law 99-514, 26
23 U.S.C. Section 501(c)(3), or other federal or state statutes
24 or rules, the purposes or powers of which include retaining
25 or protecting the natural, scenic, agricultural or
26 open-space values of real property; assuring the availabili-
27 ty of real property for agricultural, forest, recreational or
28 open-space use; protecting natural resources and wildlife;
29 maintaining or enhancing land, air or water quality; or
30 preserving the historical, architectural, archaeological or
31 cultural aspects of real property.

32 (c) "Preservation easement" means a nonpossessory
33 interest in an historical building.

34 (d) "Third-party right of enforcement" means a right
35 provided in a conservation or preservation easement, in
36 order to enforce any of its terms, granted to a governmen-
37 tal body, charitable corporation, charitable association or
38 charitable trust, which, although eligible to be a holder, is
39 not a holder.

§20-12-4. Creation, transfer and duration.

1 (a) Except as otherwise provided in this article, a con-
2 servation or preservation easement may be created, con-
3 veyed, recorded, assigned, released, modified, terminated
4 or otherwise altered or affected in the same manner as
5 other easements.

6 (b) No right or duty of a holder, successive holder
7 named in the easement deed or person having a
8 third-party right of enforcement arises under a conserva-
9 tion or preservation easement before the easement's accep-
10 tance by the holder, successive holder or third party with
11 right of enforcement and a recordation of the acceptance.

12 (c) Except as provided in subsection (b), section five
13 of this article, a conservation or preservation easement
14 created after the effective date of this article may be per-

15 petual in duration, but in no event shall be for a duration
16 of less than twenty-five years.

17 (d) An interest in real property in existence at the time
18 a conservation or preservation easement is created, includ-
19 ing an unrecorded lease for the production of minerals or
20 removal of timber, shall not be impaired unless the owner
21 of such interest is a party to the easement or expressly
22 consents to comply with the restriction of such easement.

§20-12-5. Judicial and related actions.

1 (a) An action affecting a conservation or preservation
2 easement may be brought by any of the following:

3 (1) An owner of an interest in the real property bur-
4 dened by the easement;

5 (2) A holder of the easement;

6 (3) A person having a third-party right of enforce-
7 ment; or

8 (4) A person, agency or entity otherwise authorized by
9 state or federal law.

10 (b) This article does not affect the power of a court to
11 modify or terminate a conservation or preservation ease-
12 ment in accordance with the principles of law and equity
13 consistent with the public policy of this article as stated
14 under section two of this article, when the easement is
15 broadly construed to effect that policy. Notwithstanding
16 provision of law to the contrary, conservation and preser-
17 vation easements shall be liberally construed in favor of
18 the grants contained therein to effect the purposes of those
19 easements and the policy and purpose of this article.

20 (c) A holder, governmental entity or other person may
21 not exercise the right of eminent domain or the power of
22 condemnation to acquire a conservation easement without
23 condemning or exercising the right of eminent domain as
24 to the entire fee interest of the property: *Provided*, That
25 any public utility regulated pursuant to the provisions of

26 chapter twenty-four of this code or any public service
27 enterprise subject to the provisions of the Natural Gas Act,
28 title XV, United States Code, Section 717, et seq., or the
29 Federal Power Act, title XV, United States Code, Section
30 794a, et seq., or any successor statute for the regulation of
31 public utility or public service business, may condemn
32 land or an interest in land subject to a conservation or
33 preservation easement for any purpose authorized by the
34 governing regulatory statute or by the administrative
35 agency established under the statute. Nothing in this arti-
36 cle may be construed to limit the lawful exercise of the
37 right of eminent domain or the power of condemnation
38 by any person or entity having such power, or the right of
39 any real property owner to compensation by reason of the
40 lawful exercise of such right of eminent domain or power
41 of condemnation for any estate or interest in real property
42 except a conservation or preservation easement authorized
43 by this article.

§20-12-6. Validity.

1 (a) A conservation or preservation easement is valid
2 even though:

3 (1) It is not appurtenant to an interest in real property;

4 (2) It can be or has been assigned to another holder;

5 (3) It is not of a character that has been recognized
6 traditionally as common law;

7 (4) It imposes a negative burden;

8 (5) It imposes affirmative obligations upon the owner
9 of an interest in the burdened property or upon the hold-
10 er;

11 (6) The benefit does not touch or concern real proper-
12 ty; or

13 (7) There is no privity of estate or of contract.

14 (b) To be enforceable under the provisions of this
15 article, a conservation or preservation easement shall be

16 recorded within sixty days of the effective date of the
17 easement. Upon proper recording, the provisions of this
18 article apply retroactively to the effective date of the ease-
19 ment.

§20-12-7. Applicability.

1 (a) This article applies to any interest created after the
2 effective date of this article, whether designated as a con-
3 servation or preservation easement or as a covenant, equi-
4 table servitude, restriction, easement or otherwise.

5 (b) This article applies to any interest created before
6 the effective date when the interest would have been en-
7 forceable had it been created after its effective date, unless
8 retroactive application contravenes the constitution or laws
9 of the United States or of this state. No conservation ease-
10 ment or preservation easement created prior to the effec-
11 tive date of this article may be invalidated by reason of the
12 enactment of this article when the conservation easement
13 or preservation easement was valid under the law in effect
14 at the time of its creation.

15 (c) This article does not invalidate any interest, wheth-
16 er designated as a conservation or preservation easement
17 or as a covenant, equitable servitude, restriction, easement
18 or otherwise, that is enforceable under another law of this
19 state.

§20-12-8. Uniformity of application and construction.

1 This article shall be applied and construed to effectu-
2 ate its general purpose to make uniform the laws with
3 respect to the subject of this article among states enacting
4 similar laws. Except as expressly otherwise provided,
5 nothing contained in this article is intended to be con-
6 strued to alter applicable established common law. In a
7 manner consistent with common law, the granting of a
8 conservation or preservation easement shall not subse-
9 quently restrict the right of the fee owner to further grant
10 any other interest in real property to any person or entity
11 when the grant does not materially impair the prior con-

12 servation or preservation easement. When a fee holder
 13 grants an interest beyond the conservation or preservation
 14 easement, he shall notify the holder of any conservation or
 15 preservation easement at least forty-five days prior to the
 16 execution of any subsequent easement or any other con-
 17 veyance of an interest in land encompassed by the conser-
 18 vation or preservation easement.

CHAPTER 191

(S. B. 13—By Senators Dittmar, Anderson and Whitlow)

[Passed February 13, 1995; 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 seventeen-a, relating to the division of natural resources; mandating the director to waive the fee for use of picnic shelters or cabins in a state recreation area for an individual or group donating materials and labor for the construction of a shelter or cabin; limiting the waiver so that it does not exceed the value of materials and labor donated; providing that this waiver shall be both prospective and retroactive; and requiring the director to promulgate a legislative rule.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF PARKS AND RECREATION.

***§5B-1-17a. Free use of picnic shelters and cabins in state recreation areas.**

1 The director of the division of natural resources shall
 2 waive the use fee normally charged to an individual or
 3 group for one day's use of a picnic shelter or one week's
 4 use of a cabin in a state recreation area when the individu-
 5 al or group donates the materials and labor for the con-

*Clerk's Note: This section was repealed by the repeal of article one in S.B. 33 (Ch. 192). However, the provisions were recodified and now appear as §20-5-2 in the same act.

6 construction of such picnic shelter or cabin: *Provided*, That
7 the individual or group was authorized by the director to
8 construct the picnic shelter or cabin and that it was con-
9 structed in accordance with the authorization granted and
10 the standards and requirements of the division pertaining
11 to such construction.

12 The individual or group to whom the waiver is granted
13 may use the picnic shelter for one reserved day or the
14 cabin for one reserved week during each calendar year
15 until the amount of the donation equals the amount of the
16 loss of revenue from the waiver or until the individual dies
17 or the group ceases to exist, whichever first occurs. The
18 waiver is not transferable. The director shall permit free
19 use of picnic shelters or cabins to individuals or groups
20 who have contributed materials and labor for construction
21 of picnic shelters or cabins prior to the effective date of
22 this section. The director shall promulgate a legislative
23 rule in accordance with the provisions of chapter
24 twenty-nine-a of this code governing the free use of picnic
25 shelters or cabins provided for in this section, the eligibili-
26 ty for such free use, determining the value of the dona-
27 tions of labor and materials, the appropriate definitions of
28 a group and the maximum time limit for such use.

CHAPTER 192

(Com. Sub. for S. B. 33—By Senators Tomblin, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT to repeal article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, four and five, article one-a of said chapter; to amend and reenact section two,

article two of said chapter; to further amend said article by adding thereto six new sections, designated sections eight through thirteen, inclusive; and to amend chapter twenty of said code by adding thereto a new article, designated article five, all relating to recodifying the laws relating to the tourism functions of the former division of tourism and parks and the transfer by executive order of state parks, state recreation areas and wildlife recreation areas to the division of natural resources; transferring responsibility for development of any additional rails-to-trails to the state rail authority; changing composition of the council for community and economic development and clarifying office of director; continuing the tourism functions of the former division of tourism and parks within the West Virginia development office; creating a new tourism commission, composed of both private-sector and public-sector members, to govern the activities of the division of tourism; authorizing the formation of a nonprofit private corporation whose directors may include members of the tourism commission; authorizing the combining of public and private funds for use in the promotion and development of tourism in West Virginia; requiring the tourism commission to develop a comprehensive tourism promotion and development strategy and to consider various tourism initiatives and to make recommendations on the same; requiring legislative rules and permitting procedural rules for application forms and instructions; providing for expenditure of the tourism promotion fund for advertising and promotion; recodifying provisions relating to state parks and recreation areas within the division of natural resources; jurisdiction of section of parks and recreation and appointment of chief; continuation of contracts and ratification of funds transfer; the powers of the director; procedures for land acquisitions, sales, exchanges, transfers and contracts and authority of the director relating thereto; authorizing director to approve expenditures for advertising of state facilities; allowing waiver of certain fees; providing market for West Virginia products; continuing telemarketing functions within the division of natural resources; continuation of

operation and protection of various parks and recreation areas within the parks and recreation section, including the Greenbrier river trail and the North Bend rail trail; continuation of bonding authority as a power of the director; tax exemption; authorizing director to enter into contracts of twenty-five years for recreational facilities in certain parks and limitations on that authority; and continuation of discounts.

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 repealed; that sections two, four and five, article one-a of said chapter be amended and reenacted; that section two, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto six new sections, designated sections eight through thirteen, inclusive; and that chapter twenty of said code be amended by adding thereto a new article, designated article five, all to read as follows:

Chapter

5B. Economic Development Act of 1985.

20. Natural Resources.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

Article

1A. West Virginia Rails to Trails Program.

2. West Virginia Development Office.

ARTICLE 1A. WEST VIRGINIA RAILS TO TRAILS PROGRAM.

§5B-1A-2. Rails to trails program.

§5B-1A-4. Powers and duties of the authority.

§5B-1A-5. Powers to hold and acquire real property.

§5B-1A-2. Rails to trails program.

- 1 There is continued within the state rail authority pro-
- 2 vided for in article eighteen, chapter twenty-nine of this
- 3 code the "West Virginia Rails to Trails Program", the pur-
- 4 pose of which is to acquire or assist with the acquisition of,

5 and to develop or assist with the development of, aban-
6 doned railroad rights-of-way for interim use as public
7 nonmotorized recreational trails.

§5B-1A-4. Powers and duties of the authority.

1 The state rail authority is authorized to:

2 (1) Enter into agreements with any person on behalf
3 of the state to acquire an interest in any abandoned rail-
4 road right-of-way, to develop, maintain or promote any
5 rail trails created pursuant to the provisions of this article
6 and, with the consent of the director of the division of
7 natural resources, to transfer the maintenance and opera-
8 tion of rail trails created and developed to the division of
9 natural resources.

10 (2) Assist any political subdivision or any person in
11 acquiring an interest in any abandoned railroad
12 right-of-way and in developing, maintaining or promoting
13 rail trails.

14 (3) Evaluate existing and potential abandoned railroad
15 rights-of-way so as to identify such lands as may be suit-
16 able for nonmotorized recreational trail use.

17 (4) Establish state rail trails, subject to the limitations
18 on acquisition of land for state recreational facilities as set
19 forth in section twenty, article one, chapter twenty of this
20 code.

§5B-1A-5. Powers to hold and acquire real property.

1 (a) The state rail authority shall hold fee simple title or
2 any lesser interest in land, including easements and lease-
3 holds, on all abandoned railroad rights-of-way acquired
4 by the state and utilized for interim nonmotorized recre-
5 ational trail use pursuant to the provisions of this article.
6 The state rail authority may, at the option of a political
7 subdivision of this state, hold fee simple title or any lesser
8 interest in land, including easements and leaseholds, on all
9 abandoned railroad rights-of-way acquired by such politi-
10 cal subdivision and utilized for interim nonmotorized

11 recreational trail use. Any provision of article one-a,
12 chapter twenty of this code to the contrary notwithstanding,
13 ing, the public land corporation shall not be vested with
14 title to any abandoned railroad right-of-way which be-
15 comes vested in the state pursuant to the provisions of this
16 article.

17 (b) The state rail authority may acquire an interest in
18 an abandoned railroad right-of-way to be used as a rail
19 trail, in accordance with the provisions of section six, arti-
20 cle eighteen, chapter twenty-nine of this code.

21 (c) The state rail authority shall issue a rail bank certif-
22 icate for each abandoned railroad right-of-way held by
23 the state rail authority for interim nonmotorized recre-
24 ational purposes in accordance with the provisions of
25 section six of this article.

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-2. Council for community and economic development created; mem-
bers, appointment and expenses; meetings; appointment and
compensation of director.

§5B-2-8. Tourism commission created; members, appointment and expens-
es.

§5B-2-9. Powers and duties of tourism commission.

§5B-2-10. Program and policy action statement; submission to joint com-
mittee on government and finance.

§5B-2-11. Public private partnerships.

§5B-2-12. Tourism promotion fund created; use of funds.

§5B-2-13. Sunset provision.

**§5B-2-2. Council for community and economic development
created; members, appointment and expenses;
meetings; appointment and compensation of di-
rector.**

1 (a) There is hereby continued within the West Virginia
2 development office a council for community and eco-
3 nomic development, which is a body corporate and politic,
4 constituting a public corporation and government instru-
5 mentality. Membership on the council shall consist of:

6 (1) Nine members to be appointed by the governor,

7 with the advice and consent of the Senate, representing
8 community or regional interests, including economic
9 development, commerce, banking, manufacturing, the
10 utility industry, the mining industry, the telecommunica-
11 tions/data processing industry, small business, labor, tour-
12 ism or agriculture: *Provided*, That one member appointed
13 pursuant to this subsection shall be a member of a region-
14 al planning and development council. Of the nine mem-
15 bers representing community or regional interests, three
16 members shall be from each congressional district of the
17 state and shall be appointed in such a manner as to pro-
18 vide a broad geographical distribution of members of the
19 council;

20 (2) Two at-large members to be appointed by the
21 governor with the advice and consent of the Senate;

22 (3) One member to be appointed by the governor
23 from a list of two persons recommended by the speaker of
24 the House of Delegates;

25 (4) One member to be appointed by the governor
26 from a list of two persons recommended by the president
27 of the Senate;

28 (5) The president of the West Virginia economic de-
29 velopment council; and

30 (6) The chair of the tourism commission created pur-
31 suant to the provisions of section eight of this article.

32 (b) Not later than the first day of July, one thousand
33 nine hundred ninety-two, the governor shall appoint the
34 thirteen appointed members of the council for staggered
35 terms. The terms of the board members first taking office
36 on or after the effective date of this legislation shall expire
37 as designated by the governor at the time of the nomina-
38 tion, three at the end of the first year, three at the end of
39 the second year, three at the end of the third year and four
40 at the end of the fourth year, after the first day of July,
41 one thousand nine hundred ninety-two. As these original
42 appointments expire, each subsequent appointment shall

43 be for a full four-year term. Any member whose term has
44 expired shall serve until his successor has been duly ap-
45 pointed and qualified. Any person appointed to fill a
46 vacancy shall serve only for the unexpired term. Any
47 member shall be eligible for reappointment. In cases of
48 any vacancy in the office of a member, such vacancy shall
49 be filled by the governor in the same manner as the origi-
50 nal appointment.

51 (c) Members of the council shall not be entitled to
52 compensation for services performed as members, but
53 shall be entitled to reimbursement for all reasonable and
54 necessary expenses actually incurred in the performance
55 of their duties. A majority of the members shall constitute
56 a quorum for the purpose of conducting business. The
57 council shall elect its chair for a term to run concurrent
58 with the term of office of the member elected as chair.
59 The chair is eligible for successive terms in that position.

60 (d) The council shall employ an executive director of
61 the West Virginia development office by reason of exten-
62 sive education and experience in the field of professional
63 economic development to serve at the will and pleasure of
64 the council. The salary of the director shall be fixed by
65 the council. The director shall have overall management
66 responsibility and administrative control and supervision
67 within the West Virginia development office. It is the
68 intention of the Legislature that the director shall provide
69 professional and technical expertise in the field of profes-
70 sional economic and tourism development in order to
71 support the policy-making functions of the council, but
72 that the director is not a public officer, agent, servant or
73 contractor within the meaning of section thirty-eight, arti-
74 cle VI of the constitution of the state and is not a statutory
75 officer within the meaning of section one, article two,
76 chapter five-f of this code. Subject to the provisions of
77 the contract provided for in section four of this article, the
78 director is authorized to hire and fire economic develop-
79 ment representatives employed pursuant to the provisions
80 of section five of this article.

§5B-2-8. Tourism commission created; members, appointment and expenses.

1 (a) There is hereby created within the West Virginia
2 development office an independent tourism commission,
3 which is a body corporate and politic, constituting a public
4 corporation and government instrumentality. Membership
5 on the council shall consist of nine members:

6 (1) Six members to be appointed by the governor,
7 with the advice and consent of the Senate, representing
8 private-sector participants in the state's tourism industry.
9 Of the six members so appointed, one shall represent a
10 convention and visitors bureau and another shall be a
11 member of a convention and visitors bureau. In making
12 the private-sector appointments the governor may select
13 from a list provided by the West Virginia hospitality and
14 travel association of qualified applicants. Of the six
15 private-sector members so appointed, no more than two
16 shall be from each congressional district within the state
17 and shall be appointed to provide the broadest geographic
18 distribution which is feasible;

19 (2) One member to be appointed by the governor
20 from the membership of the council for community and
21 economic development created pursuant to the provisions
22 of section two of this article;

23 (3) One member to be appointed by the governor to
24 represent public sector nonstate participants in the tourism
25 industry within the state; and

26 (4) The secretary of transportation or his or her
27 designee, ex officio.

28 (b) Not later than thirty days from the date of enact-
29 ment of this article, the governor shall appoint the eight
30 appointed members of the commission to terms of four
31 years, to assume the duties of the office and to meet at the
32 call of the chair not later than the first day of July, one
33 thousand nine hundred ninety-five. The terms of the
34 initial members of the commission shall be staggered such

35 that the governor shall designate three members who shall
36 serve for a term of two years, three members who shall
37 serve for a term of three years and two members who shall
38 serve for a full term of four years. Each subsequent ap-
39 pointment of a member upon the expiration of the desig-
40 nated terms shall serve a term of four years. Any member
41 whose term has expired shall serve until his or her succes-
42 sor has been appointed. Any person appointed to fill a
43 vacancy shall serve only for the unexpired term. Any
44 member shall be eligible for reappointment. In cases of
45 vacancy in the office of member, such vacancy shall be
46 filled by the governor in the same manner as the original
47 appointment.

48 (c) Members of the commission shall not be entitled to
49 compensation for services performed as members. A
50 majority of these members shall constitute a quorum for
51 the purpose of conducting business. The governor shall
52 appoint a chair of the commission for a term to run con-
53 current with the term of the office of the member appoint-
54 ed to be the chair. The chair is eligible for successive
55 terms in that position.

§5B-2-9. Powers and duties of tourism commission.

1 (a) The commission shall develop a comprehensive
2 tourism promotion and development strategy for West
3 Virginia. "Comprehensive tourism promotion and devel-
4 opment strategy" means a plan that outlines strategies and
5 activities designed to continue, diversify or expand the
6 tourism base of the state as a whole; create tourism jobs;
7 develop a highly skilled tourism work force; facilitate
8 business access to capital for tourism; advertise and market
9 the resources offered by the state with respect to tourism
10 promotion and development; facilitate cooperation among
11 local, regional and private tourism enterprises; improve
12 infrastructure on a state, regional and community level in
13 order to facilitate tourism development; improve the tour-
14 ism business climate generally; and leverage funding from
15 sources other than the state, including local, federal and
16 private sources.

17 (b) In developing its strategies, the commission shall
18 consider the following:

19 (1) Improvement and expansion of existing tourism
20 marketing and promotion activities;

21 (2) Promotion of cooperation among municipalities,
22 counties, and the West Virginia infrastructure and jobs
23 development council in funding physical infrastructure to
24 enhance the potential for tourism development.

25 (c) The tourism commission shall have the power and
26 duty:

27 (1) To acquire for the state in the name of the com-
28 mission by purchase, lease or agreement, or accept or
29 reject for the state, in the name of the commission, gifts,
30 donations, contributions, bequests or devises of money,
31 security or property, both real and personal, and any inter-
32 est in such property, to effectuate or support the purposes
33 of this article;

34 (2) To make recommendations to the governor and
35 the Legislature of any legislation deemed necessary to
36 facilitate the carrying out of any of the foregoing powers
37 and duties and to exercise any other power that may be
38 necessary or proper for the orderly conduct of the busi-
39 ness of the commission and the effective discharge of the
40 duties of the commission;

41 (3) To cooperate and assist in the production of mo-
42 tion pictures and television and other communications;

43 (4) To purchase advertising time or space in or upon
44 any medium generally engaged or employed for said
45 purpose to advertise and market the resources of the state
46 or to inform the public at large or any specifically target-
47 ed group or industry about the benefits of living in, invest-
48 ing in, producing in, buying from, contracting with, or in
49 any other way related to, the state of West Virginia or any
50 business, industry, agency, institution or other entity there-
51 in: *Provided*, That of any funds appropriated and allocat-
52 ed for purposes of advertising and marketing expenses for

53 the promotion and development of tourism, not less than
54 twenty percent of the funds shall be expended with the
55 approval of the director of the division of natural resourc-
56 es to advertise, promote and market state parks, state for-
57 ests, state recreation areas and wildlife recreational re-
58 sources; and

59 (5) To take such additional actions as may be neces-
60 sary to carry out the duties and programs described in this
61 article.

62 (d) The commission shall submit a report annually to
63 the council for community and economic development
64 about the development of the tourism industry in the state
65 and the necessary funding required by the state to contin-
66 ue the development of the tourism industry.

67 (e) The executive director of the West Virginia devel-
68 opment office shall assist the commission in the perfor-
69 mance of its powers and duties and the executive director
70 is hereby authorized in providing this assistance to employ
71 necessary personnel, contract with professional or techni-
72 cal experts or consultants and to purchase or contract for
73 the necessary equipment or supplies.

74 (f) The commission shall promulgate legislative rules
75 pursuant to the provisions of chapter twenty-nine-a of this
76 code to carry out its purposes and programs, to include
77 generally the programs available, the procedure and eligi-
78 bility of applications relating to assistance under such
79 programs and the staff structure necessary to support such
80 programs, which structure shall include the qualifications
81 for a professional staff person qualified by reason of ex-
82 ceptional training and experience in the field of advertis-
83 ing to supervise the advertising and promotion functions
84 of the commission, and shall further include provision for
85 the management of West Virginia welcome centers. The
86 commission is further authorized to promulgate procedur-
87 al rules pursuant to said chapter to include instructions
88 and forms for applications relating to assistance.

**§5B-2-10. Program and policy action statement; submission to
joint committee on government and finance.**

1 The tourism commission, the West Virginia develop-
2 ment office and any other authorities, boards, commis-
3 sions, corporations or other entities created or amended
4 under this chapter and article eleven, chapter eighteen-b of
5 this code, shall prepare and submit to the joint committee
6 on government and finance on or before the first day of
7 December, one thousand nine hundred ninety-five, and
8 each year thereafter, a program and policy action state-
9 ment which shall outline in specific detail according to the
10 purpose, powers and duties of the office or section, its
11 procedure, plan and program to be used in accomplishing
12 its goals and duties as required under this article.

§5B-2-11. Public private partnerships.

1 (a) The commission is authorized to enter into con-
2 tractual or joint venture agreements with a nonprofit cor-
3 poration organized pursuant to the corporate laws of the
4 state, organized to permit qualification pursuant to Section
5 501(c) of the Internal Revenue Code and organized for
6 purposes of the promotion and development of tourism in
7 West Virginia, and funded from sources other than the
8 state. Members of the commission are authorized to sit on
9 the board of directors of the private nonprofit corpora-
10 tion.

11 (b) From time to time the commission may enter into
12 joint ventures wherein the West Virginia development
13 office and the nonprofit corporation share in the develop-
14 ment and funding of tourism promotion or development
15 programs.

16 (c) All contracts and joint venture agreements must be
17 approved by recorded vote of the commission. Contracts
18 entered into pursuant to this section for longer than one
19 fiscal year shall contain, in substance, a provision that the
20 contract shall be considered canceled without further obli-
21 gation on the part of the state if the Legislature or, where
22 appropriate, the federal government shall fail to appropri-
23 ate sufficient funds therefor or shall act to impair the con-
24 tract or cause it to be canceled.

§5B-2-12. Tourism promotion fund created; use of funds.

1 There is hereby continued in the state treasury the
2 special revenue fund known as the "tourism promotion
3 fund" created under prior enactment of section nine, arti-
4 cle one of this chapter.

5 (a) A minimum of five percent of the moneys deposit-
6 ed in the fund each year shall be used solely for direct
7 advertising for West Virginia travel and tourism: *Provided,*
8 That no less than twenty percent of these funds be ex-
9 pended with the approval of the director of the division of
10 natural resources to effectively promote and market the
11 state's parks, state forests, state recreation areas and wildlife
12 recreational resources. Direct advertising means advertis-
13 ing which is limited to television, radio, mailings, newspa-
14 per, magazines and outdoor billboards, or any combina-
15 tion thereof;

16 (b) The balance of the moneys deposited in the fund
17 shall be used for direct advertising within the state's travel
18 regions as defined by the commission. The funds shall be
19 made available to these districts beginning the first day of
20 July, one thousand nine hundred ninety-five, according to
21 legislative rules promulgated by the tourism commission:
22 *Provided,* That emergency rules for the distribution of
23 funds for the fiscal year ending the thirtieth day of June,
24 one thousand nine hundred ninety-six, are specifically
25 authorized; and

26 (c) All advertising expenditures over twenty-five thou-
27 sand dollars from the tourism promotion fund require
28 prior approval by recorded vote of the commission.

§5B-2-13. Sunset provision.

1 Unless sooner terminated by law, the tourism commis-
2 sion shall terminate on the first day of July, one thousand
3 nine hundred ninety-seven, in accordance with the provi-
4 sions of article ten, chapter four of this code.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 5. PARKS AND RECREATION.

- §20-5-1. Section of parks and recreation; chief of section; existing obligation; appropriations.
- §20-5-2. Powers of the director with respect to the section of parks and recreation.
- §20-5-3. Section of parks and recreation; purpose; powers and duties generally.
- §20-5-4. Definitions; state parks and recreation system.
- §20-5-5. Authority of director to issue park development revenue bonds; grants and gifts.
- §20-5-6. Tax exemption.
- §20-5-7. Investment in notes, bonds and security interests.
- §20-5-8. Disclaimer of any liability of state of West Virginia.
- §20-5-9. Trustee for holders of park development revenue bonds.
- §20-5-10. Proceeds of park development revenue bonds, grants and gifts.
- §20-5-11. Authority of director to pledge revenue from recreational facilities as security.
- §20-5-12. Management and control of project.
- §20-5-13. Provisions of constitution and law observed; what approval required.
- §20-5-14. Restaurants and other facilities.
- §20-5-15. Contracts for operation of commissaries, restaurants, recreational facilities and other establishments limited to ten years' duration; renewal at option of director; termination of contract by the director; necessity for prior legislative approval before certain lodge, cabin, camping, golf facility, including pro shop operations, ski facility or gift shop facilities are placed under contract.
- §20-5-16. Authority to enter into contracts with third parties to construct lodge facilities.
- §20-5-17. Correlation of projects and services.
- §20-5-18. Discounts for West Virginia residents over the age of sixty-two.
- §20-5-19. Discounts for West Virginia residents who are totally and permanently disabled.
- §20-5-1. Section of parks and recreation; chief of section; existing obligation; appropriations.**

- 1 (a) The section of parks and recreation of the division
2 of natural resources shall have within its jurisdiction and
3 supervision the parks functions of the former division of
4 tourism and parks, transferred to the division of natural
5 resources pursuant to the provisions of section twelve,

6 article one, chapter five-b of this code enacted in the year
7 one thousand nine hundred ninety-four. The section of
8 parks and recreation shall be under the control of a chief,
9 to be appointed by and to serve at the will and pleasure of
10 the director, who shall be qualified by reason of excep-
11 tional training and experience in the field of public recre-
12 ation administration or natural resource management.

13 (b) The division of natural resources shall have the
14 duty and authority to administer those properties which
15 are a part of the state parks and public recreation system,
16 to which legal title has remained with the division of natu-
17 ral resources, while the section of parks and recreation was
18 part of the former division of tourism and parks.

19 (c) All existing contracts and obligations of the section
20 of parks and recreation, including those in the name of the
21 division of tourism and parks administered on behalf of
22 the section of parks and recreation, shall remain in full
23 force and effect and any existing contracts and obligations
24 relating to parks and recreation shall be performed by the
25 division of natural resources.

26 (d) The transfer, made pursuant to executive order, to
27 the division of natural resources of the unexpended bal-
28 ance existing on the thirtieth day of June, one thousand
29 nine hundred ninety-five, in any appropriation originally
30 made to the division of tourism and parks is hereby rati-
31 fied.

**§20-5-2. Powers of the director with respect to the section of
parks and recreation.**

1 The director of the division of natural resources shall
2 be responsible for the execution and administration of the
3 provisions herein as an integral part of the parks and rec-
4 reation program of the state and shall organize and staff
5 the section of parks and recreation for the orderly, effi-
6 cient and economical accomplishment of these ends. The
7 authority granted in the year one thousand nine hundred
8 ninety-four to the director of the division of natural re-
9 sources to employ up to six additional unclassified per-

10 sonnel to carry out the parks functions of the division of
11 natural resources is continued.

12 The director of the division of natural resources shall
13 further have the authority, power and duty to:

14 (a) Establish, manage and maintain the state's parks
15 and recreation system for the benefit of the people of this
16 state and do all things necessary and incidental to the
17 development and administration thereof;

18 (b) Acquire property for the state in the name of the
19 division of natural resources by purchase, lease or agree-
20 ment; retain, employ and contract with legal advisors and
21 consultants; or accept or reject for the state, in the name of
22 the division, gifts, donations, contributions, bequests or
23 devises of money, security or property, both real and per-
24 sonal, and any interest in such property, including lands
25 and waters, for state park or recreational areas for the
26 purpose of providing public recreation: *Provided*, That
27 the provisions of section twenty, article one of this chapter
28 are specifically made applicable to any acquisitions of
29 land: *Provided, however*, That any sale, exchange or trans-
30 fer of property for the purposes of completing land acqui-
31 sitions or providing improved recreational opportunities to
32 the citizens of the state shall be subject to the procedures
33 of article one-a of this chapter: *Provided further*, That no
34 sale of any park or recreational area property, including
35 lands and waters, used for purposes of providing public
36 recreation on the effective date of this article and no pri-
37 vatization of any park may occur without statutory author-
38 ity;

39 (c) Approve and direct the use of all revenue derived
40 from the operation of the state parks and public recreation
41 system for the operation, maintenance and improvement
42 of the system, individual projects of the system or for the
43 retirement of park development revenue bonds;

44 (d) Approve the use of no less than twenty percent of
45 the: (i) Funds appropriated for purposes of advertising
46 and marketing expenses related to the promotion and

47 development of tourism, pursuant to subsection (j), section
48 eighteen, article twenty-two, chapter twenty-nine of this
49 code; and (ii) funds authorized for expenditure from the
50 tourism promotion fund for purposes of direct advertising,
51 pursuant to section twelve, article two, chapter five-b of
52 this code and section ten, article twenty-two-a, chapter
53 twenty-nine of this code, to effectively promote and mar-
54 ket the state's parks, state forests, state recreation areas and
55 wildlife recreational resources;

56 (e) Issue park development revenue bonds as provided
57 in this article;

58 (f) Provide for the construction and operation of cab-
59 ins, lodges, resorts, restaurants and other developed recre-
60 ational service facilities, subject to the provisions of section
61 fifteen of this article and section twenty, article one of this
62 chapter;

63 (g) Promulgate rules to control uses of the parks, sub-
64 ject to the provisions of chapter twenty-nine-a of this
65 code: *Provided*, That the director shall not permit public
66 hunting, the exploitation of minerals or the harvesting of
67 timber for commercial purposes in any state park;

68 (h) Notwithstanding any provision of this code to the
69 contrary, the director may, for amounts less than two hun-
70 dred fifty dollars, exempt designated state parks from the
71 requirement that all payments must be deposited in a bank
72 within twenty-four hours;

73 (i) The director of the division of natural resources
74 shall waive the use fee normally charged to an individual
75 or group for one day's use of a picnic shelter or one
76 week's use of a cabin in a state recreation area when the
77 individual or group donates the materials and labor for the
78 construction of the picnic shelter or cabin: *Provided*, That
79 the individual or group was authorized by the director to
80 construct the picnic shelter or cabin and that it was con-
81 structed in accordance with the authorization granted and
82 the standards and requirements of the division pertaining
83 to such construction. The individual or group to whom the

84 waiver is granted may use the picnic shelter for one re-
85 served day or the cabin for one reserved week during each
86 calendar year until the amount of the donation equals the
87 amount of the loss of revenue from the waiver or until the
88 individual dies or the group ceases to exist, whichever first
89 occurs. The waiver is not transferable. The director shall
90 permit free use of picnic shelters or cabins to individuals
91 or groups who have contributed materials and labor for
92 construction of picnic shelters or cabins prior to the effec-
93 tive date of this section. The director shall promulgate a
94 legislative rule in accordance with the provisions of chap-
95 ter twenty-nine-a of this code governing the free use of
96 picnic shelters or cabins provided for in this section, the
97 eligibility for free use, determining the value of the dona-
98 tions of labor and materials, the appropriate definitions of
99 a group and the maximum time limit for such use;

100 (j) Provide within the parks a market for West Virginia
101 arts, crafts and products, which shall permit gift shops
102 within the parks to offer for sale items purchased on the
103 open market from local artists, artisans, craftsmen and
104 suppliers and local or regional crafts cooperatives; and

105 (k) Promote and disseminate information related to
106 the attractions of the state through the continued operation
107 of the state's telemarketing initiative, which is hereby trans-
108 ferred to the division of natural resources effective the first
109 day of July, one thousand nine hundred ninety-six, which
110 telemarketing initiative shall include a centralized reserva-
111 tion and information system for state parks and recre-
112 ational facilities.

§20-5-3. Section of parks and recreation; purpose; powers and duties generally.

1 The purposes of the section of parks and recreation
2 shall be to promote conservation by preserving and pro-
3 tecting natural areas of unique or exceptional scenic, sci-
4 entific, cultural, archaeological or historic significance and
5 to provide outdoor recreational opportunities for the citi-
6 zens of this state and its visitors. It shall be the duty of the

7 section of parks and recreation to have within its jurisdic-
8 tion and supervision:

9 (a) All state parks and recreation areas, including all
10 lodges, cabins, swimming pools, motorboating and all
11 other recreational facilities therein, except the roads here-
12 tofore transferred pursuant to section one, article four,
13 chapter seventeen of this code to the state road system and
14 to the responsibility of the commissioner of highways with
15 respect to the construction, reconstruction and mainte-
16 nance of the roads or any future roads for public usage on
17 publicly owned lands for future state parks, state forests
18 and public hunting and fishing areas;

19 (b) The authority and responsibility to do the neces-
20 sary cutting and planting of vegetation along road
21 rights-of-way in state parks and recreational areas;

22 (c) The administration of all laws and regulations
23 relating to the establishment, development, protection, use
24 and enjoyment of all state parks and state recreational
25 facilities consistent with the provisions of this article;

26 (d) The continued operation and maintenance of the
27 Berkeley Springs historical state park, in Morgan County,
28 as a state recreational facility, designated the Berkeley
29 Springs sanitarium under prior enactment of this code;

30 (e) The continued operation and maintenance of that
31 portion of Washington Carver camp in Fayette County
32 formerly incorporated within the boundaries of Babcock
33 state park;

34 (f) The continued operation and maintenance of
35 Camp Creek state park as a state recreational facility, for-
36 merly delineated according to section three, article one-a,
37 chapter nineteen of this code;

38 (g) The continued operation and maintenance of
39 Moncove Lake state park as a state recreational facility,
40 formerly delineated pursuant to enactment of section
41 thirteen, article one, chapter five-b of this code in the year
42 one thousand nine hundred ninety;

43 (h) The continued protection, operation and mainte-
44 nance of approximately seventy-five miles of right-of-way
45 along the former Greenbrier subdivision of the Chessie
46 railroad system between Caldwell in Greenbrier County
47 and Cass in Pocahontas County, designated the Greenbrier
48 river trail, including the protection of the trail from motor-
49 ized vehicular traffic and operation for the protection of
50 adjacent public and private property; and

51 (i) The continued protection, operation and mainte-
52 nance of approximately sixty and fifty-seven
53 one-hundredths miles of right-of-way of the CSX railway
54 system between Walker in Wood County and Wilsonburg
55 in Harrison County, designated the North Bend rail trail,
56 including the protection of the trail from motorized vehic-
57 ular traffic and operation for the protection of adjacent
58 public and private property.

§20-5-4. Definitions; state parks and recreation system.

1 As used in this article, unless the context clearly re-
2 quires otherwise:

3 "Bonds" shall mean bonds issued by the director.

4 "Cost of project" shall embrace the cost of construc-
5 tion, the cost of all land, property, material and labor
6 which are deemed essential thereto, cost of improvements,
7 financing charges, interest during construction and all
8 other expenses, including legal fees, trustees', engineers'
9 and architects' fees which are necessary or properly inci-
10 dental to the project.

11 "Project" shall be deemed to mean collectively the
12 acquisition of land, the construction of any buildings or
13 other works, together with incidental approaches, struc-
14 tures and facilities, reasonably necessary and useful in
15 order to provide new or improved recreational facilities.

16 "Recreational facilities" shall mean and embrace cab-
17 ins, lodges, swimming pools, golf courses, restaurants,
18 commissaries and other revenue producing facilities in
19 any state park.

20 "Rent or rental" shall include all moneys received for
21 the use of any recreational facility.

§20-5-5. Authority of director to issue park development revenue bonds; grants and gifts.

1 The director, with the approval of the governor, is
2 hereby empowered to raise the cost of any project, as
3 defined in this article, by the issuance of park develop-
4 ment revenue bonds of the state, the principal of and inter-
5 est on the bonds shall be payable solely from the special
6 fund herein provided for the payment. The bonds shall
7 be authorized by order of the director, approved by the
8 governor, which shall recite an estimate by the director of
9 the cost of the project, and shall provide for the issuance
10 of bonds in an amount sufficient, when sold as hereinafter
11 provided, to produce the cost, less the amount of any grant
12 or grants, gift or gifts received, or in the opinion of the
13 director expected to be received from the United States of
14 America or from any other source. The acceptance by the
15 director of any and all grants and gifts, whether in money
16 or in land, labor or materials, is hereby expressly autho-
17 rized. All bonds shall have and are hereby declared to
18 have all the qualities of negotiable instruments under the
19 provisions of article eight, chapter forty-six of this code.
20 The director shall have the power:

21 (a) To issue negotiable bonds, security interests or
22 notes and to provide for and secure the payment thereof
23 and to provide for the rights of the holders thereof and to
24 purchase, hold and dispose of any of its bonds, security
25 interests or notes.

26 (b) To sell, at public or private sale, any bond or other
27 negotiable instrument, security interests or obligation of
28 the director in any manner and upon such terms as the
29 director deems would best serve the purposes set forth
30 herein.

31 (c) To issue its bonds, security interests and notes
32 payable solely from the revenues or funds available to the
33 director therefor; and the director may issue its bonds,

34 security interests or notes in such principal amounts as it
35 shall deem necessary to provide funds for any purposes
36 herein including:

37 (i) The payment, funding or refunding of the princi-
38 pal of, interest on or redemption premiums on any bonds,
39 security interests or notes issued by it whether the bonds,
40 security interests, notes or interest to be funded or refund-
41 ed have or have not become due.

42 (ii) The establishment or increase of reserves to secure
43 or to pay bonds, security interests, notes or the interest
44 thereon and all other costs or expenses of the director
45 incident to and necessary or convenient to carry out its
46 purposes and powers. Any bonds, security interests or
47 notes may be additionally secured by a pledge of any
48 revenues, funds, assets or moneys of the special fund here-
49 in provided.

50 (d) To issue renewal notes, or security interests, to
51 issue bonds to pay notes or security interests and, whenev-
52 er it deems refunding expedient, to refund any bonds by
53 the issuance of new bonds, whether the bonds to be re-
54 funded have or have not matured except that no such
55 renewal notes shall be issued to mature more than ten
56 years from date of issuance of the notes renewed, and no
57 such refunding bonds shall be issued to mature more than
58 twenty-five years from the date of original issuance.

59 (e) To apply the proceeds from the sale of renewal
60 notes, security interests or refunding bonds to the pur-
61 chase, redemption or payment of the notes, security inter-
62 ests or bonds to be refunded.

63 (f) To accept gifts or grants or property, funds, securi-
64 ty interests, money, materials, labor, supplies or services
65 from the United States of America or from any govern-
66 mental unit or any person, firm or corporation and to
67 carry out the terms or provisions of, or make agreements
68 with respect to, or pledge, any gifts or grants and to do
69 any and all things necessary, useful, desirable or conve-
70 nient in connection with the procuring, acceptance or

71 disposition of gifts or grants.

72 (g) To the extent permitted under its contracts with the
73 holders of bonds, security interests or notes of the authori-
74 ty, to consent to any modification of the rate of interest,
75 time of payment of any installment of principal or interest,
76 security or any other term of any bond, security interest,
77 note or contract or agreement of any kind to which the
78 director is a party.

79 (h) The director shall determine the form of the
80 bonds, including coupons to be attached thereto to evi-
81 dence the right of interest payments, which bonds shall be
82 signed by the director, under the great seal of the state,
83 attested by the secretary of state and the coupons attached
84 thereto shall bear the facsimile signature of the director.
85 In case any of the officers whose signatures appear on
86 bonds or coupons shall cease to be officers before the
87 delivery of the bonds, the signatures shall nevertheless be
88 valid and sufficient for all purposes the same as if they
89 had remained in office until such delivery.

90 (i) The director shall fix the denominations of the
91 bonds, the principal and interest of which shall be payable
92 at the office of the treasurer of the state of West Virginia,
93 at the capitol of the state or, at the option of the holder, at
94 such other place to be named in the bonds in such medi-
95 um as may be determined by the director.

96 (j) The director may provide for the registration of the
97 bonds in the name of the owner as to principal alone, and
98 as to both principal and interest under such terms and
99 conditions as the director may determine, and shall sell the
100 bonds in such manner as he or she may determine to be
101 for the best interest of the state, taking into consideration
102 the financial responsibility of the purchaser and the terms
103 and conditions of the purchase and especially the avail-
104 ability of the proceeds of the bonds when required for
105 payment of the cost of the project.

106 (k) The proceeds of the bonds shall be used solely for
107 the payment of the cost of the project and shall be depos-

108 ited and withdrawn as provided by section thirteen-g of
109 this article, and under such further restrictions, if any, as
110 the director may provide.

111 (l) If the proceeds of such bonds, by error in calcula-
112 tion or otherwise, shall be less than the cost of the project,
113 additional bonds may in like manner be issued to provide
114 the amount of the deficiency and, unless otherwise provid-
115 ed for in the trust agreement hereinafter mentioned, shall
116 be deemed to be of the same issue and shall be entitled to
117 payment from the same fund without preference or priori-
118 ty as the bonds before issued.

119 (m) If the proceeds of bonds issued for the project
120 shall exceed the cost thereof, the surplus shall be paid into
121 a special fund to be established for payment of the princi-
122 pal and interest of the bonds as specified in the trust
123 agreement provided for in the following section. The
124 fund may be used for the purchase of any of the outstand-
125 ing bonds payable from such fund at the market price, but
126 not exceeding the price, if any, which bonds shall in the
127 same year be redeemable, and all bonds redeemed or
128 purchased shall forthwith be canceled and shall not again
129 be issued. Prior to the preparation of definitive bonds, the
130 director may, under like restrictions, issue temporary
131 bonds with or without coupons exchangeable for definiti-
132 tive bonds upon the issuance of the latter. The revenue
133 bonds may be issued without any other proceedings or the
134 happening of any other conditions or things than those
135 proceedings, conditions and things which are specified
136 and required herein or by the constitution of the state.

§20-5-6. Tax exemption.

1 The exercise of the powers granted to the director
2 herein will be in all respects for the benefit of the people
3 of the state, for the improvement of their health, safety,
4 convenience and welfare and for the enhancement of their
5 recreational opportunities and is a public purpose. As the
6 operation and maintenance of park development projects
7 will constitute the performance of essential government

8 functions, the director shall not be required to pay any
9 taxes or assessments upon any park development projects
10 or upon any property acquired or used by the director or
11 upon the income therefrom, other than taxes collected
12 from the consumer pursuant to article fifteen, chapter
13 eleven of this code. The bonds and notes and all interest
14 and income thereon shall be exempt from all taxation by
15 this state or any county, municipality, political subdivision
16 or agency thereof, except inheritance taxes.

§20-5-7. Investment in notes, bonds and security interests.

1 The notes, bonds and security interests of the director
2 are hereby made securities in which the state board of
3 investments, all insurance businesses, all banking institu-
4 tions, trust companies, building and loan associations,
5 savings and loan associations may invest and upon which
6 notes, security interests or bonds become subject to re-
7 demption plus accrued interest to such date. Upon the
8 purchase, the notes, security interests or bonds shall be
9 canceled.

§20-5-8. Disclaimer of any liability of state of West Virginia.

1 The state of West Virginia shall not be liable on notes,
2 security interests or bonds or other evidences of indebted-
3 ness of the director and the notes, security interests or
4 bonds or other evidence of indebtedness shall not be a
5 debt of the state of West Virginia and the notes, security
6 interests or bonds or other evidence of indebtedness shall
7 contain on the face thereof a statement to such effect.

§20-5-9. Trustee for holders of park development revenue bonds.

1 The director may enter into an agreement or agree-
2 ments with any trust company, or with any bank having
3 the powers of a trust company, either within or outside the
4 state, as trustee for the holders of bonds issued hereunder,
5 setting forth therein the duties of the state and of the di-
6 rector in respect to acquisition, construction, improvement,
7 maintenance, operation, repair and insurance of the pro-

8 ject, the conservation and application of all moneys, the
9 insurance of moneys on hand or on deposit and the rights
10 and remedies of the trustee and the holders of the bonds,
11 as may be agreed upon with the original purchasers of the
12 bonds, and including therein provisions restricting the
13 individual right of action of bondholders as is customary
14 in trust agreements respecting bonds and debentures of
15 corporations, protecting and enforcing the rights and
16 remedies of the trustee and the bondholders and providing
17 for approval by the original purchaser of the bonds of the
18 appointment of consulting architects, and of the security
19 given by those who contract to construct the project, and
20 by any bank or trust company in which the proceeds of
21 bonds or rentals shall be deposited, and for approval by
22 the consulting architects of all contracts for construction.
23 All expenses incurred in carrying out the agreement may
24 be treated as a part of the cost of maintenance, operation
25 and repair of the project.

§20-5-10. Proceeds of park development revenue bonds, grants and gifts.

1 The proceeds of all bonds sold for any park develop-
2 ment project and the proceeds of any grant or gift re-
3 ceived by the director for any project financed by the
4 issuance of park development revenue bonds shall be paid
5 to the treasurer of the state of West Virginia, who shall not
6 commingle the funds with any other moneys, but shall
7 deposit them in a separate bank account or accounts. The
8 moneys in the accounts shall be paid by the treasurer on
9 requisition of the director or any other person as the di-
10 rector may authorize to make such requisition. All depos-
11 its of the moneys shall, if required by the treasurer or the
12 director, be secured by obligation of the United States, of
13 the state of West Virginia, or of the director, of a market
14 value equal at all times to the amount of the deposit and
15 all banking institutions are authorized to give such depos-
16 its.

§20-5-11. Authority of director to pledge revenue from recreational facilities as security.

1 The director, with the approval of the governor, shall
2 have authority to pledge all revenue derived from any
3 project as security for any bonds issued to defray the cost
4 of the project. In any case in which the director may
5 deem it advisable, he or she shall also have the authority to
6 pledge the revenue derived from any existing recreational
7 facilities under his or her control, or any state park or
8 forest, as additional security for the payment of any bonds
9 issued under the provisions of this article to pay the cost
10 of any park development project.

§20-5-12. Management and control of project.

1 The division shall properly maintain, repair, operate,
2 manage and control the project, fix the rates of rental and
3 establish bylaws and rules for the use and operation of the
4 project and may make and enter into all contracts or
5 agreements necessary and incidental to the performance
6 of its duties and the execution of its powers hereunder.

§20-5-13. Provisions of constitution and law observed; what approval required.

1 It shall not be necessary to secure from any officer or
2 board not named in this article any approval or consent, or
3 any certificate or finding, or to hold an election, or to take
4 any proceedings whatever, either for the construction of
5 any project, or the improvement, maintenance, operation
6 or repair thereof, or for the issuance of bonds hereunder,
7 except as are prescribed by these provisions or are re-
8 quired by the constitution of this state.

9 Nothing contained herein shall be so construed or
10 interpreted as to authorize or permit the incurring of state
11 debt of any kind or nature as contemplated by the provi-
12 sions of the constitution of the state in relation to state
13 debt.

§20-5-14. Restaurants and other facilities.

1 The director may, on all areas under his or her juris-
2 diction and control, operate commissaries, restaurants and
3 other establishments for the convenience of the public.

- 4 For these purposes the director may purchase equipment,
5 foodstuffs, supplies and commodities according to law.

§20-5-15. Contracts for operation of commissaries, restaurants, recreational facilities and other establishments limited to ten years' duration; renewal at option of director; termination of contract by the director; necessity for prior legislative approval before certain lodge, cabin, camping, golf facility, including pro shop operations, ski facility or gift shop facilities are placed under contract.

1 When it is considered necessary by the director to
2 enter into a contract with a person, firm, corporation,
3 foundation or public agency for the operation of a com-
4 missary, restaurant, recreational facility or other establish-
5 ment within the state parks and public recreation system,
6 the contract shall be for a duration not to exceed ten years,
7 but the contract may provide for an option to renew at the
8 director's discretion for an additional term or terms not to
9 exceed ten years at the time of renewal. Prior to initiating
10 a contract for the operation of a state park lodge, cabin,
11 campground, gift shop, golf facility, including pro shop
12 operations, or ski facility, the director shall submit the
13 specific location which would be subject to the contract to
14 the Legislature for its approval and authorization: *Provid-*
15 *ed*, That for contracts for gift shops or golf facilities in
16 specific locations operated under contract on the effective
17 date of this section, and contracts for a duration of not
18 more than one year which provide for options to renew
19 for not more than five succeeding years, notice to the joint
20 committee on government and finance, but not specific
21 legislative authorization and approval, is required prior to
22 execution of the contract.

23 Any contract entered into by the director shall provide
24 an obligation upon the part of the operator that he or she
25 maintain a level of performance satisfactory to the director
26 and shall further provide that any contract may be termi-
27 nated by the director in the event he or she determines that

28 the performance is unsatisfactory and has given the opera-
29 tor reasonable notice of the termination.

§20-5-16. Authority to enter into contracts with third parties to construct lodge facilities.

1 Notwithstanding any other provision of this code to
2 the contrary, in addition to all other powers and authority
3 vested in the director, he or she is hereby authorized and
4 empowered to enter into contracts with third parties for the
5 construction and operation of recreational facilities at
6 Chief Logan state park, Beech Fork state park, Tomlinson
7 Run state park and Stonewall Jackson lake state park:
8 *Provided*, That the term of the contracts may not exceed a
9 period of twenty-five years, at which time the full title to
10 the lodge facilities shall vest in the state: *Provided, howev-*
11 *er*, That contracts shall be presented to the joint committee
12 on government and finance for review and comment prior
13 to execution: *Provided further*, That the contract may
14 provide for renewal for the purpose of permitting contin-
15 ued operation of the facilities at the option of director for
16 a term or terms not to exceed ten years: *And provided*
17 *further*, That no extension or renewal beyond the original
18 twenty-five-year term may be executed by the director
19 absent the approval of the joint committee on government
20 and finance.

§20-5-17. Correlation of projects and services.

1 The director of the division of natural resources shall
2 correlate and coordinate park and recreation programs,
3 projects and developments with the functions and services
4 of other offices and sections of the division and other
5 agencies of the state government so as to provide, consis-
6 tent with the provisions of this chapter, suitable and ade-
7 quate facilities, landscaping, personnel and other services
8 at and about all state parks and public recreation facilities
9 under his or her jurisdiction.

§20-5-18. Discounts for West Virginia residents over the age of sixty-two.

1 The director shall provide to West
 2 Virginia citizens who are sixty-two years of age or older,
 3 and who document residency and age by a valid West
 4 Virginia driver's license, a fifty percent reduction in
 5 campground rental fees for each campsite to be used
 6 exclusively by said eligible camper: *Provided*, That the
 7 fifty percent reduction in campground rental fees shall
 8 only apply to those rentals occurring during the period of
 9 time beginning on the day after Labor Day and ending
 10 four days prior to Memorial day.

**§20-5-19. Discounts for West Virginia residents who are
 totally and permanently disabled.**

1 The director shall issue a discount card to West
 2 Virginia residents who are totally and permanently
 3 disabled which would provide a fifty percent reduction in
 4 campground rental fees for each campsite to be used
 5 exclusively by the eligible camper: *Provided*, That in
 6 order to be eligible for the reduction, the person shall
 7 document that he or she is a resident of this state and that
 8 he or she has a total and permanent disability. The
 9 director shall promulgate rules in accordance with article
 10 three, chapter twenty-nine-a of this code setting forth the
 11 documentation which is necessary to prove residency and
 12 total and permanent disability: *Provided, however*, That
 13 the fifty percent reduction in campground rental fees
 14 applies only to those rentals occurring during the period
 15 of time beginning on the day after Labor Day and ending
 16 four days prior to Memorial Day.

CHAPTER 193

(Com. Sub. for H. B. 2451—By Delegates Gallagher and Border)

[Passed March 11, 1995; in effect ninety days from passage.
 Became law without Governor's signature.]

AN ACT to repeal sections twelve-a and sixteen-a, article five,
 chapter thirty of the code of West Virginia, one thousand

nine hundred thirty-one, as amended; to amend and reenact sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, twelve-b, thirteen, fourteen, fourteen-a, fifteen, sixteen, nineteen, twenty-one and twenty-two of said article; and to further amend said article five by adding thereto nine new sections, designated sections one-a, one-b, two-a, five-a, seven-a, seven-b, sixteen-b, sixteen-c and twenty-two-a, all relating to the regulation of pharmacists, licensed interns and pharmacist technicians; repealing existing section twelve-a relating to drug and drug price listing and posting requirements and penalties for noncompliance; repealing existing section sixteen-a authorizing the manufacture of laetrile; legislative findings and statement of purpose; defining terms; filling of board vacancies; board qualifications; increasing board compensation; meetings and business of the board; clarifying public and closed meetings; records kept by the board; providing for expungement of records; examination of records; notice requirements; public information; making various technical changes; permitting licensed interns and pharmacy technicians to assist pharmacists; experience and training qualifications for pharmacists, licensed interns and pharmacy technicians; titles and terms; regulating pharmacy technicians; reciprocity; disciplinary proceedings; grounds for disciplinary action; fines and penalties; hearings and notice; confidentiality of prescription records; reporting criteria for professional malpractice, incompetence and convictions; voluntary agreements relating to alcohol or chemical dependency; confidentiality requirements; pharmacy lists; fees; license renewals and display; prohibitions; distribution of generic and brand-name drugs; prescription requirements for "brand medically necessary" drugs; requiring ownership of USP-DI reference manual; pharmacy registration; pharmacists-in-charge; increasing fines for violations of equipment requirements; manufacturing permits; authorizing partial filling of schedule II medications under certain circumstances; limitations on application of article; increasing criminal and civil penalties; providing for immunity from civil actions for board members; limiting liability for professionals reporting to the board; required reporting of litigation results to the board; and rule-making authority.

Be it enacted by the Legislature of West Virginia:

That sections twelve-a and sixteen-a, article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, twelve-b, thirteen, fourteen, fourteen-a, fifteen, sixteen, nineteen, twenty-one and twenty-two of said article be amended and reenacted; and that said article five be further amended by adding thereto nine new sections, designated sections one-a, one-b, two-a, five-a, seven-a, seven-b, sixteen-b, sixteen-c and twenty-two-a, all to read as follows:

**ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS,
PHARMACY INTERNS AND PHARMACIES.**

- §30-5-1. Legislative findings.
- §30-5-1a. Statement of purpose.
- §30-5-1b. Definitions.
- §30-5-2. Board of pharmacy; appointment, qualifications and terms of members; compensation; powers and duties generally; meetings and notices.
- §30-5-2a. Records of board; expungement; examination notice; public information.
- §30-5-3. When licensed pharmacist required; person not licensed pharmacist, pharmacy technician or licensed intern not to compound prescriptions or dispense poisons or narcotics; licensure of interns.
- §30-5-4. Use of titles or terms; penalties and fines.
- §30-5-5. Qualifications for licensure as pharmacist; fees; certificates of licensure; rules for licensure; reciprocity; minimum standards.
- §30-5-5a. Legislative findings; registration of pharmacy technicians; qualifications; training programs; rules and restrictions.
- §30-5-6. Reciprocal licensure of pharmacists from other states or countries.
- §30-5-7. Grounds for suspension or revocation of license or disciplinary proceedings; penalties and procedures; temporary suspensions; reporting of disciplinary action.
- §30-5-7a. Required reporting of information to board pertaining to professional malpractice and convictions; complaints of professional incompetence; reporting forms.
- §30-5-7b. Voluntary agreements relating to alcohol or chemical dependency; confidentiality of same.
- §30-5-8. Reports by secretary of board to secretary of state; "list of pharmacists."
- §30-5-9. Fees.
- §30-5-10. Annual renewal of license; fees and notices.

- §30-5-11. Certificate of licensure or permit shall be displayed.
- §30-5-12. Responsibility for quality of drugs dispensed; exception; falsification of labels; deviation from prescription.
- §30-5-12b. Definitions; selection of generic drug products; exceptions; records; labels; manufacturing standards; rules; notice of substitution; complaints; notice and hearing; immunity.
- §30-5-13. Each pharmacy to have USP-DI.
- §30-5-14. Pharmacies to be registered; permit to operate; fees; pharmacist to conduct business.
- §30-5-14a. Pharmacist-in-charge.
- §30-5-15. Professional and technical equipment required for pharmacy or drugstore; penalties and fines.
- §30-5-16. Permit for manufacture and packaging of drugs, medicines, cosmetics; distribution of legend drugs; regulations as to sanitation and equipment; penalties; revocation of permit.
- §30-5-16b. Partial filling of prescriptions.
- §30-5-16c. Partial filling of prescriptions for long-term care facility or terminally ill patients; requirements; records; violations.
- §30-5-19. Rules of board of pharmacy; revocation of permits; employment of field agents, chemists, clerical and other qualified personnel.
- §30-5-21. Limitations of article.
- §30-5-22. Offenses; penalties.
- §30-5-22a. Civil immunity for board members; liability limitations of professionals reporting to board; reporting results of litigation to the board; rules.

§30-5-1. Legislative findings.

1 The Legislature hereby finds and declares that the
2 practice of pharmacy is a privilege and not a natural or
3 fundamental right of any individual. As a matter of public
4 policy, it is necessary to protect the public through the
5 enactment of this article and to regulate the granting of
6 such privileges and their use. This article shall be liberally
7 construed to carry out these purposes.

§30-5-1a. Statement of purpose.

1 It is the purpose of this article to promote, preserve
2 and protect the public health, safety and welfare by the
3 effective regulation of the practice of pharmacy; the licen-
4 sure of pharmacists; the licensure, and regulation of all
5 sites or persons who distribute, manufacture, or sell drugs

6 or devices used in the dispensing and administration of
7 drugs or devices within this state.

§30-5-1b. Definitions.

1 The following words and phrases, as used in this arti-
2 cle, shall have the following meanings, unless the context
3 otherwise requires:

4 (a) "Administer" means the direct application of a
5 drug to the body of a patient or research subject by injec-
6 tion, inhalation, ingestion or any other means.

7 (b) "Board of pharmacy" or "board" means the West
8 Virginia state board of pharmacy.

9 (c) "Compounding" means:

10 (1) The preparation, mixing, assembling, packaging
11 or labeling of a drug or device:

12 (A) As the result of a practitioner's prescription drug
13 order or initiative based on the practitioner/patient/phar-
14 macist relationship in the course of professional practice
15 for sale or dispensing; or

16 (B) For the purpose of, or as an incident to, research,
17 teaching or chemical analysis and not for sale or dispens-
18 ing;

19 (2) The preparation of drugs or devices in anticipation
20 of prescription drug orders based on routine, regularly
21 observed prescribing patterns.

22 (d) "Confidential information" means information
23 maintained by the pharmacist in the patient record or
24 which is communicated to the patient as part of patient
25 counseling, or which is communicated by the patient to
26 the pharmacist. This information is privileged and may be
27 released only to the patient or to other members of the
28 health care team and other pharmacists where, in the phar-
29 macist's professional judgment, such release is necessary to
30 the patient's health and well-being; to such other persons
31 or governmental agencies authorized by law to receive
32 such privileged information; as necessary for the limited

33 purpose of peer review and utilization review; as autho-
34 rized by the patient or required by court order.

35 (e) "Deliver" or "delivery" means the actual, construc-
36 tive or attempted transfer of a drug or device from one
37 person to another, whether or not for a consideration.

38 (f) "Device" means an instrument, apparatus, imple-
39 ment or machine, contrivance, implant or other similar or
40 related article, including any component part or accessory,
41 which is required under federal law to bear the label, "Cau-
42 tion: Federal or state law requires dispensing by or on the
43 order of a physician."

44 (g) "Dispense" or "dispensing" means the preparation
45 and delivery of a drug or device in an appropriately la-
46 beled and suitable container to a patient or patient's repre-
47 sentative or surrogate pursuant to a lawful order of a prac-
48 titioner for subsequent administration to, or use by, a pa-
49 tient.

50 (h) "Distribute" means the delivery of a drug or device
51 other than by administering or dispensing.

52 (i) "Drug" means:

53 (1) Articles recognized as drugs in the USP-DI, Facts
54 and Comparisons, Physicians Desk Reference or supplе-
55 ments thereto, for use in the diagnosis, cure, mitigation,
56 treatment or prevention of disease in human or other ani-
57 mals;

58 (2) Articles, other than food, intended to affect the
59 structure or any function of the body of human or other
60 animals; and

61 (3) Articles intended for use as a component of any
62 articles specified in subsection (1) or (2) of this section.

63 (j) "Drug regimen review" includes, but is not limited
64 to, the following activities:

65 (1) Evaluation of the prescription drug orders and
66 patient records for:

67 (A) Known allergies;

- 68 (B) Rational therapy-contraindications;
- 69 (C) Reasonable dose and route of administration; and
- 70 (D) Reasonable directions for use.
- 71 (2) Evaluation of the prescription drug orders and
72 patient records for duplication of therapy.
- 73 (3) Evaluation of the prescription drug for interactions
74 and/or adverse effects which may include, but are not
75 limited to, any of the following:
- 76 (A) Drug-drug;
- 77 (B) Drug-food;
- 78 (C) Drug-disease; and
- 79 (D) Adverse drug reactions.
- 80 (4) Evaluation of the prescription drug orders and
81 patient records for proper utilization, including over utili-
82 zation and under utilization and optimum therapeutic
83 outcomes.
- 84 (k) "Intern" means an individual who is:
- 85 (1) Currently registered by this state to engage in the
86 practice of pharmacy while under the supervision of a
87 licensed pharmacist and is satisfactorily progressing to-
88 ward meeting the requirements for licensure as a pharma-
89 cist; or
- 90 (2) A graduate of an approved college of pharmacy or
91 a graduate who has established educational equivalency by
92 obtaining a Foreign Pharmacy Graduate Examination
93 Committee (FPGEC) certificate, who is currently licensed
94 by the board for the purpose of obtaining practical expe-
95 rience as a requirement for licensure as a pharmacist; or
- 96 (3) A qualified applicant awaiting examination for
97 licensure; or
- 98 (4) An individual participating in a residency or fel-
99 lowship program.
- 100 (l) "Labeling" means the process of preparing and

101 affixing a label to a drug container exclusive, however, of
102 a labeling by a manufacturer, packer or distributor of a
103 nonprescription drug or commercially packaged legend
104 drug or device. Any such label shall include all informa-
105 tion required by federal law or regulation and state law or
106 rule.

107 (m) "Mail order pharmacy" means a pharmacy, re-
108 gardless of its location, which dispenses greater than ten
109 percent prescription drugs via the mail.

110 (n) "Manufacturer" means a person engaged in the
111 manufacture of drugs or devices.

112 (o) "Manufacturing" means the production, prepara-
113 tion, propagation or processing of a drug or device, either
114 directly or indirectly, by extraction from substances of
115 natural origin or independently by means of chemical or
116 biological synthesis and includes any packaging or re-
117 packaging of the substance(s) or labeling or relabeling of
118 its contents and the promotion and marketing of such
119 drugs or devices. Manufacturing also includes the prepa-
120 ration and promotion of commercially available products
121 from bulk compounds for resale by pharmacies, practitio-
122 ners or other persons.

123 (p) "Nonprescription drug" means a drug which may
124 be sold without a prescription and which is labeled for use
125 by the consumer in accordance with the requirements of
126 the laws and rules of this state and the federal government.

127 (q) "Patient counseling" means the oral communica-
128 tion by the pharmacist of information, as defined in the
129 rules of the board, to the patient, to improve therapy by
130 aiding in the proper use of drugs and devices.

131 (r) "Person" means an individual, corporation, partner-
132 ship, association or any other legal entity, including gov-
133 ernment.

134 (s) "Pharmaceutical care" is the provision of drug
135 therapy and other pharmaceutical patient care services
136 intended to achieve outcomes related to the cure or pre-
137 ventation of a disease, elimination or reduction of a patient's
138 symptoms or arresting or slowing of a disease process as

139 defined in the rules of the board.

140 (t) "Pharmacist" or "registered pharmacist" means an
141 individual currently licensed by this state to engage in the
142 practice of pharmacy and pharmaceutical care.

143 (u) "Pharmacist-in-charge" means a pharmacist cur-
144 rently licensed in this state who accepts responsibility for
145 the operation of a pharmacy in conformance with all laws
146 and rules pertinent to the practice of pharmacy and the
147 distribution of drugs and who is personally in full and
148 actual charge of such pharmacy and personnel.

149 (v) "Pharmacy" means any drugstore, apothecary or
150 place within this state where drugs are dispensed and sold
151 at retail or displayed for sale at retail and pharmaceutical
152 care is provided; and any place outside of this state where
153 drugs are dispensed and pharmaceutical care is provided
154 to residents of this state.

155 (w) "Pharmacy technician" means registered support-
156 ive personnel who work under the direct supervision of a
157 pharmacist who have passed an approved training pro-
158 gram as described in this article.

159 (x) "Practitioner" means an individual currently li-
160 censed, registered or otherwise authorized by the jurisdic-
161 tion in which he or she practices to prescribe and adminis-
162 ter drugs in the course of professional practices, including
163 allopathic and osteopathic physicians, dentists, physician's
164 assistants, optometrists, veterinarians, podiatrists and nurse
165 practitioners as allowed by law.

166 (y) "Preceptor" means an individual who is currently
167 licensed as a pharmacist by the board, meets the qualifica-
168 tions as a preceptor under the rules of the board, and par-
169 ticipates in the instructional training of pharmacy interns.

170 (z) "Prescription drug" or "legend drug" means a drug
171 which, under federal law, is required, prior to being dis-
172 pensed or delivered, to be labeled with either of the fol-
173 lowing statements:

174 (1) "Caution: Federal law prohibits dispensing without
175 prescription";

176 (2) "Caution: Federal law restricts this drug to use by,
177 or on the order of, a licensed veterinarian"; or a drug
178 which is required by any applicable federal or state law or
179 rule to be dispensed pursuant only to a prescription drug
180 order or is restricted to use by practitioners only.

181 (aa) "Prescription drug order" means a lawful order of
182 a practitioner for a drug or device for a specific patient.

183 (bb) "Prospective drug use review" means a review of
184 the patient's drug therapy and prescription drug order, as
185 defined in the rules of the board, prior to dispensing the
186 drug as part of a drug regimen review.

187 (cc) "USP-DI" means the United States Pharmaco-
188 pedia-Dispensing Information.

189 (dd) "Wholesale distributor" means any person en-
190 gaged in wholesale distribution of drugs, including, but
191 not limited to, manufacturers' and distributors' warehouses,
192 chain drug warehouses and wholesale drug warehouses;
193 independent wholesale drug trader; and retail pharmacies
194 that conduct wholesale distributions.

**§30-5-2. Board of pharmacy; appointment, qualifications and
terms of members; compensation; powers and
duties generally; meetings and notices.**

1 (a) There shall be a state board of pharmacy, known as
2 the "West Virginia board of pharmacy," which shall consist
3 of five practicing pharmacists and two public members,
4 who shall be appointed by the governor, by and with the
5 advice and consent of the Senate. Any vacancy which
6 occurs in the membership of the board for any reason,
7 including expiration of term, removal, resignation, death,
8 disability or disqualification shall be immediately filled by
9 the governor as provided by this section. Nothing in this
10 section shall require the governor to change the composi-
11 tion of the board prior to the usual expiration of any
12 member's term. The governor may consider the diversity
13 of pharmacy areas of practice when filling vacancies.

14 (b) Each pharmacist member of the board, at the time
15 of his appointment, shall be a resident of this state, li-
16 censed and in good standing to engage in the practice of

17 pharmacy in this state for a period of at least five years
18 prior to their appointment. The public members shall be
19 residents of this state who have attained the age of eigh-
20 teen years and may not be a past or present pharmacist,
21 the spouse of a pharmacist, a person who has ever had any
22 material financial interest in providing pharmacy services
23 or who has engaged in any activity directly related to the
24 practice of pharmacy.

25 (c) Each member of the board shall receive two hun-
26 dred dollars for each day spent in attending to the duties
27 of the board or of its committees, and shall be reimbursed
28 for all actual and necessary expenses incurred in carrying
29 out his or her duties.

30 (d) The members of the board in office on the date
31 this section takes effect shall, unless sooner removed, con-
32 tinue to serve until their respective terms expire and until
33 their successors have been appointed and have qualified.
34 Board member terms shall be for five years with at least
35 one pharmacist member's term expiring yearly. The gov-
36 ernor may, with the advice and consent of the Senate,
37 reappoint any member for additional consecutive terms.
38 Members as of the first day of July, one thousand nine
39 hundred ninety-five, are eligible for reappointment to
40 additional terms regardless of the length of time they have
41 previously served on the board.

42 (e) The board, in addition to the authority, powers and
43 duties granted to the board by this chapter and chapter
44 sixteen of this code, shall have the authority to:

45 (1) Regulate the practice of pharmacy;

46 (2) Regulate the employment of licensed interns in
47 pharmacy;

48 (3) Appoint, within the limit of appropriations, inspec-
49 tors who shall be pharmacists, and investigators, to act as
50 agents of the board within the provisions of this chapter
51 and chapter sixteen of this code and rules as the board
52 shall promulgate;

53 (4) Adopt rules of professional conduct; and

54 (5) Hire an attorney, as may be necessary.

55 (f) A majority of the membership of the board consti-
56 tutes a quorum for the transaction of business, and any
57 motion is approved by a majority vote of a quorum. All
58 board members shall be given advance notice of each
59 board meeting.

60 (g) Meetings of the board shall be held in public ses-
61 sion, except that the board may hold closed sessions to
62 prepare, approve, grade or administer examinations. Disci-
63 plinary proceedings, prior to a finding of probable cause,
64 as provided in section seven of this article shall be held in
65 closed sessions, unless the party subject to discipline re-
66 quests that the hearing be held in public sessions. All dis-
67 cussions or meetings of the board concerning personnel
68 matters shall be held in closed session.

**§30-5-2a. Records of board; expungement; examination no-
tice; public information.**

1 (a) The board shall maintain a permanent record of
2 the names of all pharmacists, interns and pharmacy techni-
3 cians lawfully practicing in this state, and of all persons
4 applying for licensure to practice, along with an individual
5 historical record for each such individual containing re-
6 ports and all other information furnished to the board
7 concerning any applicant, pharmacist, intern or pharmacy
8 technician.

9 (b) Upon a determination by the board that any infor-
10 mation submitted to it is without merit, the report shall be
11 expunged from the individual's historical record.

12 (c) Any licensee or registrant of the board or autho-
13 rized representative thereof, has the right, upon request, to
14 examine his or her own individual historical record main-
15 tained by the board pursuant to this article and to place
16 into such record a statement regarding the correctness or
17 relevance of any information in the historical record.
18 These statements shall at all times be appended to and
19 accompany any request for review or copies made of the
20 portion of the record to which they refer.

21 (d) Orders of the board relating to disciplinary action

- 22 against a pharmacist, pharmacy technician, or other license
23 or registrant of the board are public information.

§30-5-3. When licensed pharmacist required; person not licensed pharmacist, pharmacy technician or licensed intern not to compound prescriptions or dispense poisons or narcotics; licensure of interns.

1 (a) It is unlawful for any person not a pharmacist, or
2 who does not employ a pharmacist, to conduct any pharmacy,
3 or store for the purpose of retailing, compounding
4 or dispensing prescription drugs or prescription devices.

5 (b) It is unlawful for the proprietor of any store or
6 pharmacy to permit any person not a pharmacist to compound
7 or dispense prescriptions or prescription refills, or
8 to retail or dispense the poisons and narcotic drugs named
9 in sections two, three and six, article eight, chapter sixteen
10 of this code: *Provided*, That a licensed intern may compound
11 and dispense prescriptions or prescription refills
12 under the direct supervision of a pharmacist: *Provided*,
13 *however*, That registered pharmacy technicians may assist
14 in the preparation and dispensing of prescriptions or prescription
15 refills including, but not limited to, reconstitution
16 of liquid medications, typing and affixing labels under the
17 direct supervision of a licensed pharmacist.

18 (c) It is the duty of a pharmacist or employer who
19 employs an intern to license the intern with the board
20 within ninety days after employment. The board shall
21 furnish proper forms for this purpose and shall issue a
22 certificate to the intern upon licensure.

23 (d) The experience requirement for licensure as a
24 pharmacist shall be computed from the date certified by
25 the supervising pharmacist as the date of entering the
26 internship. If the internship is not registered with the
27 board of pharmacy, then the intern shall receive no credit
28 for such experience when he or she makes application for
29 examination for licensure as a pharmacist: *Provided*, That
30 credit may be given for such unregistered experience if an
31 appeal is made and evidence produced showing experience
32 was obtained but not registered and that failure to

33 register the internship experience was not the fault of the
34 intern.

35 (e) An intern having served part or all of his or her
36 internship in a pharmacy in another state or foreign coun-
37 try shall be given credit for the same when the affidavit of
38 his or her internship is signed by the pharmacist under
39 whom he or she served, and it shows the dates and number
40 of hours served in the internship and when the affidavit is
41 attested by the secretary of the state board of pharmacy of
42 the state or country where the internship was served.

43 (f) Up to one third of the experience requirement for
44 licensure as a pharmacist may be fulfilled by an internship
45 in a foreign country.

§30-5-4. Use of titles or terms; penalties and fines.

1 (a) It is unlawful for any person not legally licensed as
2 a pharmacist, unless he or she employs a licensed pharma-
3 cist, to take, use or exhibit the title of pharmacist, or li-
4 censed or registered pharmacist, or the title of druggist or
5 apothecary, or any other title or description of like import,
6 or to label, mark, or advertise his or her or any other place
7 of business as a pharmacy or drugstore or by the use of
8 the words drug or medicines or any other compound or
9 derivative of the same, or by any other word or sign indi-
10 cating or intended to indicate that drugs or pharmaceutical
11 supplies are either sold or offered for sale.

12 (b) It is unlawful for any person not legally registered
13 as a pharmacy technician to take, use or exhibit the title of
14 pharmacy technician, or any title or description of like
15 import.

16 (c) Any person violating this section shall, upon con-
17 viction, be deemed guilty of a misdemeanor and fined not
18 less than five hundred nor more than one thousand dol-
19 lars.

§30-5-5. Qualifications for licensure as pharmacist; fees; cer- tificates of licensure; rules for licensure; reciprocity; minimum standards.

1 (a) In order to be licensed as a pharmacist within the

2 meaning of this article, a person shall:

3 (1) Be eighteen years of age or older;

4 (2) Present to the board satisfactory evidence that he
5 or she is a graduate of a recognized school of pharmacy
6 as defined by the board of pharmacy;

7 (3) Present to the board satisfactory evidence that he
8 or she has completed at least fifteen hundred hours of
9 internship in a pharmacy under the instruction and super-
10 vision of a pharmacist;

11 (4) Pass an examination approved by the board of
12 pharmacy; and

13 (5) Present to the board satisfactory evidence that he
14 or she is a person of good moral character, has not been
15 convicted of a felony involving controlled substances or
16 violent crime, and is not addicted to alcohol or the use of
17 controlled substances.

18 (b) An applicant for examination shall pay to the
19 board a fee of one hundred twenty-five dollars with his or
20 her application.

21 (c) The board shall issue certificates of licensure to all
22 persons who successfully pass the required examination
23 and are otherwise qualified and to all those whose certifi-
24 cates or licenses the board shall accept in lieu of an exami-
25 nation as provided in section six of this article.

26 (d) The board shall by rule stipulate the forms to be
27 used for licensure application, the requirements for reci-
28 procity and the required minimum score for passing of
29 the licensure examination.

§30-5-5a. Legislative findings; registration of pharmacy technicians; qualifications; training programs; rules and restrictions.

1 (a) The Legislature finds that it is in the best interests
2 of the public health, safety and welfare that licensed phar-
3 macists in this state be assisted with or relieved of certain
4 tasks so that the pharmacist may counsel patients, improve
5 pharmaceutical care and therapeutic outcomes. To achieve

6 this aim, the board shall recognize and register pharmacy
7 technicians.

8 (b) On or after the first day of July, one thousand nine
9 hundred ninety-six, any person practicing as a pharmacy
10 technician in this state shall be registered with the board of
11 pharmacy pursuant to the provisions of this section.

12 (c) In order to become registered as pharmacy techni-
13 cians in this state, individuals shall:

14 (1) Be at least eighteen years old;

15 (2) Be a high school graduate or its equivalent;

16 (3) Present to the board satisfactory evidence that he
17 or she is of good moral character, is not addicted to alco-
18 hol or controlled substances and is free of any felony
19 convictions; and

20 (4) Satisfactorily complete a board-approved pharma-
21 cy technician training program.

22 (d) The pharmacy technician training program and its
23 curriculum shall be designed to train individuals to per-
24 form nonprofessional functions as described in legislative
25 rules promulgated in accordance with the provisions of
26 article three, chapter twenty-nine-a of this code.

27 (e) Pharmacy technicians shall be identified by a name
28 tag and designation as pharmacy technician while working
29 in a pharmacy within this state. A ratio of no more than
30 four pharmacy technicians per on-duty pharmacist operat-
31 ing in any outpatient, mail order or institutional pharmacy
32 shall be maintained.

**§30-5-6. Reciprocal licensure of pharmacists from other states
or countries.**

1 (a) The board of pharmacy may by reciprocity license
2 pharmacists in this state who have been legally registered
3 or licensed pharmacists in another state: *Provided*, That
4 the applicant for such licensure shall meet the require-
5 ments of the rules for reciprocity promulgated by the
6 board in accordance with the provisions of chapter

7 twenty-nine-a of this code: *Provided, however,* That reci-
8 procity is not authorized for pharmacists from another
9 state where that state does not permit reciprocity to phar-
10 macists licensed in West Virginia.

11 (b) The board may refuse reciprocity to pharmacists
12 from another country unless the applicant qualifies under
13 such rules as may be promulgated by the board for licen-
14 sure of foreign applicants.

15 (c) Applicants for licensure under this section shall,
16 with their application, forward to the secretary of the
17 board of pharmacy a fee of two hundred fifty dollars. In
18 the event the applicant desires to be examined other than
19 at a regular meeting of the board the applicant shall sub-
20 mit to the board an additional fee of one hundred fifty
21 dollars.

**§30-5-7. Grounds for suspension or revocation of license or
disciplinary proceedings; penalties and proce-
dures; temporary suspensions; reporting of disci-
plinary action.**

1 (a) The board shall have the power to withhold, revoke
2 or suspend any license or any certificate issued under this
3 article or to penalize or discipline any pharmacist or phar-
4 macy after giving reasonable notice and an opportunity to
5 be heard pursuant to the provisions of section one, article
6 five, chapter twenty-nine-a of this code, any person who
7 has:

8 (1) Become unfit or incompetent to practice pharmacy
9 by reason of: (A) Alcohol or substance abuse; (B) insani-
10 ty; or (C) any abnormal physical or mental condition
11 which threatens the safety of persons to whom such person
12 might sell or dispense prescriptions, drugs, or devices, or
13 for whom he might manufacture, prepare or package, or
14 supervise the manufacturing, preparation, or packaging of
15 prescriptions, drugs or devices;

16 (2) Been convicted in any of the courts of this state,
17 the United States of America, or any other state, of a felo-
18 ny or any crime involving moral turpitude which bears a
19 rational nexus to the individual's ability to practice as a

20 pharmacist or pharmacist technician;

21 (3) Violated any of the provisions of this chapter or
22 chapter sixteen of this code;

23 (4) Failed to comply with the rules of professional
24 conduct adopted by the board pursuant to section two of
25 this article;

26 (5) Knowledge or suspicion that a pharmacist, phar-
27 macy technician or pharmacy intern is incapable of en-
28 gaging in the practice of pharmacy with reasonable skill,
29 competence and safety and has failed to report this infor-
30 mation to the board;

31 (6) Committed fraud as a licensee in connection with
32 the practice of pharmacy;

33 (7) Performed an act outside this state which would
34 constitute a violation within this state; or

35 (8) Agreed to participate in a legend drug product
36 conversion program promoted or offered by a manufac-
37 turer, wholesaler or distributor of such product for which
38 the pharmacist or pharmacy received any form of finan-
39 cial remuneration, or agreed to participate in a legend
40 drug program in which the pharmacist or pharmacy is
41 promoted or offered as the exclusive provider of legend
42 drug products or whereby in any way the public is denied,
43 limited or influenced in selecting pharmaceutical service
44 or counseling.

45 (b) Upon a finding of a violation of one or more of
46 the above grounds for discipline by a pharmacist, intern or
47 pharmacy technician, the board may impose one or more
48 of the following penalties:

49 (1) Suspension of the offender's license or registration
50 for a term to be determined by the board;

51 (2) Revocation of the offender's license or registration;

52 (3) Restriction of the offender's license or registration
53 to prohibit the offender from performing certain acts or
54 from engaging in the practice of pharmacy in a particular
55 manner for a term to be determined by the board;

56 (4) Imposition of a fine not to exceed one thousand
57 dollars for each offense;

58 (5) Refusal to renew the offender's license or registra-
59 tion;

60 (6) Placement of the offender on probation and super-
61 vision by the board for a period to be determined by the
62 board.

63 (c) All final decisions of the board shall be subject to
64 judicial review pursuant to the procedures of article five,
65 chapter twenty-nine-a of this code.

66 (d) In the case of a pharmacy or wholesale distributor,
67 the disciplinary order may be entered as to the corporate
68 owner, if any, as well as to the pharmacist, officer, owner
69 or partner of the pharmacy or wholesale distributor if it is
70 found that such person or entity had knowledge of or
71 knowingly participated in one or more of the violations set
72 forth in this article or of article three, chapter sixty-a of
73 this code.

74 (e) Notwithstanding the provisions of section eight,
75 article one, chapter thirty of this code, if the board deter-
76 mines that the evidence in its possession indicates that a
77 pharmacist's continuation in practice or unrestricted prac-
78 tice constitutes an immediate danger to the public, the
79 board may, on a temporary basis and without a hearing,
80 take any of the actions provided for in this section if pro-
81 ceedings for a hearing before the board are initiated si-
82 multaneously with the temporary action and begin within
83 fifteen days of such action. The board shall render its
84 decision within five days of the conclusion of a hearing
85 conducted pursuant to the provisions of this section.

86 (f) In every disciplinary or licensure case considered
87 by the board pursuant to this article, whether initiated by
88 the board or upon complaint or information from any
89 person or organization, the board shall make a prelimi-
90 nary determination as to whether probable cause exists to
91 substantiate charges of disqualification due to any reason
92 set forth in this section. If such probable cause is found to
93 exist, all proceedings on such charges shall be open to the

94 public, who shall be entitled to all reports, records and
95 nondeliberative materials introduced at such hearing, in-
96 cluding the record of any final action taken: *Provided,*
97 That any medical records pertaining to a person who has
98 not expressly waived his or her right to the confidentiality
99 of such records shall not be open to the public.

100 (g) All disciplinary actions taken by the board shall be
101 reported to the national board of pharmacy, appropriate
102 federal agencies and to any other state boards with which
103 the disciplined licensee may also be registered or licensed.

**§30-5-7a. Required reporting of information to board pertain-
ing to professional malpractice and convictions;
complaints of professional incompetence; report-
ing forms.**

1 (a) Every person, partnership, corporation, association,
2 insurance company, professional society or other organi-
3 zation providing professional liability insurance to a phar-
4 macist, pharmacist technician or intern in this state shall
5 submit to the board the following information within thir-
6 ty days from any judgment, dismissal or settlement of a
7 civil action or of any claim involving the insured: The date
8 of any judgment or settlement; the amount of any settle-
9 ment or judgment against the insured; and such other
10 information as the board may require.

11 (b) Within thirty days after a person known to be a
12 pharmacist, pharmacy intern, or pharmacy technician
13 licensed or otherwise lawfully practicing pharmacy in this
14 state or applying to be so licensed is convicted of any
15 crime under the laws of this state, or the laws of the United
16 States which involves drugs in any way, including any
17 controlled substance under state or federal law, the clerk
18 of the court of record in which the conviction was entered
19 shall forward to the board a certified true and correct
20 abstract of record of the convicting court. The abstract
21 shall include the name and address of such licensee, the
22 nature of the offense committed and the final judgment
23 and sentence of the court.

24 (c) Any person may report to the board relevant facts
25 about the conduct of a licensee of the board which in the

26 opinion of such person amounts to professional malprac-
27 tice or professional incompetence.

28 (d) The board shall provide forms for filing reports
29 pursuant to this section. Reports submitted in other forms
30 shall be accepted by the board.

**§30-5-7b. Voluntary agreements relating to alcohol or chemi-
cal dependency; confidentiality of same.**

1 (a) In order to encourage voluntary reporting of alco-
2 hol or other chemical dependency impairment and in
3 recognition of the fact that alcoholism and chemical de-
4 pendency are illnesses, a pharmacist or pharmacy techni-
5 cian or other licensee or registrant or the board may enter
6 into a voluntary agreement with the board reporting his or
7 her participation in an alcohol or chemical dependency
8 treatment program or reporting an alcohol or chemical
9 dependency impairment to the board and seek treatment
10 for his or her dependency. Pursuant to said agreement, the
11 board shall impose limitations on the practice of said
12 pharmacist, pharmacy technician or other licensee or reg-
13 istrant of the board.

14 (b) Any voluntary agreement entered into pursuant to
15 this subsection may not be considered a disciplinary ac-
16 tion or order by the board and shall not be public infor-
17 mation if:

18 (1) Such voluntary agreement is the result of the phar-
19 macist, pharmacy technician, or other licensee or registrant
20 of the board reporting his or her participation in an alco-
21 hol or chemical dependency treatment program or report-
22 ing to the board his or her alcohol or chemical dependen-
23 cy impairment and requesting such an agreement for the
24 purpose of seeking treatment; and

25 (2) The board has not received nor filed any written
26 complaints regarding said pharmacist, pharmacy techni-
27 cian or other licensee or registrant of the board relating to
28 an alcohol or chemical dependency impairment affecting
29 the care and treatment of patients or customers, nor re-
30 ceived any reports pursuant to section seven of this article
31 relating to an alcohol or chemical dependency impair-

32 ment.

33 (c) If any pharmacist, pharmacy technician or other
34 licensee or registrant enters into a voluntary agreement
35 with the board pursuant to this subsection and then fails to
36 comply with or fulfill the terms of said agreement, the
37 board shall initiate disciplinary proceedings pursuant to
38 section seven of this article.

39 (d) If the board has not instituted any disciplinary
40 proceedings as provided for in this article, any informa-
41 tion received, maintained or developed by the board relat-
42 ing to the alcohol or chemical dependency impairment of
43 any pharmacist or pharmacy technician, other licensee or
44 registrant of the board and any voluntary agreement made
45 pursuant to this subsection shall be confidential and not
46 available for public information, discovery or court sub-
47 poena nor for introduction into evidence in any profes-
48 sional liability action or other action for damages arising
49 out of the provision of or failure to provide health care
50 services.

51 (e) In the board's annual report of its activities to the
52 Legislature required under section eight of this article, the
53 board shall include information regarding the success of
54 the voluntary agreement mechanism established therein:
55 *Provided*, That in making such report the board shall not
56 disclose any personally identifiable information relating to
57 any pharmacist or other licensee or registrant of the board
58 participating in a voluntary agreement as provided herein.

59 (f) Notwithstanding any of the foregoing provisions,
60 the board may cooperate with and provide documentation
61 of any voluntary agreement entered into pursuant to this
62 subsection to licensing boards in other jurisdictions, as
63 may be appropriate.

64 (g) Any restrictions on the disclosure of confidential
65 information does not apply to any investigation or pro-
66 ceeding by the board or by a hospital governing board or
67 committee with respect to relevant medical records, while
68 any of the aforesaid are acting within the scope of their
69 authority as stated in law or in the hospital bylaws, rules,
70 regulations or policies and procedures: *Provided*, That the

71 disclosure of any information pursuant to this provision
72 shall not be considered a waiver of any such privilege in
73 any other proceeding.

**§30-5-8. Reports by secretary of board to secretary of state;
"list of pharmacists."**

1 The secretary of the board of pharmacy shall provide
2 the secretary of state with a list of all pharmacists, pharma-
3 cy technicians and pharmacy interns in this state, giving
4 the name of the person, his or her business address, and
5 the date of his or her licensure registration. On or before
6 the fifteenth day of September each year, the secretary of
7 the board shall certify to the secretary of state all changes
8 in said list required by the addition of new licensures,
9 registrations, renewals, reported deaths, forfeitures of li-
10 censes or registrations or for other causes, occurring dur-
11 ing the preceding year. The secretary of state shall enter in
12 an appropriate book, known as "List of Pharmacists" the
13 facts shown by such reports, which reports shall be filed
14 and preserved in his or her office.

§30-5-9. Fees.

1 The board of pharmacy shall charge and collect the
2 following fees, in addition to those provided in article one
3 of this chapter and in sections five, fourteen and sixteen of
4 this article: For renewing the licensure of a pharmacist,
5 thirty dollars; to license an intern pharmacist, ten dollars
6 plus five dollars for each of the remaining periods of his
7 or her internship; to register a consultant pharmacist, twen-
8 ty dollars for the initial application and ten dollars for
9 each additional application; and to register a pharmacy
10 technician, twenty-five dollars and ten dollars for each
11 renewal.

§30-5-10. Annual renewal of license; fees and notices.

1 (a) Every licensed pharmacist, intern or pharmacy
2 technician who desires to renew his or her license shall on
3 or before the first day of July, one thousand nine hundred
4 ninety-one, and annually thereafter apply to the state
5 board of pharmacy for a renewal of his or her license, and
6 shall transmit with his or her application the fee prescribed

7 in the preceding section of this article. Notification of the
8 annual renewal shall be given by the board at least thirty
9 days prior to said first day of July. Such notification shall
10 be mailed to the last known address of each pharmacist or
11 pharmacy technician as shown on record with the board.

12 (b) If any pharmacist or pharmacy technician fails for
13 a period of sixty days after the first day of July of each
14 year to apply to the board for a renewal of his or her li-
15 cense, the board shall send a second notification of the
16 required annual renewal to the last known address of the
17 pharmacist or pharmacy technician by certified mail, re-
18 turn receipt requested. If the pharmacist or pharmacy
19 technician fails to apply to the board for a renewal of his
20 or her license within thirty days after receipt of the second
21 notification, his or her name shall be erased from the reg-
22 ister of pharmacists and pharmacy technicians.

23 (c) In order for any pharmacist or pharmacy techni-
24 cian whose name has been erased from the register of the
25 board pursuant to subsection (b) of this section to again
26 become licensed, such pharmacist or pharmacy technician
27 shall appear personally before the board, or an authorized
28 committee of the board, to show cause for permitting the
29 license to lapse. If such person submits to the board satis-
30 factory reasons for allowing the license to lapse and satis-
31 fies the board as to his or her qualifications to practice the
32 profession, such person shall be reinstated upon payment
33 of a reinstatement fee of two hundred fifty dollars plus the
34 renewal fee of thirty dollars.

§30-5-11. Certificate of licensure or permit shall be displayed.

1 Every certificate of registration or licensure to practice
2 as a pharmacist, intern or pharmacy technician, and every
3 renewal of such certificate or permit, shall be conspicuous-
4 ly displayed in the pharmacy or place of business of
5 which the pharmacist, intern or pharmacy technician or
6 other person to whom it is issued is the owner or manager,
7 or in which he or she is employed.

**§30-5-12. Responsibility for quality of drugs dispensed; excep-
tion; falsification of labels; deviation from pre-
scription.**

1 (a) All persons, whether licensed pharmacists or not,
2 shall be responsible for the quality of all drugs, chemicals
3 and medicines they may sell or dispense, with the excep-
4 tion of those sold in or dispensed unchanged from the
5 original retail package of the manufacturer, in which event
6 the manufacturer shall be responsible.

7 (b) Except as provided in section twelve-b of this arti-
8 cle, the following acts shall be prohibited: (1) The falsifi-
9 cation of any label upon the immediate container, box
10 and/or package containing a drug; (2) the substitution or
11 the dispensing of a different drug in lieu of any drug
12 prescribed in a prescription without the approval of the
13 practitioner authorizing the original prescription: *Provid-*
14 *ed,* That this shall not be construed to interfere with the art
15 of prescription compounding which does not alter the
16 therapeutic properties of the prescription or appropriate
17 generic substitute; (3) the filling or refilling of any pre-
18 scription for a greater quantity of any drug or drug prod-
19 uct than that prescribed in the original prescription with-
20 out a written order or an oral order reduced to writing, or
21 the refilling of a prescription without the verbal or written
22 consent of the practitioner authorizing the original pre-
23 scription.

**§30-5-12b. Definitions; selection of generic drug products;
exceptions; records; labels; manufacturing
standards; rules; notice of substitution; com-
plaints; notice and hearing; immunity.**

1 (a) As used in this section:

2 (1) "Brand name" means the proprietary or trade name
3 selected by the manufacturer and placed upon a drug or
4 drug product, its container, label or wrapping at the time
5 of packaging.

6 (2) "Generic name" means the official title of a drug
7 or drug combination for which a new drug application, or
8 an abbreviated new drug application, has been approved
9 by the United States food and drug administration and is
10 in effect.

11 (3) "Substitute" means to dispense without the pre-
12 scriber's express authorization a therapeutically equivalent

13 generic drug product in the place of the drug ordered or
14 prescribed.

15 (4) "Equivalent" means drugs or drug products which
16 are the same amounts of identical active ingredients and
17 same dosage form, and which will provide the same thera-
18 peutic efficacy and toxicity when administered to an indi-
19 vidual and is approved by the United States food and drug
20 administration.

21 (5) "Practitioner" means a physician, an authorized
22 Type A physician assistant at the direction of his or her
23 supervising physician in accordance with the provisions of
24 section sixteen, article three of this chapter, osteopath,
25 dentist, veterinarian, podiatrist, optometrist or any other
26 person duly licensed to practice and to prescribe drugs
27 under the laws of this state.

28 (b) A pharmacist who receives a prescription for a
29 brand name drug or drug product shall substitute a less
30 expensive equivalent generic name drug or drug product
31 unless in the exercise of his or her professional judgment
32 the pharmacist believes that the less expensive drug is not
33 suitable for the particular patient: *Provided*, That no sub-
34 stitution may be made by the pharmacist where the pre-
35 scribing practitioner indicates that, in his or her profes-
36 sional judgment, a specific brand name drug is medically
37 necessary for a particular patient.

38 (c) A written prescription order shall permit the phar-
39 macist to substitute an equivalent generic name drug or
40 drug product except where the prescribing practitioner has
41 indicated in his or her own handwriting the words "Brand
42 Medically Necessary." The following sentence shall be
43 printed on the prescription form: "This prescription may
44 be filled with a generically equivalent drug product unless
45 the words 'Brand Medically Necessary' are written, in the
46 practitioner's own handwriting, on this prescription form.":
47 *Provided*, That "Brand Medically Necessary" may be indi-
48 cated on the prescription order other than in the prescrib-
49 ing practitioner's own handwriting unless otherwise re-
50 quired by federal mandate.

51 (d) A verbal prescription order shall permit the phar-
52 macist to substitute an equivalent generic name drug or
53 drug product except where the prescribing practitioner

54 shall indicate to the pharmacist that the prescription is
55 "Brand Necessary" or "Brand Medically Necessary." The
56 pharmacist shall note the instructions on the file copy of
57 the prescription or chart order form.

58 (e) No person may by trade rule, work rule, contract,
59 or in any other way prohibit, restrict, limit or attempt to
60 prohibit, restrict or limit the making of a generic name
61 substitution under the provisions of this section. No em-
62 ployer or his or her agent may use coercion or other
63 means to interfere with the professional judgment of the
64 pharmacist in deciding which generic name drugs or drug
65 products shall be stocked or substituted: *Provided*, That
66 this section shall not be construed to permit the pharmacist
67 to generally refuse to substitute less expensive therapeuti-
68 cally equivalent generic drugs for brand name drugs, and
69 that any pharmacist so refusing shall be subject to the
70 penalties prescribed in section twenty-two, article five,
71 chapter thirty of this code.

72 (f) A pharmacist may substitute a drug pursuant to the
73 provisions of this section only where there will be a sav-
74 ings to the buyer. Where substitution is proper pursuant to
75 this section, or where the practitioner prescribes the drug
76 by generic name, the pharmacist shall, consistent with his
77 or her professional judgment, dispense the lowest retail
78 cost, effective brand which is in stock.

79 (g) All savings in the retail price of the prescription
80 shall be passed on to the purchaser; these savings shall be
81 equal to the difference between the retail price of the
82 brand name product and the customary and usual price of
83 the generic product substituted therefor: *Provided*, That in
84 no event shall such savings be less than the difference in
85 acquisition cost of the brand name product prescribed and
86 the acquisition cost of the substituted product.

87 (h) Each pharmacy shall maintain a record of any
88 substitution of an equivalent generic name drug product
89 for a prescribed brand name drug product on the file
90 copy of a written or verbal prescription or chart order.
91 Such record shall include the manufacturer and generic
92 name of the drug product selected.

- 93 (i) All drugs shall be labeled in accordance with the
94 instructions of the practitioner.
- 95 (j) Unless the practitioner directs otherwise, the pre-
96 scription label on all drugs dispensed by the pharmacist
97 shall indicate the generic name using abbreviations if
98 necessary and either the name of the manufacturer or
99 packager, whichever is applicable in the pharmacist's dis-
100 cretion. The same notation will be made on the original
101 prescription retained by the pharmacist.
- 102 (k) A pharmacist may not dispense a product under
103 the provisions of this section unless the manufacturer has
104 shown that the drug has been manufactured with the fol-
105 lowing minimum good manufacturing standards and prac-
106 tices by:
- 107 (1) Labeling products with the name of the original
108 manufacturer and control number;
- 109 (2) Maintaining quality control standards equal to or
110 greater than those of the United States Food and Drug
111 Administration;
- 112 (3) Marking products with identification code or
113 monogram; and
- 114 (4) Labeling products with an expiration date.
- 115 (l) The West Virginia board of pharmacy shall pro-
116 mulgate rules in accordance with the provisions of chapter
117 twenty-nine-a of this code which establish a formulary of
118 generic type and brand name drug products which are
119 determined by the board to demonstrate significant bio-
120 logical or therapeutic inequivalence and which, if substi-
121 tuted, would pose a threat to the health and safety of pa-
122 tients receiving prescription medication. The formulary
123 shall be promulgated by the board within ninety days of
124 the date of passage of this section, and may be amended in
125 accordance with the provisions of chapter twenty-nine-a of
126 this code.
- 127 (m) No pharmacist shall substitute a generic named
128 therapeutically equivalent drug product for a prescribed
129 brand name drug product if the brand name drug product

130 or the generic drug type is listed on the formulary estab-
131 lished by the West Virginia board of pharmacy pursuant
132 to this article, or is found to be in violation of the require-
133 ments of the United States Food and Drug Administration.

134 (n) Any pharmacist who substitutes any drug shall,
135 either personally or through his or her agent, assistant or
136 employee, notify the person presenting the prescription of
137 such substitution. The person presenting the prescription
138 shall have the right to refuse the substitution. Upon re-
139 quest the pharmacist shall relate the retail price difference
140 between the brand name and the drug substituted for it.

141 (o) Every pharmacy shall post in a prominent place
142 that is in clear and unobstructed public view, at or near the
143 place where prescriptions are dispensed, a sign which shall
144 read: "West Virginia law requires pharmacists to substitute
145 a less expensive generic named therapeutically equivalent
146 drug for a brand name drug, if available, unless you or
147 your physician direct otherwise." The sign shall be printed
148 with lettering of at least one and one-half inches in height
149 with appropriate margins and spacing as prescribed by the
150 West Virginia board of pharmacy.

151 (p) The West Virginia board of pharmacy shall pro-
152 mulgate rules in accordance with the provisions of chapter
153 twenty-nine-a of this code setting standards for substituted
154 drug products, obtaining compliance with the provisions
155 of this section and enforcing the provisions of this section.

156 (q) Any person shall have the right to file a complaint
157 with the West Virginia board of pharmacy regarding any
158 violation of the provisions of this article. Such complaints
159 shall be investigated by the board of pharmacy.

160 (r) Fifteen days after the board has notified, by regis-
161 tered mail, a person, firm, corporation or copartnership
162 that such person, firm, corporation or copartnership is
163 suspected of being in violation of a provision of this sec-
164 tion, the board shall hold a hearing on the matter. If, as a
165 result of the hearing, the board determines that a person,
166 firm, corporation or copartnership is violating any of the
167 provisions of this section, it may, in addition to any penal-
168 ties prescribed by section twenty-two of this article, sus-

169 pend or revoke the permit of any person, firm, corpora-
170 tion or copartnership to operate a pharmacy.

171 (s) No pharmacist complying with the provisions of
172 this section shall be liable in any way for the dispensing of
173 a generic named therapeutically equivalent drug, substitut-
174 ed under the provisions of this section, unless the generic
175 named therapeutically equivalent drug was incorrectly
176 substituted.

177 (t) In no event where the pharmacist substitutes a drug
178 under the provisions of this section shall the prescribing
179 physician be liable in any action for loss, damage, injury
180 or death of any person occasioned by or arising from the
181 use of the substitute drug unless the original drug was
182 incorrectly prescribed.

183 (u) Failure of a practitioner to specify that a specific
184 brand name is necessary for a particular patient shall not
185 constitute evidence of negligence unless the practitioner
186 had reasonable cause to believe that the health of the pa-
187 tient required the use of a certain product and no other.

§30-5-13. Each pharmacy to have USP-DI.

1 Every pharmacy as defined in this article shall own
2 and have in the pharmacy at all times in text or electronic
3 form, a recent edition of the USP-DI and any supple-
4 ments. No license or renewal shall be issued until a
5 USP-DI is in the pharmacy.

§30-5-14. Pharmacies to be registered; permit to operate; fees; pharmacist to conduct business.

1 (a) The board of pharmacy shall require and provide
2 for the annual registration of every pharmacy doing busi-
3 ness in this state. Any person, firm, corporation or partner-
4 ship desiring to operate, maintain, open or establish a
5 pharmacy in this state shall apply to the board of pharma-
6 cy for a permit to do so. The application for such permit
7 shall be made on a form prescribed and furnished by the
8 board of pharmacy, which, when properly executed, shall
9 indicate the owner, manager, trustee, lessee, receiver, or
10 other person or persons desiring such permit, as well as the
11 location of such pharmacy, including street and number,

12 and such other information as the board of pharmacy may
13 require. If it is desired to operate, maintain, open or estab-
14 lish more than one pharmacy, separate application shall be
15 made and separate permits or licenses shall be issued for
16 each.

17 (b) Every initial application for a permit shall be ac-
18 companied by the required fee of one hundred fifty dol-
19 lars. The fee for renewal of such permit or license shall be
20 seventy-five dollars annually.

21 (c) If an application is approved, the secretary of the
22 board of pharmacy shall issue to the applicant a permit or
23 license for each pharmacy for which application is made.
24 Permits or licenses issued under this section shall not be
25 transferable and shall expire on the thirtieth day of June
26 of each calendar year, and if application for renewal of
27 permit or license is not made on or before that date, or a
28 new one granted on or before the first day of August,
29 following, the old permit or license shall lapse and become
30 null and void and shall require an inspection of the phar-
31 macy and a fee of one hundred fifty dollars plus one
32 hundred fifty dollars for the inspection.

33 (d) Every such place of business so registered shall
34 employ a pharmacist in charge and operate in compliance
35 with the general provisions governing the practice of phar-
36 macy and the operation of a pharmacy.

37 (e) The provisions of this section shall have no appli-
38 cation to the sale of nonprescription drugs which are not
39 required to be dispensed pursuant to a practitioner's pre-
40 scription.

§30-5-14a. Pharmacist-in-charge.

1 (a) Every pharmacy at all times shall be under the
2 direction and supervision of a licensed pharmacist who
3 shall be designated by the owner of the pharmacy as the
4 pharmacist-in-charge. This designation must be filed with
5 the board within thirty days of the designation.

6 (b) The pharmacist-in-charge is responsible for the
7 pharmacy's compliance with state and federal pharmacy
8 laws and regulations and for maintaining records and

9 inventory.

10 (c) It is a violation of this section if the owner of a
11 pharmacy fails to designate a pharmacist-in-charge or
12 permits the practice of pharmacy without having designat-
13 ed a pharmacist-in-charge, or fails to notify the board of
14 pharmacy if the designated pharmacist-in-charge leaves
15 the employ of the pharmacy.

16 (d) Before a permit is issued to operate a pharmacy, or
17 renewed, the application shall designate the pharmacist-in-
18 charge. The designated pharmacist-in-charge shall be
19 present when a new store is to be inspected.

20 (e) A pharmacist-in-charge shall not hold such desig-
21 nated position at more than one pharmacy, whether within
22 or without the state of West Virginia. The board of phar-
23 macy shall promulgate rules in accordance with the provi-
24 sions of chapter twenty-nine-a of this code relative to
25 pharmacies which are operated over forty hours a week.

26 (f) An interim pharmacist-in-charge may be designat-
27 ed for a period not to exceed sixty days. The request for
28 an interim pharmacist-in-charge shall detail the circum-
29 stances which warrant such a change. This change in des-
30 ignation shall be filed with the board within thirty days of
31 the designation.

32 (g) The board of pharmacy shall furnish the form
33 which designates a change of the pharmacist-in-charge
34 and every such application shall be subject to a fee of ten
35 dollars.

**§30-5-15. Professional and technical equipment required for
pharmacy or drugstore; penalties and fines.**

1 (a) Every pharmacy shall be equipped with proper
2 pharmaceutical utensils so that prescriptions can be prop-
3 erly filled and compounded. The board of pharmacy shall
4 by rule prescribe the minimum equipment which a phar-
5 macy shall possess.

6 (b) Any person violating this section is guilty of a
7 misdemeanor and shall be fined not less than two hundred
8 fifty dollars nor more than one thousand dollars, and no

9 permit shall be issued or renewed for any pharmacy which
10 has not complied with the provisions of this section.

§30-5-16. Permit for manufacture and packaging of drugs, medicines, cosmetics; distribution of legend drugs; regulations as to sanitation and equipment; penalties; revocation of permit.

1 (a) No drugs or medicines, or toilet articles, dentifrices,
2 or cosmetics, shall be manufactured, made, produced,
3 packed, packaged or prepared within the state, except
4 under the personal supervision of a pharmacist or such
5 other person as may be approved by the board of pharma-
6 cy, after an investigation and determination by the board
7 that they are qualified by scientific or technical training
8 and/or experience to perform such duties of supervision as
9 may be necessary to protect the public health and safety.

10 (b) No person shall manufacture, make, produce, pack,
11 package or prepare any such articles without first obtain-
12 ing a permit to do so from the board of pharmacy. The
13 permit shall be subject to such rules with respect to sanita-
14 tion and/or equipment, as the board of pharmacy may
15 from time to time adopt for the protection of the public
16 health and safety.

17 (c) Any person, firm, corporation, partnership, compa-
18 ny, cooperative society or organization who offers for sale,
19 sells, offers or exposes for sale through the method of
20 distribution any legend drugs shall be subject to this arti-
21 cle.

22 (d) The application for any permit required by this
23 section shall be made on a form to be prescribed and
24 furnished by the board of pharmacy and shall be accom-
25 panied by the following fees: For a distributor, one hun-
26 dred fifty dollars, for a manufacturer, five hundred dollars,
27 which amounts shall also be paid as the fees for each an-
28 nual renewal of such permits. Separate applications shall
29 be made and separate permits issued for each separate
30 place of manufacture, distribution, making, producing,
31 packing, packaging or preparation.

32 (e) The following fees shall be charged for a permit to

33 handle controlled substances: For a hospital or clinic, fifty
34 dollars; for extended care facilities, twenty-five dollars; for
35 a nursing home, twenty-five dollars; for a teaching institu-
36 tion, twenty-five dollars; for a researcher, twenty-five dol-
37 lars; for a medical examiner, twenty-five dollars; and for a
38 pharmacy or drugstore, fifteen dollars, which amounts
39 shall also be paid for each annual renewal of such permits.

40 (f) Permits issued under the provisions of this section
41 shall be posted in a conspicuous place in the factory or
42 place for which issued; such permits shall not be transfer-
43 able, and shall expire on the thirtieth day of June follow-
44 ing the day of issue and shall be renewed annually. Noth-
45 ing in this section shall be construed to apply to those
46 operating registered pharmacies.

47 (g) Any person, firm, corporation, partnership, compa-
48 ny, cooperative society or organization violating any of
49 the provisions of this section and any permittee hereunder
50 who shall violate any of the conditions of this permit or
51 any of the rules adopted by the board of pharmacy shall,
52 upon conviction, be deemed guilty of a misdemeanor and
53 fined not more than fifty dollars for each offense. Each
54 and every day such violation continues shall constitute a
55 separate and distinct offense. Upon conviction of a per-
56 mittee, his permit shall also immediately be revoked and
57 become null and void.

58 (h) Any person, firm, corporation, partnership, compa-
59 ny, cooperative society, organization or any permittee who
60 is convicted of two or more successive violations of the
61 provisions of this section or of the rules adopted by the
62 board of pharmacy shall at the discretion of the board of
63 pharmacy have such permit permanently revoked, and the
64 board of pharmacy shall refuse to issue further permits to
65 such person, firm, corporation, partnership, company,
66 cooperative society, organization or permittee.

§30-5-16b. Partial filling of prescriptions.

1 The partial filling of a prescription for a controlled
2 substance listed in Schedule II is permissible if the phar-
3 macist is unable to supply the full quantity called for in a
4 written or emergency oral prescription and he makes a

5 notation of the quantity supplied on the face of the written
6 prescription or on the written record of the emergency
7 oral prescription. The remaining portion of the prescrip-
8 tion may be filled within seventy-two hours of the first
9 partial filling: *Provided*, That if the remaining portion is
10 not or cannot be filled within the seventy-two hour period,
11 the pharmacist shall so notify the prescribing individual
12 practitioner. No further quantity may be supplied beyond
13 seventy-two hours without a new prescription.

§30-5-16c. Partial filling of prescriptions for long-term care facility or terminally ill patients; requirements; records; violations.

1 (a) As used in this section, "long-term care facility" or
2 "LTCF" means any nursing home, personal care home, or
3 residential board and care home as defined in section two,
4 article five-c, chapter sixteen of this code which provides
5 extended health care to resident patients: *Provided*, That
6 the care or treatment in a household, whether for compen-
7 sation or not, of any person related by blood or marriage,
8 within the degree of consanguinity of second cousin to the
9 head of the household, or his or her spouse, may not be
10 deemed to constitute a nursing home, personal care home
11 or residential board and care home within the meaning of
12 this article. This section shall not apply to:

13 (1) Hospitals, as defined under section one, article
14 five-b, chapter sixteen of this code or to extended care
15 facilities operated in conjunction with a hospital;

16 (2) State institutions as defined in section six, article
17 one, chapter twenty-seven or in section three, article one,
18 chapter twenty-five, all of this code;

19 (3) Nursing homes operated by the federal govern-
20 ment;

21 (4) Facilities owned or operated by the state govern-
22 ment;

23 (5) Institutions operated for the treatment and care of
24 alcoholic patients;

25 (6) Offices of physicians; or

26 (7) Hotels, boarding homes or other similar places that
27 furnish to their guests only a room and board.

28 (b) As used in this section, "terminally ill" means that
29 an individual has a medical prognosis that his life expect-
30 tancy is six months or less.

31 (c) Schedule II prescriptions for patients in a LTCF
32 and for terminally ill patients shall be valid for a period of
33 sixty days from the date of issue unless terminated within
34 a shorter period by the discontinuance of the medication.

35 (d) A prescription for a Schedule II controlled sub-
36 stance written for a patient in a LTCF or for a terminally
37 ill patient may be filled in partial quantities, including, but
38 not limited to, individual dosage units. The total quantity
39 of Schedule II controlled substances dispensed in all par-
40 tial filling shall not exceed the total quantity prescribed.

41 (1) If there is any question whether a patient may be
42 classified as having a terminal illness, the pharmacist shall
43 contact the prescribing practitioner prior to partially fill-
44 ing the prescription.

45 (2) Both the pharmacist and the prescribing practitio-
46 ner have a corresponding responsibility to assure that the
47 controlled substance is for a terminally ill patient.

48 (e) The pharmacist shall record on the prescription
49 that the patient is "terminally ill" or a "LTCF patient". A
50 prescription that is partially filled and does not contain the
51 notation "terminally ill" or "LTCF patient" shall be deemed
52 to have been filled in violation of section three hundred
53 eight, article three, chapter sixty-a of this code.

54 (f) For each partial filling, the dispensing pharmacist
55 shall record on the back of the prescription, or on another
56 appropriate record which is readily retrievable, the follow-
57 ing information:

58 (1) The date of the partial filling;

59 (2) The quantity dispensed;

60 (3) The remaining quantity authorized to be dis-
61 pensed; and

62 (4) The identification of the dispensing pharmacist.

63 (g) Information pertaining to current Schedule II
64 prescriptions for terminally ill and LTCF patients may be
65 maintained in a computerized system if such a system has
66 the capability to permit either by display or printout, for
67 each patient and each medication, all of the information
68 required by this section as well as the patient's name and
69 address, the name of each medication, original prescrip-
70 tion number, date of issue, and prescribing practitioner
71 information. The system shall also allow immediate updat-
72 ing of the prescription record each time a partial filling of
73 the prescription is performed and immediate retrieval of
74 all information required under this section.

**§30-5-19. Rules of board of pharmacy; revocation of permits;
employment of field agents, chemists, clerical and
other qualified personnel.**

1 (a) The board of pharmacy shall promulgate rules in
2 accordance with the provisions of chapter twenty-nine-a of
3 this code not inconsistent with law, as are necessary to
4 carry out the purposes and enforce the provisions of this
5 article. The board may revoke any permit or license issued
6 under the provisions of this article at any time when exam-
7 ination or inspection of the pharmacy discloses that such
8 place of business is not being conducted according to law.

9 (b) The board of pharmacy shall have the power and
10 authority to employ field agents, chemists, clerical help,
11 hearing examiners and other qualified personnel as may
12 be necessary to carry out the purposes and enforce the
13 provisions of this article.

§30-5-21. Limitations of article.

1 (a) Nothing in this article shall be construed to pre-
2 vent, restrict or in any manner interfere with the sale of
3 non-narcotic nonprescription drugs which may be lawful-
4 ly sold without a prescription in accordance with the Unit-
5 ed States food, drug, and cosmetic act, or the laws of this
6 state, nor shall any rule be adopted by the board which
7 shall require the sale of nonprescription drugs by a li-
8 censed pharmacist or in a pharmacy, or which shall pre-

9 vent, restrict, or otherwise interfere with the sale or distri-
10 bution of such drugs by any retail merchant. The sale or
11 distribution of nonprescription drugs shall not be deemed
12 to be improperly engaging in the practice of pharmacy.

13 (b) Nothing in this article shall be construed to inter-
14 fere with any legally qualified practitioner of medicine,
15 dentistry or veterinary medicine, who is not the proprietor
16 of the store for the dispensing or retailing of drugs, and
17 who is not in the employ of such proprietor, in the com-
18 pounding of his own prescriptions, or to prevent him from
19 supplying to his patients such medicines as he may deem
20 proper, if such supply is not made as a sale.

§30-5-22. Offenses; penalties.

1 (a) Any person who violates any of the provisions of
2 section three of this article is guilty of a misdemeanor,
3 and, upon conviction, shall, for each offense, be fined not
4 less than two hundred fifty dollars nor more than one
5 thousand dollars, or confined in the county jail not to
6 exceed six months, or both fined and imprisoned, in the
7 discretion of the court, and each day such violation shall
8 continue shall be deemed a separate offense.

9 (b) Any person who violates any of the provisions of
10 section twelve is guilty of a misdemeanor, and, upon con-
11 viction, shall be punished by a fine of not less than fifty
12 nor more than one hundred fifty dollars for each offense.

13 (c) Any person, except for the board of pharmacy or
14 board member acting within the scope of his or her re-
15 sponsibilities or duties as such member, who violates any
16 of the provisions of section twelve-b is guilty of a misde-
17 meanor, and, upon conviction, shall be punished by a fine
18 of not less than fifty nor more than one thousand dollars
19 for each offense.

20 (d) Any person, firm, partnership or corporation who
21 violates any of the provisions of section fourteen is guilty
22 of a misdemeanor, and, upon conviction, for the first of-
23 fense shall be fined not to exceed one hundred dollars, or
24 shall be imprisoned in the county jail not to exceed six
25 months, or both fined and imprisoned, in the discretion of

26 the court. Each and every day that the violation continues
27 shall constitute a separate offense.

28 (e) Any person, firm, partnership or corporation who
29 violates any of the provisions of section eighteen is guilty
30 of a misdemeanor, and, upon conviction, shall be fined not
31 to exceed fifty dollars for the first offense, and upon con-
32 viction of a second offense shall be fined not less than
33 fifty nor more than five hundred dollars, or shall be im-
34 prisoned in the county jail not to exceed thirty days, or
35 both fined and imprisoned. Each and every day that the
36 violation continues shall constitute a separate offense.

**§30-5-22a. Civil immunity for board members; liability limita-
tions of professionals reporting to board; report-
ing results of litigation to the board; rules.**

1 (a) The members of the board when acting in good
2 faith and without malice shall enjoy immunity from indi-
3 vidual civil liability while acting within the scope of their
4 duties as board members.

5 (b) Any licensee of this board who reports or other-
6 wise provides evidence of the negligence, impairment or
7 incompetence of another member of this profession to the
8 board or to any peer review organization, shall not be
9 liable to any person for making such a report if such re-
10 port is made without actual malice and in the reasonable
11 belief that such report is warranted by the facts known to
12 him or her at the time.

13 (c) Within thirty days of the dismissal, settlement, adju-
14 dication or other termination of any claim or cause of
15 action asserted against any professional reporting under
16 the provisions of this article the person or persons filing
17 such claim or cause of actions shall submit to the board
18 the following information:

19 (1) The names of the parties involved;

20 (2) The name of the court in which the action was
21 filed, if applicable;

22 (3) The basis and nature of the claim or cause of ac-
23 tion; and

24 (4) The results of such claim or cause of action, in-
25 cluding dismissal, settlement, court or jury verdict or other
26 means of termination.

27 (d) The board shall promulgate legislative rules in
28 accordance with the provisions of chapter twenty-nine-a of
29 this code establishing procedures for imposing sanctions
30 and penalties against any licensee who fails to submit to
31 the board the information required by this section.

CHAPTER 194

(Com. Sub. for S. B. 364—By Senators Sharpe and Ross)

[Passed March 11, 1995; in effect July 1, 1995. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, four, five, seven and twelve, article thirteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eighteen, all relating to requiring surveying firms to maintain a licensee on their company staff; exemptions to examination requirements; and establishing minimum technical criteria to govern the performance of surveyors when more stringent specifications are not required by other agencies.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 13A. LAND SURVEYORS.

- §30-13A-1. License required.
- §30-13A-2. Definitions.
- §30-13A-4. Powers and duties of board; funds.
- §30-13A-5. Qualifications of applicants for licenses; surveyor-in-training applications; fees; examinations.
- §30-13A-7. Exemption from regulation and licensing.
- §30-13A-12. Duty of county clerks and public officials.
- §30-13A-18. Minimum standards for boundary surveys.

§30-13A-1. License required.

1 In order to provide for the regulation of land survey-
2 ing in this state, no person shall engage in, offer to engage
3 in, or hold himself out to the public as being engaged in,
4 the practice of land surveying in this state (except for the
5 persons exempted under the provisions of section seven of
6 this article), unless and until he shall first obtain a license
7 to engage in the practice of land surveying in accordance
8 with the provisions of this article, which license remains
9 unexpired, unsuspended and unrevoked.

10 Any firm, association, partnership or corporation of-
11 fering surveying services or advertising as offering land
12 surveying services must maintain a licensee on their com-
13 pany staff by means of ownership interest or full-time
14 employee of the company.

§30-13A-2. Definitions.

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

3 (a) "Applicant" means any person making application
4 for an original or renewal license under the provisions of
5 this article;

6 (b) "Licensee" means any person holding a license
7 issued under the provisions of this article;

8 (c) "Board" means the West Virginia state board of
9 examiners of land surveyors created under the provisions
10 of this article;

11 (d) "Practice of land surveying" means the rendering

12 or offering to render for a fee, salary or other compensa-
13 tion, monetary or otherwise, for the public generally, any
14 of the following services:

15 (1) The location, relocation, establishment, reestablish-
16 ment or retracement of any property line or boundary of
17 any parcel of land or of any road or utility right-of-way,
18 easement or alignment;

19 (2) The performance of any survey for the division,
20 subdivision or resubdivision of any tract of land;

21 (3) The determination of the position of any monu-
22 ment or reference point which marks a property line
23 boundary or corner, or setting, resetting or replacing any
24 such monument or reference point, by the use of the prin-
25 ciples of land surveying;

26 (4) The determination of the configuration or contour
27 of the earth's surface or the position of fixed objects there-
28 on or related thereto, by means of measuring lines and
29 angles, whether directly, indirectly, by conventional meth-
30 ods or GPS, and applying the principles of mathematics;

31 (5) The performance of cadastral surveying, under-
32 ground surveying, surface mine surveying or hydrograph-
33 ic surveying;

34 (6) The preparation of subdivision maps; and

35 (7) The preparation of maps or drawings showing any
36 of the above;

37 (e) "Professional surveyor" means any person who
38 engages in the practice of land surveying;

39 (f) "Direct supervision" means the responsible licensee
40 shall be in direct control of all field and office operations,
41 including research, evaluation of all data and decisions
42 relative to the final output data/material, i.e., plats, plans,
43 descriptions, etc., that could affect the general public;

44 (g) "Global positioning system (GPS)" means any
45 measurement of elevations or positions either absolute or

46 relative which utilizes the observation of artificial satellites;

47 (h) "Mortgage/loan inspection survey" means a survey
48 in which property lines and corners have not been estab-
49 lished.

§30-13A-4. Powers and duties of board; funds.

1 (a) The board shall have the power and duty to:

2 (1) Examine applicants and determine their eligibility
3 for a license to engage in the practice of land surveying;

4 (2) Prepare, conduct and grade an apt and proper
5 written, oral or written and oral examination of applicants
6 for a license and determine the satisfactory passing score
7 thereon;

8 (3) Promulgate reasonable rules implementing the
9 provisions of this article and the powers and duties con-
10 ferred upon the board hereby, all of which reasonable
11 rules shall be promulgated in accordance with the provi-
12 sions of article three, chapter twenty-nine-a of this code;

13 (4) Issue, renew, deny, suspend or revoke licenses to
14 engage in the practice of land surveying in accordance
15 with the provisions of this article;

16 (5) Investigate alleged violations of the provisions of
17 this article, reasonable rules promulgated hereunder and
18 orders and final decisions of the board and take appropri-
19 ate disciplinary action against any licensee for the viola-
20 tion thereof or institute appropriate legal action for the
21 enforcement of the provisions of this article, reasonable
22 rules promulgated hereunder and orders and final deci-
23 sions of the board or take such disciplinary action and
24 institute such legal action;

25 (6) Keep accurate and complete records of its pro-
26 ceedings, certify the same as may be appropriate and pre-
27 pare, from time to time, a list showing the names and ad-
28 dresses of all licensees;

29 (7) Take such other action as may be reasonably nec-

30 essary or appropriate to effectuate the provisions of this
31 article; and

32 (8) Establish standards to evaluate surveying curricula
33 as it relates to the practice of land surveying under the
34 provisions of this article and to determine the amount of
35 experience required under section five of this article which
36 may be substituted for a particular curriculum.

37 (b) All moneys paid to the board shall be accepted by
38 a person designated by the board and deposited by him
39 with the treasurer of the state and credited to an account to
40 be known as the "board of examiners of land surveyors
41 fund". All of the reasonable compensation of the mem-
42 bers of the board, the reimbursement of all reasonable and
43 necessary expenses actually incurred by such members
44 and all other costs and expenses incurred by the board in
45 the administration of this article shall be paid from such
46 fund, and no part of the state's general revenue fund shall
47 be expended for this purpose.

**§30-13A-5. Qualifications of applicants for licenses; surveyor-
in-training applications; fees; examinations.**

1 (a) To be eligible for a license to engage in the prac-
2 tice of land surveying, the applicant must:

3 (1) Be at least eighteen years of age;

4 (2) Be of good moral character;

5 (3) Have been a resident of the United States for one
6 year immediately preceding the date of application;

7 (4) Not have been convicted of a crime involving
8 moral turpitude;

9 (5) On and after the first day of July, one thousand
10 nine hundred ninety-five, six years or more of experience
11 under the direct supervision of a licensee or a person au-
12 thorized in another state or country to engage in the prac-
13 tice of land surveying shall be required by those appli-
14 cants who are graduates of a surveying curriculum of two

15 scholastic years or more. Eight years of experience under
16 the supervision of a person authorized to practice land
17 surveying in this state, or a person authorized in another
18 state or country to engage in the practice of land survey-
19 ing, shall be required for those applicants who are not
20 graduates of a surveying curriculum; and

21 (6) Have passed the examination prescribed by the
22 board, which examination shall cover the basic subject
23 matter of land surveying and land surveying skills and
24 techniques.

25 (b) Any applicant for any such license shall submit an
26 application therefor on forms provided by the board.
27 Such application shall be verified and shall contain a state-
28 ment of the applicant's education and experience, the
29 names of five persons for reference (at least three of
30 whom shall be licensees or persons authorized in another
31 state or country to engage in the practice of land survey-
32 ing, who have knowledge of his work) and such other
33 information as the board may from time to time by rea-
34 sonable rule prescribe.

35 (c) An applicant shall pay to the board with his appli-
36 cation an examination fee for the purpose of covering the
37 cost of the examination as determined by the board by
38 rule.

39 (d) Examinations shall be held at least once each year
40 at such time and place as the board shall determine. The
41 scope of the examination and methods of procedure shall
42 be determined by the board. An applicant who fails to
43 pass all or any part of an examination may reapply at any
44 time and shall furnish additional information as requested
45 by the board. The cost of reexamination will be based on
46 the cost of the examination as determined by the board by
47 rule.

48 (e) The board shall offer a surveyor-in-training (SIT)
49 examination to applicants who meet the requirements of
50 subdivisions (1), (2), (3) and (4), subsection (a) of this
51 section, and are graduates of a surveying curriculum of

52 two or more years which has been approved by the board
53 of examiners of land surveyors. The examination shall
54 include an eight-hour portion of fundamentals in science,
55 mathematics and surveying. Applicants must pass the
56 other portions of the surveyor-in-training examination
57 and complete the work experience and other requirements
58 of this section before they are allowed to take the second
59 eight-hour examination which consists of principles and
60 practices.

§30-13A-7. Exemption from regulation and licensing.

1 The following persons are exempt from regulation
2 and licensing under the provisions of this article and any
3 reasonable rules promulgated hereunder and may engage
4 in the practice of land surveying without a license issued
5 under the provisions of this article and any such reason-
6 able rules:

7 (a) Any professional engineer authorized to practice
8 the profession of engineering as provided in article thir-
9 teen of this chapter may apply within one year after the
10 effective date of this section and if such person meets the
11 requirements of subdivisions (1), (2), (3) and (4), subsec-
12 tion (a), section five of this article, he or she is eligible for
13 a license without examination. Any applicant for any
14 such license shall submit an application and proof of sur-
15 veying experience as specified in said section;

16 (b) Any employee of a proprietorship, partnership,
17 association, corporation or other business entity which is
18 engaged in the practice of land surveying in this state:
19 *Provided*, That the work of any such employee is done
20 under the supervision of and certified by a licensed em-
21 ployee of the proprietorship, partnership, association,
22 corporation or other business entity;

23 (c) Any employee of a person, firm, association or
24 corporation, when such employee is engaged in the prac-
25 tice of land surveying exclusively for the person, firm,
26 association or corporation by which employed, or, if a
27 corporation, its parents, affiliates or subsidiaries, and such
28 person, firm, association or corporation does not hold

29 himself or itself out to the public as being engaged in the
30 business of land surveying;

31 (d) Any employee or officer of the United States, this
32 state or any political subdivision thereof, when such em-
33 ployee is engaged in the practice of land surveying exclu-
34 sively for such governmental unit.

§30-13A-12. Duty of county clerks and public officials.

1 No plat, document, plan, map, drawing, exhibit, sketch
2 or pictorial representation intended to be used in the trans-
3 fer of real property shall be filed by any clerk of a county
4 commission or accepted by any public official of this state
5 unless the seal required by section eleven of this article has
6 been affixed thereto, except that any document, plan, map,
7 drawing, exhibit, sketch or pictorial representation, pre-
8 pared by a person exempted from the regulation and
9 licensing requirements of this article, as provided in sec-
10 tion seven of this article, shall not be required to have the
11 seal required by section eleven of this article affixed there-
12 to. If a document, plan, plat, map, drawing, exhibit, sketch
13 or pictorial representation has been altered from its origi-
14 nal form, it shall not be filed by any clerk of a county or
15 accepted by any public official of this state. Nothing in
16 this section shall prevent a document prepared prior to the
17 twenty-fifth day of May, one thousand nine hundred
18 sixty-nine, from being recorded without such seal. If a
19 seal of such exempt person is not affixed to said docu-
20 ment, plan, plat, map, drawing, exhibit, sketch or pictorial
21 representation, a certificate shall be placed thereon by the
22 exempt person, stating upon what the exemption is
23 claimed. Said certificate may be in a form similar to the
24 following:

25 "I certify that I am engaged in surveying exclu-
26 sively for _____ and
27 believe I am exempt from regulations and licens-
28 ing under West Virginia Code 30-13A-7

29
30

Signature"

§30-13A-18. Minimum standards for boundary surveys.

1 The purpose of these standards is to establish mini-
2 mum technical criteria to govern the performance of sur-
3 veyors when more stringent specifications are not required
4 by other agencies, contract, etc. Further, the purpose is to
5 protect the inhabitants of this state from dishonest or in-
6 competent surveying, and generally to protect the public
7 welfare.

8 (a) The client discussion prior to the survey should
9 cover the purpose of survey, scope of services, disputes
10 with adjoining fees and contract.

11 (b) The record search should include the record de-
12 scription based on current and prior deeds, conveyance
13 from common grantor, or if necessary original survey or
14 grant. It should also include descriptions of adjoining
15 properties, other sources of information or resolution of
16 conflicts in descriptions. All records of information
17 sources used will be retained as a permanent record.

18 (c) The field survey will consist of a field search for
19 controlling evidence, a discussion of evidence with the
20 owner, adjoining or others having knowledge of the
21 boundaries and the location of evidence by traverse meth-
22 ods. The surveyor will use methods and equipment suit-
23 able for the purpose of the survey and the field notes will
24 be retained as a permanent record.

25 (d) Distance will be measured in feet or meters, or
26 fractions thereof, and angles will be measured in degrees
27 or parts thereof. These will be measured to a precision
28 that will produce the desired level of accuracy. Areas will
29 be measured to a precision consistent with the purpose of
30 the survey. All measuring devices will be checked period-
31 ically for accuracy and condition.

32 (e) Monumentation is required for all new or reestab-
33 lished corners, or reference monument for inaccessible
34 corners, and is encouraged at intervisible points between
35 corners. Artificial or set monuments will be made of du-
36 rable ferrous material and set firmly in the ground. Pipes
37 will have a minimum inside diameter of one inch, while
38 rebars will have a minimum outside diameter of one-half

39 inch and both will have a minimum length of thirty inch-
40 es. Other markers shall have a minimum cross-sectional
41 area of three-tenths square inch and will be of durable
42 material, identifiable and unique. Natural objects chosen
43 for corners shall be durable, unique and easily identifi-
44 able.

45 (f) A plat will be prepared for all boundary surveys,
46 shall show the results of the field survey and will be deliv-
47 ered to the client. Plats will be to a scale large enough to
48 show significant details. Information on plats will include
49 when applicable north arrows and basis of bearings, date
50 of survey, measured length and direction of each bound-
51 ary line by distance, bearing and quadrant and evidence of
52 possession on or near the property line.

53 The description of all corners or reference monu-
54 ments, and whether found (fd) or set, area of the parcel
55 and of significant parts, including streets, alleys and
56 nonlotted area of subdivision, state, county and district or
57 municipality will be shown on the plat. The subdivision
58 name, lot, block and plat reference will also be shown on
59 subdivision or lot surveys.

60 The tax map, parcel number, name of current and/or
61 past owners for subject property and adjoining, current
62 conveyance reference for subject property and adjoining
63 will be shown. Name, address, license number, signature,
64 seal of surveyor, overlaps and gaps in record lines, former
65 deed or grant lines as needed, ties to significant objects
66 and general location information will also be included.

67 (g) A description will be prepared for each boundary
68 survey and will include the state, county, district or munic-
69 ipality and watershed or topographic location. Lot and
70 block numbers will be shown for new platted subdivisions,
71 but retracement surveys for lots and other surveys will
72 require a metes and bounds description. The description
73 will also include the point of beginning, the description of
74 monumentation at each corner and objects encountered
75 along the line, the length and direction of each line, and
76 the radius, chord bearing and distance of a curved bound-
77 ary.

78 The description will also show the intent with regard to
79 adjoiner, physical evidence or record monument along the
80 line. The area of the parcel, reference to plat and surveyor
81 preparing description and the reference to conveyance by
82 which the current owner claims title, including grantor,
83 grantee, date and place.

84 (h) The report of survey will be used when the plat
85 and description do not adequately address all matters
86 considered by the surveyor in performing the survey and
87 will be provided to the client with a plat and description.

88 The report will include all unusual circumstances sur-
89 rounding the survey, weight given to conflicting evidence
90 and encroachments, overlaps or gaps and how they were
91 resolved, and the names of adjoiners contacted and the
92 information they supplied.

93 (i) A mortgage/loan inspection survey in which
94 boundaries on a property have not been surveyed in ac-
95 cordance with the methods set forth by the board, then the
96 plat must be stamped "a mortgage inspection survey only,
97 not a boundary survey". The surveyor must notify a land-
98 owner or other person commissioning their services if a
99 survey or an inspection was performed.

CHAPTER 195

(S. B. 195—By Senators Wagner, Bailey, Bowman, Buckalew, Miller,
Wiedebusch and Yoder)

[Passed March 10, 1995; in effect July 1, 1995. Approved by the Governor.]

AN ACT to repeal section thirteen, article thirty, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three of said article, relating to continuing the board of social work examiners; authorizing employment of staff; deleting reference to annual license renewal; authorizing the promulgation of legislative rules; changing type of audit to prelimi-

nary performance review; and repealing duplicative language.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 30. SOCIAL WORKERS.

§30-30-3. Board of social work examiners.

1 (a) For the purpose of carrying out the provisions of
2 this article, there is hereby created a West Virginia board
3 of social work examiners, consisting of seven members
4 who shall be appointed by the governor, subject to the
5 following requirements:

6 (1) No person may be excluded from serving on the
7 board by reason of race, sex or national origin;

8 (2) One member shall be an independent clinical so-
9 cial worker, two members shall be certified social workers,
10 one member shall be a graduate social worker and two
11 members shall be social workers. All such members must
12 be licensed under the provisions of this article in accor-
13 dance with their respective titles. In addition, there shall
14 be one member of the board chosen from the general
15 public: *Provided*, That those members who are appointed
16 by the governor to serve as the first board after the effec-
17 tive date of this article shall be persons eligible for the
18 licensing required under this article: *Provided, however*,
19 That the member from the general public shall never be
20 required to be eligible for licensing;

21 (3) The members of the first board to serve after the
22 effective date of this article shall be appointed within nine-
23 ty days thereof;

24 (4) The term of office for each member of the board
25 shall be three years: *Provided*, That one of the members
26 of the first board to serve after the effective date of this

27 article shall serve a term of two years, three of them shall
28 serve a term of three years and the remaining three shall
29 serve a term of four years; and

30 (5) The governor shall, whenever there is a vacancy on
31 the board due to circumstances other than the expiration
32 of the term of a member, appoint another member with
33 the same qualifications as the member who has vacated to
34 serve the duration of the unexpired term.

35 For the purpose of accepting nominations for the
36 replacement of a member, the governor shall cause a no-
37 tice of the vacancy to be published at least thirty days
38 prior to an announcement of the replacement member, as
39 a Class I-0 legal advertisement, in accordance with the
40 provisions of section two, article three, chapter fifty-nine
41 of this code. The publication area shall be statewide.

42 If the governor fails to make appointment in ninety
43 days after expiration of any term, the board shall make the
44 necessary appointment. Each member shall hold office
45 until the expiration of the term for which such member is
46 appointed and until a successor shall have been duly ap-
47 pointed and qualified.

48 (b) Any members of the board may be removed from
49 office for cause, in accordance with procedures set forth in
50 this code for the removal of public officials from office.

51 (c) The board shall pay each member the same com-
52 pensation as is paid to members of the Legislature for
53 their interim duties as recommended by the citizens legis-
54 lative compensation commission and authorized by law
55 for each day or portion thereof engaged in the discharge
56 of official duties and shall reimburse each member for
57 actual and necessary expenses incurred in the discharge of
58 official duties: *Provided*, That such compensation and
59 such expenses shall not exceed the amount received by the
60 board from licensing fees and penalties imposed under
61 subdivision (4), subsection (e) of this section.

62 (d) The board shall hold an annual election for the
63 purpose of electing a chairman, vice chairman and secre-

64 tary. The requirements for meetings and management of
65 the board shall be established in regulations promulgated
66 by the board as required by this article.

67 (e) In addition to the duties set forth in other provi-
68 sions of this article, the board shall:

69 (1) Recommend to the Legislature any proposed mod-
70 ifications to this article;

71 (2) Report to county prosecutors any suspected viola-
72 tions of this article: *Provided*, That no report shall be
73 made until the board has given the suspected violator
74 ninety days written notice of the suspected violation and
75 the violator has, within such ninety-day period, been af-
76 farded an opportunity to respond to the board with re-
77 spect to the allegation;

78 (3) Publish an annual report and a roster listing the
79 names and addresses of all persons who have been li-
80 censed in accordance with the provisions of this article as
81 an independent clinical social worker, certified social
82 worker, graduate social worker or social worker;

83 (4) Establish a fee schedule by legislative rule, pursu-
84 ant to the provisions of chapter twenty-nine-a of this code,
85 which schedule may include fees for the initial examina-
86 tion, license fee, license renewal, license replacement, re-
87 ciprocal license, license classification change, continuing
88 education provider approval and monitoring, mailing lists
89 and requests for information and reports; fees for requests
90 for information and reports shall not be greater than the
91 cost of personnel, time and supplies incurred by the board
92 and shall not be applied to the annual report;

93 (5) Establish standards and requirements by legislative
94 rule, pursuant to the provisions of chapter twenty-nine-a
95 of this code, for continuing education. In establishing
96 these requirements the board shall consult with profession-
97 al groups and organizations representing all levels of prac-
98 tice provided for in this article and the board shall consid-
99 er recognized staff development programs, continuing
100 education programs offered by colleges and universities

101 having social work programs approved or accredited by
102 the council on social work education, and continuing
103 education programs offered by recognized state and na-
104 tional social work bodies: *Provided*, That such standards
105 and requirements for continuing education shall not be
106 construed to alter or affect in any way the standards and
107 requirements for licensing as set forth elsewhere in this
108 article;

109 (6) Establish standards and requirements for the prac-
110 tice of social work and the differentiation of qualifications,
111 education, training, experience, supervision, responsibili-
112 ties, rights, duties and privileges at the independent clinical
113 social worker, certified social worker, graduate social
114 worker and social worker license levels. In establishing
115 these standards and requirements the board shall consult
116 with professional groups and organizations representing
117 all levels of practice provided for in this article. Standards
118 and requirements may include, but are not limited to,
119 practice standards, practice parameters, quality indicators,
120 minimal standards of acceptance, advanced training and
121 certification and continuing education: *Provided*, That
122 such standards and requirements for practice may not be
123 construed to alter or affect in any way the standards and
124 requirements for licensing as set forth elsewhere in this
125 article;

126 (7) Conduct its proceedings in accordance with provi-
127 sions of article nine-a, chapter six of this code; and

128 (8) Employ, direct and define the duties of administra-
129 tive clerical support staff.

130 After having conducted a preliminary performance
131 review through its joint committee on government opera-
132 tions, pursuant to article ten, chapter four of this code, the
133 Legislature hereby finds and declares that the board of
134 social work examiners be continued and reestablished.
135 Accordingly, notwithstanding the provisions of said article,
136 the board of social work examiners shall continue to exist
137 until the first day of July, one thousand nine hundred
138 ninety-eight.

CHAPTER 196

(Com. Sub. for H. B. 2348—By Mr. Speaker, Mr. Chambers, and Delegates
Gallagher, Leach, Compton, Kiss, Calvert and Sprouse)

[Passed March 10, 1995; in effect ninety days from passage.

Became law without Governor's signature.]

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-four, relating to creating a self-supporting state board for respiratory care practitioners; requiring a license to practice; defining the scope of practice and related terms; specifying board composition, powers, responsibilities and operating procedures; establishing criteria and fees for issuing, renewing and reinstating full and limited licenses and temporary permits; creating misdemeanor penalties for nonlicensure and other acts; exempting certain categories from licensure; providing a grandfather clause; setting standards for disciplinary action, license revocation and suspension and due process; and delineating exceptions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 34. BOARD OF RESPIRATORY CARE PRACTITIONERS.

- §30-34-1. License required to practice.
- §30-34-2. Definitions.
- §30-34-3. Board of respiratory care.
- §30-34-4. Organization and meetings of board; quorum; expenses.
- §30-34-5. Board responsibilities.
- §30-34-6. Powers of the board; fund.
- §30-34-7. Issuance of license; renewal of license; renewal fee; display of license.
- §30-34-8. Criteria for licensure.
- §30-34-9. Temporary permits.
- §30-34-10. Prohibitions and penalties.
- §30-34-11. Grandfather clause.

- §30-34-12. Professional identification.
- §30-34-13. Disciplinary criteria.
- §30-34-14. Due process procedure.
- §30-34-15. Exceptions.
- §30-34-16. Practice of medicine prohibited.

§30-34-1. License required to practice.

1 In order to protect the life, health and safety of the
2 public, any person practicing or offering to practice as a
3 respiratory care technician or respiratory therapist is re-
4 quired to submit evidence that he or she is qualified to
5 practice, and is licensed as provided in this article. After
6 the thirtieth day of June, one thousand nine hundred
7 ninety-six, it shall be unlawful for any person not licensed
8 under the provisions of this article to practice as a respira-
9 tory care technician or respiratory therapist in this state, to
10 deliver any portion of the description of services or scope
11 of practice, or to use any title, sign, card or device to indi-
12 cate that he or she is a respiratory care technician or respi-
13 ratory therapist. The provisions of this article are not
14 intended to limit, preclude or otherwise interfere with the
15 practice of other health care providers including those
16 health care providers working in any setting and licensed
17 by appropriate agencies or boards of the state of West
18 Virginia whose practices and training may include ele-
19 ments of the same nature as the practice of a licensed
20 respiratory care technician or a licensed respiratory thera-
21 pist.

§30-34-2. Definitions.

- 1 (a) "Board" means the West Virginia board for respira-
2 tory care;
- 3 (b) "Formal training" means a supervised, structured
4 educational activity that includes preclinical didactic and
5 laboratory activities and clinical activities. The training
6 must be approved by an accrediting agency recognized by
7 the board. It must include an evaluation of competence
8 through standardized testing mechanisms that the board
9 determines to be both valid and reliable;
- 10 (c) "Graduate respiratory care technician" means an
11 individual who has graduated from a respiratory care

CHAPTER 196

(Com. Sub. for H. B. 2348—By Mr. Speaker, Mr. Chambers, and Delegates
Gallagher, Leach, Compton, Kiss, Calvert and Sprouse)

[Passed March 10, 1995; in effect ninety days from passage.
Became law without Governor's signature.]

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- §30-34-1. License required to practice.
- §30-34-2. Definitions.
- §30-34-3. Board of respiratory care.
- §30-34-4. Organization and meetings of board; quorum; expenses.
- §30-34-5. Board responsibilities.
- §30-34-6. Powers of the board; fund.
- §30-34-7. Issuance of license; renewal of license; renewal fee; display of license.
- §30-34-8. Criteria for licensure.
- §30-34-9. Temporary permits.
- §30-34-10. Prohibitions and penalties.
- §30-34-11. Grandfather clause.

- §30-34-12. Professional identification.
- §30-34-13. Disciplinary criteria.
- §30-34-14. Due process procedure.
- §30-34-15. Exceptions.
- §30-34-16. Practice of medicine prohibited.

§30-34-1. License required to practice.

1 In order to protect the life, health and safety of the
2 public, any person practicing or offering to practice as a
3 respiratory care technician or respiratory therapist is re-
4 quired to submit evidence that he or she is qualified to
5 practice, and is licensed as provided in this article. After
6 the thirtieth day of June, one thousand nine hundred
7 ninety-six, it shall be unlawful for any person not licensed
8 under the provisions of this article to practice as a respira-
9 tory care technician or respiratory therapist in this state, to
10 deliver any portion of the description of services or scope
11 of practice, or to use any title, sign, card or device to indi-
12 cate that he or she is a respiratory care technician or respi-
13 ratory therapist. The provisions of this article are not
14 intended to limit, preclude or otherwise interfere with the
15 practice of other health care providers including those
16 health care providers working in any setting and licensed
17 by appropriate agencies or boards of the state of West
18 Virginia whose practices and training may include ele-
19 ments of the same nature as the practice of a licensed
20 respiratory care technician or a licensed respiratory thera-
21 pist.

§30-34-2. Definitions.

- 1 (a) "Board" means the West Virginia board for respira-
2 tory care;
- 3 (b) "Formal training" means a supervised, structured
4 educational activity that includes preclinical didactic and
5 laboratory activities and clinical activities. The training
6 must be approved by an accrediting agency recognized by
7 the board. It must include an evaluation of competence
8 through standardized testing mechanisms that the board
9 determines to be both valid and reliable;
- 10 (c) "Graduate respiratory care technician" means an
11 individual who has graduated from a respiratory care

12 technician education program and who is scheduled to
13 take the next available examination administered by the
14 state or a national organization approved by the board;

15 (d) "Graduate respiratory care therapist" means an
16 individual who has graduated from a respiratory therapist
17 educational program and is scheduled to take the next
18 available examination administered by the state or a na-
19 tional organization approved by the board;

20 (e) "Practice of respiratory care" means the practice of
21 respiratory care, and any part of respiratory care, by per-
22 sons licensed under the provisions of this article and shall
23 be limited to that which has been learned through formal
24 or special training including performance evaluation to
25 evaluate competence. The practice of respiratory care
26 may be performed in any clinic, hospital, skilled nursing
27 facility, private dwelling or other place deemed appropri-
28 ate or necessary by the board in accordance with the pre-
29 scription or verbal orders of a licensed physician or other
30 legally authorized person with prescriptive authority, and
31 /or under the direction of a qualified medical director.
32 Practice of respiratory care includes, but is not limited to:

33 (1) The administration of pharmacological, diagnostic
34 and therapeutic agents related to respiratory care proce-
35 dures necessary to implement a treatment, disease preven-
36 tion, pulmonary rehabilitative or diagnostic regimen pre-
37 scribed by a physician;

38 (2) Transcription and implementation of written or
39 verbal orders of a physician or other legally authorized
40 person with prescriptive authority, pertaining to the prac-
41 tice of respiratory care;

42 (3) Observing and monitoring signs and symptoms,
43 general behavior, general physical response to respiratory
44 care treatment and diagnostic testing, including determina-
45 tion of whether such signs, symptoms, reactions, behavior
46 or general response exhibit abnormal characteristics;

47 (4) Based on observed abnormalities, appropriate
48 reporting, referral or implementation of respiratory care
49 protocols or changes in treatment pursuant to the written

50 or verbal orders of a person with prescriptive authority
51 under the laws of the state of West Virginia; or

52 (5) The initiation of emergency procedures under the
53 regulations of the board or as otherwise permitted in this
54 article;

55 (f) "Qualified medical director" means the medical
56 director of any inpatient or outpatient respiratory care
57 service, department or home care agency. The medical
58 director shall be a licensed physician who is knowledge-
59 able in the diagnosis and treatment of respiratory prob-
60 lems. This physician shall be responsible for the quality,
61 safety and appropriateness of the respiratory services pro-
62 vided and require that respiratory care be ordered by a
63 physician, or other legally authorized person with pre-
64 scriptive authority, who has medical responsibility for the
65 patient. The medical director shall be readily accessible to
66 the respiratory care practitioners and assure their compe-
67 tency;

68 (g) "Respiratory care" means the allied health profes-
69 sion responsible for the direct and indirect services in the
70 treatment, management, diagnostic testing and care of
71 patients with deficiencies and abnormalities associated with
72 the cardiopulmonary system, under a qualified medical
73 director. Respiratory care includes inhalation therapy and
74 respiratory therapy;

75 (h) "Respiratory care education program" means a
76 course of study leading to eligibility for registry or certifi-
77 cation in respiratory care and the program is approved by
78 the board;

79 (i) "Respiratory therapist" means an individual who has
80 successfully completed an accredited training program,
81 and who has successfully completed an examination for
82 respiratory therapists administered by the state or a nation-
83 al organization approved by the board and who is licensed
84 by the board as a licensed respiratory therapist;

85 (j) "Respiratory care technician" means an individual
86 who has successfully completed an accredited training
87 program and who has successfully completed a certifica-

88 tion examination for respiratory care technicians adminis-
89 tered by the state or a national organization approved by
90 the board, and who is licensed by the board as a licensed
91 respiratory care technician; and

92 (k) "Student respiratory care therapist or student respi-
93 ratory care technician" means an individual enrolled in a
94 respiratory educational program and whose sponsoring
95 educational institution assumes responsibility for the su-
96 pervision of, and the services rendered by, the student
97 respiratory care practitioner while he or she is functioning
98 in a clinical training capacity.

§30-34-3. Board of respiratory care.

1 (a) There is hereby created the West Virginia board of
2 respiratory care. The board shall consist of seven mem-
3 bers, appointed by the governor with the advice and con-
4 sent of the Senate, and shall consist of one lay citizen
5 member; one practicing physician member currently li-
6 censed in West Virginia with board certification, clinical
7 training and experience in the management of pulmonary
8 disease; and five members licensed under the provisions of
9 this article and engaged in the practice of respiratory care
10 for the five years immediately preceding their appoint-
11 ment. One of the respiratory practitioners appointed shall
12 be employed full time in home respiratory care by a home
13 medical equipment supplier. All appointees shall be citi-
14 zens of the United States and residents of this state. The
15 West Virginia society for respiratory care or its successor
16 organization shall make recommendations to the governor
17 regarding individuals to be considered for initial and sub-
18 sequent appointments.

19 (b) The members of the board shall each serve terms
20 that commence on the first day of July, one thousand nine
21 hundred ninety-five. Of the initial appointments to the
22 board, one physician and one respiratory care practitioner
23 shall serve for two-year terms, one public member and two
24 respiratory care practitioners shall serve for three-year
25 terms, and two respiratory care practitioners shall serve for
26 four-year terms. Thereafter, each appointment shall be for
27 a four-year term commencing upon the expiration of the
28 term of his or her previous term or of his or her predeces-

29 sor's term. No member may be appointed for more than
30 three consecutive terms. Vacancies shall be appointed in a
31 like manner for the balance of an unexpired term.

32 (c) The West Virginia medical association, or other
33 organizations if requested by the governor, may submit
34 the names of three physicians qualified to serve in that
35 designated position on the board.

36 (d) The governor may remove any member from the
37 board for neglect of any duty required by law or for in-
38 competence or unethical or dishonorable conduct.

**§30-34-4. Organization and meetings of board; quorum;
expenses.**

1 (a) The board shall meet at least twice a year and elect
2 annually a chairperson and a vice chairperson from its
3 members. The board may hold other meetings during the
4 year as the chairperson or board deem necessary to trans-
5 act its business.

6 (b) A majority, including one officer, constitutes a
7 quorum at any meeting, but a majority of the board is
8 required to take action by vote. The board members shall
9 receive travel and other necessary expenses actually in-
10 curred while engaged in board activities up to a maximum
11 of two hundred dollars per board meeting. All reimburse-
12 ment of expenses shall be paid out of the board of respira-
13 tory care fund created by the provisions of this article.

§30-34-5. Board responsibilities.

1 The board shall:

2 (a) Provide public notice to all state hospitals and to all
3 persons currently practicing as respiratory care practition-
4 ers that a license shall be required to continue practicing
5 as a respiratory care technician or respiratory therapist,
6 after the thirtieth day of June, one thousand nine hundred
7 ninety-six;

8 (b) Examine, license and renew the licenses of duly
9 qualified applicants;

10 (c) Maintain a current registry of persons licensed to

11 practice respiratory care under this article which shall
12 contain information on the licensee's place of employ-
13 ment, address, license number and the date of licensure;

14 (d) Cause the prosecution of all persons violating this
15 article, incurring any expenses necessary;

16 (e) Keep a record of all proceedings of the board and
17 make it available to the public for inspection during rea-
18 sonable business hours;

19 (f) Conduct hearings on charges that subject a licensee
20 to disciplinary action and on the denial, revocation or
21 suspension of a license;

22 (g) Maintain an information registry of persons whose
23 licenses have been suspended, revoked or denied. The
24 information shall include the individual's name, social
25 security number, type and cause of action, date of board
26 action, type of penalty incurred and the length of penalty.
27 This information shall be available for public inspection
28 during reasonable business hours and supplied to similar
29 boards in other states upon request;

30 (h) Establish rules pursuant to the provisions of chap-
31 ter twenty-nine-a of this code regarding relicensure and
32 continuing education requirements. Continuing education
33 requirements shall be established pursuant to a recog-
34 nized continuing respiratory care education program such
35 as, but not limited to, the program established by the
36 American association for respiratory care;

37 (i) Maintain continuing education records; and

38 (j) Approve the training, continuing education and
39 competency evaluation methods for respiratory care prac-
40 titioners to perform entry level and advanced procedures
41 in the art and techniques of respiratory care.

§30-34-6. Powers of the board; fund.

1 (a) The board may:

2 (1) Adopt rules pursuant to article three, chapter
3 twenty-nine-a of this code, as may be necessary to enable
4 it to effect the provisions of this article;

5 (2) Employ such personnel as necessary to perform
6 the functions of the board, including an administrative
7 secretary, and pay all personnel from the board of respira-
8 tory care fund;

9 (3) Establish relicensure requirements, rules of proba-
10 tion for licensees, and other procedures as deemed appro-
11 priate;

12 (4) Secure the services of resource consultants, as
13 deemed necessary by the board, who shall receive travel
14 and other necessary expenses, consistent with state laws
15 and policies, while engaged in consultative service to the
16 board and who shall be reimbursed exclusively from the
17 board of respiratory care fund;

18 (5) Fix appropriate and reasonable fees for mandatory
19 licensure, which shall be no greater than two hundred
20 dollars for initial licensure or one hundred fifty dollars for
21 annual license renewal. All fees shall be reviewed periodi-
22 cally and modified as necessary.

23 (b) The board shall designate one person to accept
24 and deposit moneys paid to the board. The money so
25 collected shall be deposited with the treasurer of the state
26 and credited to an account to be known as the "board of
27 respiratory care fund." Expenditures from the fund shall
28 be for the purposes set forth in this article and are not
29 authorized from collections but are to be made only in
30 accordance with appropriation by the Legislature and in
31 accordance with the provisions of article three, chapter
32 twelve of this code and upon the fulfillment of the provi-
33 sions set forth in article two, chapter five-a of this code:
34 *Provided*, That for the fiscal year ending the thirtieth day
35 of June, one thousand nine hundred ninety-six, expendi-
36 tures are authorized from collections rather than pursuant
37 to an appropriation by the Legislature. No part of the
38 state's general revenue fund shall be expended to carry out
39 the purposes of this article.

40 (c) The board may contract with other state boards or
41 state agencies to share offices, personnel and other admin-
42 istrative functions as authorized under this article.

**§30-34-7. Issuance of license; renewal of license; renewal fee;
display of license.**

1 (a) When the board finds that an applicant meets all of
2 the requirements of this article for a license to engage in
3 the practice of respiratory care, it shall forthwith issue to
4 that person a license. Otherwise, the board shall deny the
5 application. The application is to be submitted with a
6 license fee of two hundred dollars. If any application is
7 rejected, the board shall return the fee less any actual costs
8 incurred in processing the application.

9 (b) Every licensee shall renew his or her license on or
10 before the first day of January of each year by payment
11 of a fee established by the board which shall be no greater
12 than one hundred fifty dollars. Any license that is not so
13 renewed shall automatically lapse. A license which has
14 lapsed may be renewed within five years of its expiration
15 date by meeting the requirements set forth by the board
16 and payment of a fee equal to that established for the
17 initial license. After the expiration of such five-year peri-
18 od, a license may be renewed only by complying with the
19 provisions relating to the issuance of an original license.

20 (c) A person currently licensed to practice pursuant to
21 this article may apply for an inactive status by providing
22 written notice to the board and ceasing to engage in the
23 practice of respiratory care in this state: *Provided*, That
24 the inactive status is granted for no longer than five years.
25 The board shall maintain a list of licensees on inactive
26 status. Any person granted inactive status is not subject to
27 the payment of any fees otherwise required by the board.
28 Prior to engaging in the practice of respiratory care, the
29 person shall submit to the board an application for the
30 renewal of the license and payment of a renewal fee for
31 the current year.

32 (d) The board may deny any application for renewal
33 of a license for any reason which would justify the denial
34 of an original application for a license as specified by
35 provisions of this article.

36 (e) The board shall prescribe the form of licenses.

§30-34-8. Criteria for licensure.

1 (a) Upon payment of the proper fees, an applicant for

2 a license to practice respiratory care shall submit to the
3 board written evidence, verified by oath, that the applicant:

4 (1) Has completed an approved respiratory care edu-
5 cational program;

6 (2) Passed an examination, except where otherwise
7 provided in this article. This examination may be admin-
8 istered by the state or by a national agency approved by
9 the board. The board shall set the passing score for the
10 examination.

11 (b) The board may also issue a license to practice
12 respiratory care by endorsement to an applicant who is
13 currently licensed to practice respiratory care under the
14 laws of another state, territory or country if the qualifica-
15 tions of the applicant are deemed by the board to be
16 equivalent to, or greater than, those required in this state.

17 (c) The board may also issue a license to practice
18 respiratory care by endorsement to respiratory therapists
19 and respiratory care technicians holding credentials con-
20 ferred by the National Board for Respiratory Care, Inc., or
21 its successor organizations, if the credentials have not
22 been suspended or revoked. Applicants applying under
23 the conditions of this section shall be required to certify
24 under oath that their credentials have not been suspended
25 or revoked.

26 (d) If an applicant fails to complete the requirements
27 for licensure within ninety days from the date of filing, the
28 application is deemed to be abandoned.

§30-34-9. Temporary permits.

1 Upon payment of the proper fee the board may issue
2 a temporary permit to practice respiratory care for a peri-
3 od of six months under the following conditions:

4 (a) The applicant is currently practicing, or has prac-
5 ticed within the last twelve months in another state, territo-
6 ry or country, and is completing the requirements for
7 licensing in this state: *Provided*, That the applicant pro-
8 vides written evidence, verified by oath of that practice;

9 (b) The applicant is a graduate of a respiratory care

10 educational program and is scheduled to take the next
11 available examination, or is awaiting the results of that
12 examination: *Provided*, That the temporary permit shall
13 be revoked in the event that the applicant does not achieve
14 a passing score on the entry level technician examination.

§30-34-10. Prohibitions and penalties.

1 It shall be a misdemeanor for any person, including
2 any corporation or association, to:

3 (a) Sell or fraudulently obtain or furnish any respira-
4 tory care provider license or record or aid or abet therein;

5 (b) Practice as a respiratory care provider under cover
6 of any diploma, license or record illegally or fraudulently
7 obtained or signed or issued or under fraudulent represen-
8 tation;

9 (c) Practice as a respiratory care provider unless duly
10 licensed to do so under the provisions of this article;

11 (d) Use in connection with his or her name any desig-
12 nation tending to imply that he or she is licensed to prac-
13 tice as a respiratory care provider unless duly licensed so
14 to practice under the provisions of this article;

15 (e) Practice as a respiratory care provider during the
16 time his or her license issued under the provisions of this
17 article is suspended or revoked;

18 (f) Conduct a respiratory care provider licensing pro-
19 gram for the preparation of respiratory care provider
20 unless such program has been accredited by the board; or

21 (g) Otherwise violate any provisions of this article.

22 Upon conviction, each misdemeanor shall be punish-
23 able by a fine of not less than twenty-five nor more than
24 two hundred fifty dollars.

§30-34-11. Grandfather clause.

1 (a) After the establishment of the board of respiratory
2 care, a license shall be issued to applicants who, on the
3 effective date of this article, have passed the National
4 Board of Respiratory Care, Inc., entry-level or registry

5 examinations, or their equivalent as approved by the
6 board.

7 (b) Applicants who have not passed either of these
8 national examinations or their equivalent on the effective
9 date of this article and who, through written evidence and
10 verified by oath, demonstrate that they have been func-
11 tioning for two years in the capacity of a respiratory care
12 provider as defined by this article shall be issued a tempo-
13 rary license to practice respiratory care. A temporary
14 license issued pursuant to this section shall be renewed at
15 intervals prescribed by the board. A temporary license
16 shall not be valid after the first day of June, one thousand
17 nine hundred ninety-seven. Persons holding a temporary
18 license shall be issued a license to practice only after
19 achieving a passing score on a licensure exam adminis-
20 tered or approved by the board.

21 (c) Any person issued a license pursuant to this section
22 shall be required to pay the license or renewal fees estab-
23 lished in section seven of this article.

§30-34-12. Professional identification.

1 (a) A person holding a license to practice respiratory
2 care as a technician in this state may use the title "licensed
3 respiratory care technician" and the abbreviation "LRCT".

4 (b) A person holding a license to practice respiratory
5 care as a respiratory therapist in this state may use the title
6 "licensed respiratory therapist" and the abbreviation
7 "LRT".

8 (c) A licensee shall either show his or her license or
9 provide a copy thereof within twenty-four hours of a re-
10 quest from an employer or the board.

§30-34-13. Disciplinary criteria.

1 The board may revoke, suspend or refuse to renew
2 any license, or place on probation, or otherwise reprimand
3 a licensee or permit holder, or deny a license to an appli-
4 cant if it finds that the person:

5 (a) Is guilty of fraud or deceit in procuring or at-
6 tempting to procure a license or renewal of a license to

- 7 practice respiratory care;
- 8 (b) Is unfit or incompetent by reason of negligence,
9 habits or other causes of incompetence;
- 10 (c) Is habitually intemperate in the use of alcoholic
11 beverages;
- 12 (d) Is addicted to or has improperly obtained, pos-
13 sessed, used or distributed habit-forming drugs or narcot-
14 ics;
- 15 (e) Is convicted of a felony that materially affects the
16 person's ability to safely practice respiratory care;
- 17 (f) Is guilty of dishonest or unethical conduct as deter-
18 mined by the board of respiratory care;
- 19 (g) Has practiced respiratory care after his or her li-
20 cense or permit has expired, been suspended or revoked;
- 21 (h) Has practiced respiratory care under cover of any
22 permit or license illegally or fraudulently obtained or
23 issued; or
- 24 (i) Has violated or aided or abetted others in violation
25 of any provision of this article.

§30-34-14. Due process procedure.

- 1 (a) Upon filing with the board a written complaint
2 charging a person with being guilty of any of the acts
3 described in section thirteen of this article, the administra-
4 tive secretary or other authorized employee of the board
5 shall provide a copy of the complaint or list of allegations
6 to the person about whom the complaint was filed. That
7 person will have twenty days thereafter to file a written
8 response to the complaint. The board shall thereafter, if
9 the allegations warrant, make an investigation. If the
10 board finds reasonable grounds for the complaint, a time
11 and place for a hearing shall be set, notice of which shall
12 be served on the licensee, permit holder or applicant at
13 least fifteen calendar days in advance of the hearing date.
14 The notice shall be by personal service or by certified or
15 registered mail sent to the last known address of the per-
16 son.

17 (b) The board may petition the circuit court for the
18 county within which the hearing is being held to issue
19 subpoenas for the attendance of witnesses and the produc-
20 tion of necessary evidence in any hearing before it. Upon
21 request of the respondent or of his or her counsel, the
22 board shall petition the court to issue subpoenas in behalf
23 of the respondent. The circuit court upon petition may
24 issue such subpoenas as it deems necessary.

25 (c) Unless otherwise provided in this article, hearing
26 procedures shall be promulgated in accordance with, and a
27 person who feels aggrieved by a decision of the board
28 may take an appeal pursuant to, the administrative proce-
29 dures in this state as provided in chapter twenty-nine-a of
30 this code.

§30-34-15. Exceptions.

1 (a) A person may not practice respiratory care or
2 represent himself or herself to be a respiratory care practi-
3 tioner unless he or she is licensed under this article except
4 as otherwise provided by this article.

5 (b) This article does not prohibit:

6 (1) The practice of respiratory care which is an inte-
7 gral part of the program of study by students enrolled in
8 respiratory care education programs accredited by organi-
9 zations approved by the board. Students enrolled in respi-
10 ratory care education programs shall be identified as "stu-
11 dent RCP" and may only provide respiratory care under
12 clinical supervision;

13 (2) Self-care by a patient, or gratuitous care by a
14 friend or family member who does not represent or hold
15 himself out to be a respiratory care practitioner;

16 (3) Respiratory care services rendered in the course of
17 an emergency;

18 (4) Persons in the military services or working in fed-
19 eral facilities providing respiratory care services when
20 functioning in the course of their assigned duties; and

21 (5) The respiratory care practitioner from performing
22 advances in the art and techniques of respiratory care

23 learned through formalized or specialized training ap-
24 proved by the board.

25 (c) Nothing in this article is intended to limit, preclude
26 or otherwise interfere with the practices of other persons
27 and health care providers licensed by appropriate agencies
28 of the state.

29 (d) Nothing in this article shall prohibit home medical
30 equipment dealers from delivering and instructing persons
31 in the operation of home medical respiratory equipment,
32 or from receiving requests for changes in equipment and
33 settings from physicians or other authorized individuals.

34 (e) An individual who passes an examination that
35 includes content in one or more of the functions included
36 in this article is not prohibited from performing such
37 procedures for which he or she was tested, so long as the
38 testing body offering the examination is approved by the
39 board.

§30-34-16. Practice of medicine prohibited.

1 Nothing in this article may be construed to permit the
2 practice of medicine.

CHAPTER 197

(Com. Sub. for S. B. 25—By Senators Tomblin, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 10, 1995; 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 a new section, designated section six, relating to the creation of the West Virginia prosecuting attorneys institute, its executive council and its executive director; duties and responsibilities of the institute; the appointment of special prosecutors to serve in the various counties where the elected prosecuting attorney in that county is disqualified from the prosecution of a criminal case in that county; assessing the cost of the operation of the West Virginia prose-

cuting attorneys institute upon the various counties; providing a mechanism for county commission to be exempt from participating; providing for the termination of the West Virginia prosecuting attorneys institute; and annual reporting to the Legislature.

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 a new section, designated section six, to read as follows:

ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

§7-4-6. West Virginia prosecuting attorneys institute.

1 (a) There is hereby created the West Virginia prosecut-
2 ing attorneys institute, a public body whose membership
3 shall consist of the fifty-five elected county prosecuting
4 attorneys in the state. The institute shall meet at least once
5 each calendar year and the presence of twenty-eight of the
6 fifty-five prosecutors at any meeting constitutes a quorum
7 for the conduct of the institute's business.

8 (b) There is hereby created the executive council of
9 the West Virginia prosecuting attorneys institute which
10 shall consist of five prosecuting attorneys elected by the
11 membership of the West Virginia prosecuting attorneys
12 institute at its annual meeting and two persons appointed
13 annually by the county commissioner's association of West
14 Virginia. The executive council shall elect one member of
15 the council to serve as chairman of the institute for a term
16 of one year without compensation. The executive council
17 shall serve as the regular executive body of the institute.

18 (c) There is hereby created the position of executive
19 director of the West Virginia prosecuting attorneys insti-
20 tute to be employed by the executive council of the insti-
21 tute. The executive director of the West Virginia prosecut-
22 ing attorneys institute shall serve at the will and pleasure of
23 the executive council of the institute at an annual salary of
24 fifty thousand dollars per year. The executive director
25 shall be licensed to practice law in the state of West Virgin-

26 ia and shall devote full time to his or her official duties
27 and may not engage in the private practice of law.

28 (d) The duties and responsibilities of the institute, as
29 implemented by and through its executive council and its
30 executive director, shall include the following:

31 (1) To provide for special prosecuting attorneys to
32 pursue a criminal matter in any county upon the request
33 of a circuit court judge of that county and upon the ap-
34 proval of the executive council;

35 (2) To establish and to implement general and special-
36 ized training programs for prosecuting attorneys and their
37 professional staffs;

38 (3) To provide materials for prosecuting attorneys and
39 their professional staffs, including legal research, technical
40 assistance and technical and professional publications;

41 (4) To compile and disseminate information on behalf
42 of prosecuting attorneys and their professional staffs on
43 current developments and changes in the law and the ad-
44 ministration of criminal justice;

45 (5) To establish and to implement uniform reporting
46 procedures for prosecuting attorneys and their profession-
47 al staffs in order to maintain and to provide accurate and
48 timely data and information relative to criminal prosecuto-
49 rial matters;

50 (6) To accept and expend funds, grants and gifts and
51 accept services from any public or private source;

52 (7) To enter into agreements and contracts with public
53 or private agencies or educational institutions;

54 (8) To identify experts and other resources for use by
55 prosecutors in criminal matters;

56 (9) To make recommendations to the Legislature or
57 the supreme court of appeals of the state of West Virginia
58 on measures required, or procedural rules to be promul-
59 gated, to make uniform the processing of juvenile cases in
60 the fifty-five counties of the state; and

61 (10) To develop a written handbook for prosecutors
62 and their assistants to use which delineates relevant infor-
63 mation concerning the elements of various crimes in West
64 Virginia and other information as the institute deems ap-
65 propriate.

66 (e) Each prosecuting attorney is subject to appoint-
67 ment by the institute to serve as a special prosecuting at-
68 torney in any county where the prosecutor for that county
69 or his or her office has been disqualified from participat-
70 ing in a particular criminal case. The circuit judge of any
71 county of this state, who disqualifies the prosecutor or his
72 or her office from participating in a particular criminal
73 case in that county, shall seek the appointment by the
74 institute of a special prosecuting attorney to substitute for
75 the disqualified prosecutor. The executive director of the
76 institute shall, upon written request to the institute by any
77 circuit judge as a result of disqualification of the prosecu-
78 tor or for other good cause shown, and upon approval of
79 the executive council, appoint a prosecuting attorney to
80 serve as a special prosecuting attorney. The special prose-
81 cuting attorney appointed shall serve without any further
82 compensation other than that paid to him or her by his or
83 her county, except that he or she is entitled to be reim-
84 bursed for his or her legitimate expenses associated with
85 travel, mileage and room and board from the county to
86 which he or she is appointed as a prosecutor. The county
87 commission in which county he or she is special prosecu-
88 tor is responsible for all expenses associated with the pros-
89 ecution of the criminal action.

90 (f) The executive director of the institute shall main-
91 tain an appointment list that shall include the names of all
92 fifty-five prosecuting attorneys and that shall also include
93 the names of any assistant prosecuting attorney who wish-
94 es to serve as a special prosecuting attorney upon the same
95 terms and conditions as set forth in this section. The exec-
96 utive director of the institute, with the approval of the
97 executive council, shall appoint special prosecuting attor-
98 neys from the appointment list for any particular matter
99 giving due consideration to the proximity of the proposed
100 special prosecuting attorney's home county to the county
101 requesting a special prosecutor and giving due consider-

102 ation to the expertise of the special prosecuting attorney.

103 (g) Commencing on the first day of July, one thou-
 104 sand nine hundred ninety-six, each county commission
 105 shall pay, on a monthly basis, a special prosecution premi-
 106 um to the treasurer of the state for the funding of the West
 107 Virginia prosecuting attorneys institute. The monthly
 108 premiums shall be paid according to the following sched-
 109 ule:

110

MONTHLY PREMIUMS

111

Assessed Valuation of Property

112

of All Classes in the County

113	Category	Minimum	Maximum	Premium
114	A	\$1,500,000,000	Unlimited	\$400
115	B	\$1,000,000,000	\$1,499,999,000	\$375
116	C	\$ 800,000,000	\$ 999,999,000	\$350
117	D	\$ 700,000,000	\$ 799,999,000	\$325
118	E	\$ 600,000,000	\$ 699,999,000	\$300
119	F	\$ 500,000,000	\$ 599,999,000	\$250
120	G	\$ 400,000,000	\$ 499,999,000	\$200
121	H	\$ 300,000,000	\$ 399,999,000	\$150
122	I	\$ 200,000,000	\$ 299,999,000	\$100
123	J	-0-	\$ 199,999,000	\$ 50

124 Upon receipt of a premium, the treasurer shall deposit the
 125 premium into a special revenue fund to be known as the
 126 "West Virginia Prosecuting Attorneys Institute Fund". All
 127 costs of operating the West Virginia prosecuting attorneys
 128 institute shall be paid from the West Virginia prosecuting
 129 attorneys institute fund upon proper authorization by the
 130 executive council or by the executive director of the insti-
 131 tute and subject to annual appropriation by the Legislature
 132 of the amounts contained within the fund.

133 (h) (1) A county shall be exempted from the require-
 134 ments of subsection (g) of this section if the county com-
 135 mission of the county votes on or before the thirty-first
 136 day of December, one thousand nine hundred ninety-five,
 137 to exclude that county from participation in the West Vir-
 138 ginia prosecuting attorneys institute. On or before the

139 thirtieth day of September, one thousand nine hundred
140 ninety-five, the chair of the executive council of the prose-
141 cuting attorneys institute shall notify each county commis-
142 sion by registered mail, return receipt requested, that the
143 county commission will be subject to said subsection if the
144 county does not vote to be exempted. The vote shall be
145 during a regular public meeting of the county commis-
146 sion. The meeting shall be scheduled and notice of the
147 meeting shall be provided in accordance with the provi-
148 sions of article nine-a, chapter six of this code. If any
149 county commission votes to exclude its county pursuant to
150 the provisions of this subsection, the county, its county
151 prosecutor and assistant prosecutors and its circuit judges
152 are prohibited from utilizing any of the services provided
153 by the prosecuting attorneys institute unless those services
154 are paid for by the county on an actual cost basis, includ-
155 ing fees, expenses and other costs as determined and ap-
156 proved by the executive counsel of the prosecuting attor-
157 neys institute. Nothing contained within this subsection
158 prohibits the use by a circuit court of the procedures pro-
159 vided in section eight, article seven of this chapter if the
160 county commission of the county in which the subject
161 prosecution has been brought has voted, pursuant to the
162 provisions of this subsection, to exclude that county from
163 the provisions of subsection (g) of this section.

164 (2) After a county commission votes to exempt the
165 county from the provisions of subsection (g) of this sec-
166 tion, it may not participate in the prosecuting attorneys
167 institute nor be required to pay the premiums under said
168 section unless the county commission votes at a later meet-
169 ing to participate.

170 (i) The West Virginia prosecuting attorneys institute
171 shall continue to exist until the first day of July, one thou-
172 sand nine hundred ninety-eight, unless continued by an
173 act of the Legislature. The institute shall annually by the
174 first day of the regular legislative session provide the joint
175 committee on government and finance with a report set-
176 ting forth the activities of the institute and suggestions for
177 legislative action.

CHAPTER 198

(S. B. 323—By Senators Bowman and Blatnik)

[Passed March 9, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the county commission of any Class III, IV or V county which will be reclassified as a Class II county to elect to maintain a part-time prosecuting attorney.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS; COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSATION.

§7-7-4. Compensation of elected county officials and county commissioners for each class of county; effective date.

- 1 (a) (1) All county commissioners shall be paid com-
- 2 pensation out of the county treasury in amounts and ac-
- 3 cording to the schedule hereafter set forth for each class
- 4 of county as determined by the provisions of section three
- 5 of this article: *Provided*, That as to any county having a
- 6 tribunal in lieu of a county commission, the county com-
- 7 missioners of the county may be paid less than the mini-
- 8 mum compensation limits of the county commission for
- 9 the particular class of such county.

10	Class I	\$20,000
11	Class II	\$15,500
12	Class III	\$14,000
13	Class IV	\$10,000
14	Class V	\$ 7,000
15	Class VI	\$ 4,000

16 The compensation hereinabove provided shall be paid
 17 on and after the first day of January, one thousand nine
 18 hundred eighty-five, to each county commissioner. With-
 19 in each county, every county commissioner whose term of
 20 office commenced prior to the first day of January, one
 21 thousand nine hundred eighty-five, shall receive the same
 22 annual compensation as commissioners commencing a
 23 term of office on or after that date by virtue of the new
 24 duties imposed upon county commissioners pursuant to
 25 the provisions of chapter fifteen, acts of the Legislature,
 26 first extraordinary session, one thousand nine hundred
 27 eighty-three.

28 (2) For the purpose of determining the compensation
 29 to be paid to the elected county officials of each county,
 30 the following compensations for each county office by
 31 class are hereby established and shall be used by each
 32 county commission in determining the compensation of
 33 each of their county officials other than compensation of
 34 members of the county commission:

35		County	Circuit	Prosecuting		
36	Sheriff	Clerk	Clerk	Assessor	Attorney	
37	Class I	\$24,200	\$31,300	\$31,300	\$24,200	\$41,500
38	Class II	\$24,200	\$28,000	\$28,000	\$24,200	\$39,500
39	Class III	\$24,200	\$28,000	\$28,000	\$24,200	\$30,000
40	Class IV	\$22,300	\$24,000	\$24,000	\$22,300	\$26,500
41	Class V	\$20,400	\$22,000	\$22,000	\$20,400	\$23,500
42	Class VI	\$17,200	\$17,200	\$17,200	\$17,200	\$17,000

43 Any county clerk, circuit clerk, joint clerk of the
44 county commission and circuit court, if any, county asses-
45 sor, sheriff and prosecuting attorney of a Class I county,
46 any assessor of a Class II and Class III county, any sheriff
47 of a Class II and Class III county and any prosecuting
48 attorney of a Class II county shall devote full time to his
49 or her public duties to the exclusion of any other employ-
50 ment: *Provided*, That any public official, whose term of
51 office begins when his or her county's classification im-
52 poses no restriction on his or her outside activities, shall
53 not be restricted on his or her outside activities during the
54 remainder of the term for which he or she is elected. The
55 compensation hereinabove provided shall be paid on and
56 after the first day of January, one thousand nine hundred
57 eighty-five, to each elected county official.

58 In the case of a county that has a joint clerk of the
59 county commission and circuit court, the compensation of
60 the joint clerk shall be fixed in an amount twenty-five
61 percent higher than the compensation would be fixed for
62 the county clerk if it had separate offices of county clerk
63 and circuit clerk.

64 The Legislature finds, as a fact, that the duties imposed
65 upon county clerks by the provisions of chapter
66 sixty-four, acts of the Legislature, regular session, one
67 thousand nine hundred eighty-two, and by chapter fifteen,
68 acts of the Legislature, first extraordinary session, one
69 thousand nine hundred eighty-three, constitute new and
70 additional duties for county clerks and as such justify the
71 additional compensation provided in this section without
72 violating the provisions of section thirty-eight, article VI
73 of the constitution of West Virginia.

74 The Legislature further finds as a fact that the duties
75 imposed upon circuit clerks by the provisions of chapters
76 sixty-one and one hundred eighty-two, acts of the Legisla-
77 ture, regular session, one thousand nine hundred
78 eighty-one, and by chapter sixty, acts of the Legislature,
79 regular session, one thousand nine hundred eighty-three,
80 constitute new and additional duties for circuit clerks and

81 as such justify the additional compensation provided by
82 this section without violating the provisions of section
83 thirty-eight, article VI of the constitution of West Virginia.

84 (b) Prior to the primary election in the year one thou-
85 sand nine hundred ninety-two, and for the fiscal year
86 beginning on the first day of July, one thousand nine
87 hundred ninety-two, or for any subsequent fiscal year if
88 the approval set out herein is not granted for any fiscal
89 year, and at least thirty days prior to the meeting to ap-
90 prove the county budget, the commission shall provide
91 notice to the public of the date and time of the meeting
92 and that the purpose of the meeting of the county com-
93 mission is to decide upon their budget certification to the
94 tax department. Upon submission by the county commis-
95 sion to the chief inspector division of the department of
96 tax and revenue of a proposed annual budget which con-
97 tains anticipated receipts into the county's general revenue
98 fund, less anticipated moneys from the unencumbered
99 fund balance, equal to anticipated receipts into the coun-
100 ty's general revenue fund, less anticipated moneys from
101 the unencumbered fund balance and any federal or state
102 special grants, for the immediately preceding fiscal year,
103 plus such additional amount as is necessary for payment
104 of the increases in the salaries set out herein and related
105 employment taxes over that paid for the immediately
106 preceding fiscal year, and upon approval thereof by the
107 chief inspector, which approval shall not be granted for
108 any proposed annual budget containing anticipated re-
109 cepts which are unreasonably greater or lesser than that of
110 the immediately preceding fiscal year, for the purpose of
111 determining the compensation to be paid to the elected
112 county officials of each county office by class are hereby
113 established and shall be used by each county commission
114 in determining the compensation of each of their county
115 officials: *Provided*, That as to any county having a tribu-
116 nal in lieu of a county commission, the county commis-
117 sioners of the county may be paid less than the minimum
118 compensation limits of the county commission for the
119 particular class of the county.

1368

PROSECUTING ATTORNEYS

[Ch. 198

120

COUNTY COMMISSIONERS

121

Class I \$24,000

122

Class II \$18,600

123

Class III \$16,800

124

Class IV \$12,000

125

Class V \$ 8,400

126 If the approval set out hereinabove is granted, the
 127 compensation hereinabove provided shall be paid on and
 128 after the first day of January, one thousand nine hundred
 129 ninety-three, to each county commissioner. Within each
 130 county, every county commissioner shall receive the same
 131 annual compensation by virtue of the new duties imposed
 132 upon county commissioners pursuant to the provisions of
 133 chapter one hundred seventy-two, acts of the Legislature,
 134 second regular session, one thousand nine hundred ninety,
 135 and chapter five, acts of the Legislature, third extraordi-
 136 nary session, one thousand nine hundred ninety.

137

OTHER ELECTED OFFICIALS

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		County	Circuit		Prosecuting
	Sheriff	Clerk	Clerk	Assessor	Attorney
Class I	\$29,040	\$37,560	\$37,560	\$29,040	\$59,500
Class II	\$29,040	\$33,600	\$33,600	\$29,040	\$59,500
Class III	\$29,040	\$33,600	\$33,600	\$29,040	\$36,000
Class IV	\$26,760	\$28,800	\$28,800	\$26,760	\$31,800
Class V	\$24,480	\$26,400	\$26,400	\$24,480	\$28,200
Class VI	\$24,480	\$26,400	\$26,400	\$24,480	\$28,200

Any county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, county assessor, sheriff and prosecuting attorney of a Class I county, any assessor of a Class II and Class III county, any sheriff of a Class II and Class III county and any prosecuting

151 attorney of a Class II county shall devote full time to his
152 or her public duties to the exclusion of any other employ-
153 ment: *Provided*, That any public official, whose term of
154 office begins when his or her county's classification im-
155 poses no restriction on his or her outside activities, shall
156 not be restricted on his or her outside activities during the
157 remainder of the term for which he or she is elected. If
158 the approval set out hereinabove is granted, the compensa-
159 tion hereinabove provided shall be paid on and after the
160 first day of January, one thousand nine hundred
161 ninety-three, to each elected county official.

162 In the case of a county that has a joint clerk of the
163 county commission and circuit court, the compensation of
164 the joint clerk shall be fixed in an amount twenty-five
165 percent higher than the compensation would be fixed for
166 the county clerk if it had separate offices of county clerk
167 and circuit clerk.

168 Prior to the primary election in the year one thousand
169 nine hundred ninety-two, in the case of a Class III, Class
170 IV or Class V county which has a part-time prosecuting
171 attorney, the county commission may find that such facts
172 and circumstances exist that require the prosecuting attor-
173 ney to devote full time to his or her public duties for the
174 four-year term, beginning the first day of January, one
175 thousand nine hundred ninety-three. If the county com-
176 mission makes such a finding, it may by proper order
177 adopted and entered, require the prosecuting attorney who
178 takes office on the first day of January, one thousand nine
179 hundred ninety-three, to devote full time to his or her
180 public duties and the county commission shall then com-
181 pensate said prosecuting attorney at the same rate of com-
182 pensation as that of a prosecuting attorney in a Class II
183 county.

184 For any county: (1) Which on and after the first day
185 of July, one thousand nine hundred ninety-four, is classi-
186 fied as a Class II county; and (2) which prior to such date
187 was classified as a Class III, Class IV or Class V county and
188 maintained a part-time prosecuting attorney, the county

189 commission may elect to maintain the prosecuting
190 attorney as a part-time prosecuting attorney: *Provided,*
191 That prior to the first day of January, one thousand nine
192 hundred ninety-six, the county commission shall make a
193 finding, by proper order and entered, whether to maintain
194 a full-time or part-time prosecuting attorney. The
195 part-time prosecuting attorney shall be compensated at the
196 same rate of compensation as that of a prosecuting
197 attorney in the class for the county prior to being
198 classified as a Class II county.

CHAPTER 199

(H. B. 2375—By Delegates Beach and Fragale)

[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen-b, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adding language to allow state employees to authorize certain deductions to be made from their salaries either once or twice each month.

Be it enacted by the Legislature of West Virginia:

That section thirteen-b, article three, 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 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-13b. Voluntary deductions by state auditor from salaries of employees to pay association dues or fees and to pay supplemental health and life insurance premiums.

1 Any officer or employee of the state of West Virginia
2 may authorize that a voluntary deduction from his net
3 wages be made for the payment of membership dues or
4 fees to an employee association. Voluntary deductions
5 may also be authorized by an officer or employee for any
6 supplemental health and life insurance premium, subject
7 to prior approval by the auditor. Such deductions shall be
8 authorized on a form provided by the auditor of the state
9 of West Virginia and shall state (a) the identity of the em-
10 ployee; (b) the amount and frequency of such deductions;
11 and (c) the identity and address of the association or in-
12 surance company to which such dues shall be paid. Upon
13 execution of such authorization and its receipt by the
14 office of the auditor, such deductions shall be made in the
15 manner specified on the form and remitted to the desig-
16 nated association or insurance company on the tenth day
17 of each month: *Provided*, That such deductions shall be
18 made either once or twice monthly at the option of the
19 employee. Deduction authorizations may be revoked at
20 any time thirty days prior to the date on which the deduc-
21 tion is regularly made and on a form to be provided by
22 the office of the state auditor: *Provided, however*, That
23 nothing in this section shall interfere with or remove any
24 existing arrangement for dues deduction between an em-
25 ployer or any political subdivision of the state and its
26 employees.

CHAPTER 200

(Com. Sub. for S. B. 158—By Senators Love and Dittmar)

[Passed February 23, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-seven, relating to the division of personnel establish-

ing a leave donation program whereby employees may donate unused leave days to other employees in cases where a medical emergency exists; and limitation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CIVIL SERVICE COMMISSION.

§29-6-27. Leave donation program.

1 The division of personnel after consultation with oth-
2 er state agencies shall establish a program under which
3 annual leave accrued or accumulated by an employee of
4 an agency may, if voluntarily agreed to by the employee,
5 be transferred to the annual leave account of another des-
6 ignated employee if the other employee requires addition-
7 al leave because of a medical emergency. The annual
8 leave program shall be established by legislative rule pur-
9 suant to the provisions of chapter twenty-nine-a of this
10 code. The division of personnel shall file such legislative
11 rule no later than the fifteenth day of July, one thousand
12 nine hundred ninety-five. The division shall prepare an
13 annual status report to be presented to the joint committee
14 on government and finance no later than the fifth day of
15 January each year. A "medical emergency" means a med-
16 ical condition of an employee or a family member of the
17 employee that is likely to require the prolonged absence
18 of the employee from duty and which will result in a sub-
19 stantial loss of income to the employee because of the
20 unavailability of paid leave. As used in this section, "em-
21 ployee" includes employees in the classified and
22 classified-exempt service and employees exempt from
23 coverage who are under this article entitled to annual leave
24 as a benefit of employment: *Provided*, That none of the
25 leave so transferred may be used to qualify for or add to
26 service for any retirement system administered by the state
27 of West Virginia.

CHAPTER 201

(Com. Sub. for H. B. 2365—By Delegates Staton and Browning)

[Passed March 11, 1995; in effect ninety days from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact section two, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to making all elected members of county boards of education eligible for coverage under the public employees insurance act.

Be it enacted by the Legislature of West Virginia:

That section two, 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.

§5-16-2. Definitions.

1 The following words and phrases as used in this article,
2 unless a different meaning is clearly indicated by the con-
3 text, shall have the following meanings:

4 (1) "Advisory board" means the public employees
5 insurance agency advisory board created by this article.

6 (2) "Agency" means the public employees insurance
7 agency created by this article.

8 (3) "Director" means the director of the public employ-
9 ees insurance agency, created by this article.

10 (4) "Employee" means any person, including elected
11 officers, who works regularly full time in the service of the

12 state of West Virginia and, for the purpose of this article
13 only, the term "employee" also means any person, includ-
14 ing elected officers, who works regularly full time in the
15 service of a county board of education; a county, city or
16 town in the state; any separate corporation or instrumen-
17 tality established by one or more counties, cities or towns,
18 as permitted by law; any corporation or instrumentality
19 supported in most part by counties, cities or towns; any
20 public corporation charged by law with the performance
21 of a governmental function and whose jurisdiction is co-
22 extensive with one or more counties, cities or towns; any
23 comprehensive community mental health center or com-
24 prehensive mental retardation facility established, operated
25 or licensed by the secretary of health and human resourc-
26 es pursuant to section one, article two-a, chapter
27 twenty-seven of this code, and which is supported in part
28 by state, county or municipal funds; any person who
29 works regularly full time in the service of the university of
30 West Virginia board of trustees or the board of directors
31 of the state college system; and any person who works
32 regularly full time in the service of a combined
33 city-county health department created pursuant to article
34 two, chapter sixteen of this code. On and after the first
35 day of January, one thousand nine hundred ninety-four,
36 and upon election by a county board of education to
37 allow elected board members to participate in the public
38 employees insurance program pursuant to this article, any
39 person elected to a county board of education shall be
40 deemed to be an "employee" during the term of office of
41 the elected member: *Provided*, That the elected member
42 shall pay the entire cost of the premium if he or she elects
43 to be covered under this act. Any matters of doubt as to
44 who is an employee within the meaning of this article shall
45 be decided by the director.

46 (5) "Employer" means the state of West Virginia, its
47 boards, agencies, commissions, departments, institutions or
48 spending units; a county board of education; a county,

49 city or town in the state; any separate corporation or in-
50 strumentality established by one or more counties, cities or
51 towns, as permitted by law; any corporation or instrumen-
52 tality supported in most part by counties, cities or towns;
53 any public corporation charged by law with the perfor-
54 mance of a governmental function and whose jurisdiction
55 is coextensive with one or more counties, cities or towns;
56 any comprehensive community mental health center or
57 comprehensive mental retardation facility established,
58 operated or licensed by the secretary of health and human
59 resources pursuant to section one, article two-a, chapter
60 twenty-seven of this code, and which is supported in part
61 by state, county or municipal funds; and a combined
62 city-county health department created pursuant to article
63 two, chapter sixteen of this code. Any matters of doubt as
64 to who is an "employer" within the meaning of this article
65 shall be decided by the director. The term "employer"
66 shall not include within its meaning the national guard.

67 (6) "Finance board" means the public employees insur-
68 ance agency finance board created by this article.

69 (7) "Retired employee" shall mean an employee of the
70 state who retired after the twenty-ninth day of April, one
71 thousand nine hundred seventy-one, and an employee of
72 the university of West Virginia board of trustees or the
73 board of directors of the state college system or a county
74 board of education who retires on or after the twenty-first
75 day of April, one thousand nine hundred seventy-two, and
76 all additional eligible employees who retire on or after the
77 effective date of this article and meet the minimum eligi-
78 bility requirements for their respective state retirement
79 system: *Provided*, That for the purposes of this article
80 such employees who are not covered by a state retirement
81 system shall, in the case of education employees, meet the
82 minimum eligibility requirements of the state teachers
83 retirement system, and in all other cases, meet the mini-
84 mum eligibility requirements of the public employees
85 retirement system.

CHAPTER 202

(S. B. 467—By Senators Wooton, Schoonover, Sharpe, Blatnik,
Buckalew, Dittmar, Yoder, Bowman, Kimble, Oliverio,
Love, Boley, Ross, Minear and Anderson)

[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the name of the division of public safety to the West Virginia state police.

Be it enacted by the Legislature of West Virginia:

That section two, 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.

§15-2-2. Superintendent; departmental headquarters.

1 The department of public safety, heretofore estab-
2 lished, shall be continued and hereafter shall be known as
3 the West Virginia state police. Wherever the words "de-
4 partment of public safety" or "division of public safety"
5 appear in this code, they shall mean the West Virginia state
6 police. The governor shall nominate, and by and with the
7 advice and consent of the Senate, appoint a superintendent
8 to be the executive and administrative head of the depart-
9 ment. Notwithstanding any provision of this code to the
10 contrary, the superintendent shall be paid an annual salary
11 of sixty thousand dollars. The superintendent shall hold
12 the rank of colonel and is entitled to all rights, benefits
13 and privileges of regularly enlisted members. On the date
14 of his or her appointment, the superintendent shall be at
15 least thirty years of age. Before entering upon the dis-
16 charge of the duties of his or her office, he or she shall
17 execute a bond in the penalty of ten thousand dollars,

18 payable to the state of West Virginia and conditioned
19 upon the faithful performance of his or her duties. Such
20 bond both as to form and security shall be approved as to
21 form by the attorney general, and to sufficiency by the
22 governor.

23 Before entering upon the duties of his or her office
24 the superintendent shall subscribe to the oath hereinafter
25 provided. The headquarters of the department shall be
26 located in Kanawha County.

CHAPTER 203

(Com. Sub. for S. B. 399—By Senator Buckalew)

[Passed March 9, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to mission of the division of public safety; powers of the superintendent, officers and members; patrol of turnpike; sale of surplus property; and use of generated funds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVISION OF PUBLIC SAFETY.

§15-2-12. Mission of the division; powers of superintendent, officers and members; patrol of turnpike.

1 (a) The West Virginia division of public safety shall
2 have the mission of statewide enforcement of criminal and
3 traffic laws with emphasis on providing basic enforcement
4 and citizen protection from criminal depredation through-
5 out the state and maintaining the safety of the state's pub-
6 lic streets, roads and highways.

7 (b) The superintendent and each of the officers and
8 members of the division are hereby empowered:

9 (1) To make arrests anywhere within the state of any
10 persons charged with the violation of any law of this state,
11 or of the United States, and when a witness to the perpetra-
12 tion of any offense or crime, or to the violation of any law
13 of this state, or of the United States, to make arrests with-
14 out warrant; to arrest and detain any persons suspected of
15 the commission of any felony or misdemeanor whenever a
16 complaint is made and a warrant is issued thereon for the
17 arrest, and the person arrested shall be immediately
18 brought before the proper tribunal for examination and
19 trial in the county where the offense for which the arrest
20 has been made was committed;

21 (2) To serve criminal process issued by any court or
22 magistrate anywhere within this state: *Provided*, That they
23 may not serve civil process; and

24 (3) To cooperate with local authorities in detecting
25 crime and in apprehending any person or persons en-
26 gaged in or suspected of the commission of any crime,
27 misdemeanor or offense against the law of this state, or of
28 the United States, or of any ordinance of any municipality
29 in this state; and to take affidavits in connection with any
30 application to the division of highways, division of motor
31 vehicles and division of public safety of West Virginia for
32 any license, permit or certificate that may be lawfully
33 issued by these divisions of state government.

34 (c) Members of the division of public safety are here-
35 by designated as forest patrolmen and game and fish war-
36 dens throughout the state to do and perform any duties
37 and exercise any powers of forest patrolmen and game
38 and fish wardens, and may apprehend and bring before
39 any court or magistrate having jurisdiction of these mat-
40 ters, anyone violating any of the provisions of chapters
41 twenty, sixty and sixty-one of this code. The division of
42 public safety is at any time subject to the call of the West
43 Virginia alcohol beverage control commissioner to aid in

44 apprehending any person violating any of the provisions
45 of chapter sixty of this code. They shall serve and execute
46 warrants for the arrest of any person and warrants for the
47 search of any premises issued by any properly constituted
48 authority, and shall exercise all of the powers conferred by
49 law upon a sheriff. They may not serve any civil process
50 or exercise any of the powers of such officer in civil mat-
51 ters.

52 (d) Any member of the division of public safety
53 knowing or having reason to believe that any person has
54 violated the law may make complaint in writing before
55 any court or officer having jurisdiction and procure a
56 warrant for the offender, execute the warrant and bring the
57 person before the proper tribunal having jurisdiction. The
58 member shall make return on all warrants to the tribunals
59 and his or her official title shall be "member of the divi-
60 sion of public safety". Members of the division of public
61 safety may execute any summons or process issued by
62 any tribunal having jurisdiction requiring the attendance
63 of any person as a witness before the tribunal and make
64 return thereon as provided by law. Any return by a mem-
65 ber of the division of public safety showing the manner of
66 executing the warrant or process has the same force and
67 effect as if made by a sheriff.

68 (e) Each member of the division of public safety,
69 when called by the sheriff of any county, or when directed
70 by the governor by proclamation, has full power and au-
71 thority within the county, or within the territory defined
72 by the governor, to direct and command absolutely the
73 assistance of any sheriff, deputy sheriff, chief of police,
74 policeman, game and fish warden and peace officer of the
75 state, or of any county or municipality therein, or of any
76 able-bodied citizen of the United States, to assist and aid in
77 accomplishing the purposes expressed in this article.
78 When called, any officer or person is, during the time his
79 or her assistance is required, for all purposes a member of
80 the division of public safety and subject to all the provi-
81 sions of this article.

82 (f) The superintendent may also assign members of
83 the division to perform police duties on any turnpike or
84 toll road, or any section of any turnpike or toll road, oper-
85 ated by the West Virginia parkways, economic develop-
86 ment and tourism authority: *Provided*, That the authority
87 shall reimburse the division of public safety for salaries
88 paid to the members and shall either pay directly or reim-
89 burse the division for all other expenses of the group of
90 members in accordance with actual or estimated costs
91 determined by the superintendent.

92 (g) The division of public safety may develop propos-
93 als for a comprehensive county or multicounty plan on
94 the implementation of an enhanced emergency service
95 telephone system and may cause a public meeting on the
96 proposals, all as set forth in section six-a, article six, chap-
97 ter twenty-four of this code.

98 (h) The superintendent may also assign members of
99 the division to administer tests for the issuance of com-
100 mercial drivers' licenses, operator and junior operator
101 licenses as provided for in section seven, article two, chap-
102 ter seventeen-b of this code: *Provided*, That the division
103 of motor vehicles shall reimburse the division of public
104 safety for salaries and employee benefits paid to the mem-
105 bers, and shall either pay directly or reimburse the division
106 for all other expenses of the group of members in accor-
107 dance with actual costs determined by the superintendent.

108 (i) The superintendent shall be reimbursed by the
109 division of motor vehicles for salaries and employee bene-
110 fits paid to members of the division of public safety and
111 shall either be paid directly or reimbursed by the division
112 of motor vehicles for all other expenses of the group of
113 members in accordance with actual costs determined by
114 the superintendent, for services performed by the mem-
115 bers relating to the duties and obligations of the division
116 of motor vehicles set forth in chapters seventeen,
117 seventeen-a, seventeen-b, seventeen-c and seventeen-d of
118 this code.

119 (j) By the first day of July, one thousand nine hundred
120 ninety-three, the superintendent shall establish a network
121 to implement reports of the disappearance of children by
122 local law-enforcement agencies to local school division
123 superintendents and the state registrar of vital statistics.
124 The network shall be designed to establish cooperative
125 arrangements between local law-enforcement agencies and
126 local school divisions concerning reports of missing chil-
127 dren and notices to law-enforcement agencies of requests
128 for copies of the cumulative records and birth certificates
129 of missing children. The network shall also establish a
130 mechanism for reporting the identities of all missing chil-
131 dren to the state registrar of vital statistics.

132 (k) The superintendent may at his or her discretion
133 and upon the written request of the West Virginia alcohol
134 beverage control commissioner assist the commissioner in
135 the coordination and enforcement of article sixteen, chap-
136 ter eleven of this code and chapter sixty of this code.

137 (l) Notwithstanding the provisions of article one-a,
138 chapter twenty of this code, the superintendent of the
139 division of public safety may sell any surplus real proper-
140 ty to which the division of public safety or its predecessors
141 retain title, and deposit the net proceeds into a special
142 revenue account to be utilized for the purchase of addi-
143 tional real property and for repairs to or construction of
144 detachment offices or other facilities required by the divi-
145 sion of public safety. There is hereby created a special
146 revolving fund in the state treasury which shall be desig-
147 nated as the "surplus real property proceeds fund". The
148 fund shall consist of all money received from the sale of
149 surplus real property owned by the division of public
150 safety. Moneys deposited in the fund shall only be avail-
151 able for expenditure upon appropriation by the Legisla-
152 ture: *Provided*, That amounts collected which are found
153 from time to time to exceed the funds needed for the
154 purposes set forth in this subsection may be transferred to
155 other accounts or funds and redesignated for other pur-
156 poses by appropriation of the Legislature.

157 (m) Notwithstanding any other provision of this code,
158 the agency for surplus property is hereby empowered to
159 transfer funds generated from the sale of vehicles, other
160 equipment and commodities belonging to the division of
161 public safety to a special revenue account within the
162 division of public safety entitled the division of public
163 safety surplus transfer account. Moneys deposited in the
164 fund shall only be available for expenditure upon appro-
165 priation by the Legislature: *Provided*, That amounts
166 collected which are found from time to time to exceed the
167 funds needed for the purposes set forth in this subsection
168 may be transferred to other accounts or funds and reded-
169 igned for other purposes by appropriation of the
170 Legislature. Any funds transferred to this account may be
171 utilized by the superintendent to defray the cost of normal
172 operating needs of the division.

CHAPTER 204

(H. B. 2427—By Delegates Manuel, Collins and Trump)

[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article ten, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying the authority of federal, state, municipal and county law-enforcement agencies to provide mutual assistance on a multijurisdictional basis.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 10. COOPERATION BETWEEN LAW-ENFORCEMENT AGENCIES.

§15-10-4. Cooperation between law-enforcement agencies.

1 (a) The head of any law-enforcement agency as
2 defined in section three of this article may temporarily
3 provide assistance and cooperation to another agency of
4 the state criminal justice system or to a federal
5 law-enforcement agency in investigating crimes or
6 possible criminal activity if requested to do so in writing
7 by the head of another law-enforcement agency or federal
8 law-enforcement agency. Such assistance may also be
9 provided upon the request of the head of the
10 law-enforcement agency or federal law-enforcement
11 agency without first being reduced to writing in emergen-
12 cy situations involving the imminent risk of loss of life or
13 serious bodily injury. The assistance may include, but is
14 not limited to, entering into a multijurisdictional task force
15 agreement to integrate federal, state, county and municipal
16 law-enforcement agencies or any combination thereof, for
17 the purpose of enhancing interagency coordination,
18 intelligence gathering, facilitating multijurisdictional
19 investigations, providing criminal justice enforcement
20 personnel of the law-enforcement agency to work tempo-
21 rarily with personnel of another agency, including in an
22 undercover capacity, and making available equipment,
23 training, technical assistance and information systems for
24 the more efficient investigation, apprehension and adjudi-
25 cation of persons who violate the criminal laws of this state
26 or the United States, and to assist the victims of such
27 crimes. When providing the assistance under the provi-
28 sions of this article, a head of a law-enforcement agency
29 shall comply with all applicable statutes, ordinances, rules,
30 policies or guidelines officially adopted by the state or the
31 governing body of the city or county by which he is
32 employed, and any conditions or restrictions included
33 therein.

34 (b) While temporarily assigned to work with another
35 law-enforcement agency or agencies, criminal justice
36 enforcement personnel shall have the same jurisdiction,
37 powers, privileges and immunities, including those relating
38 to the defense of civil actions, as such criminal justice
39 enforcement personnel would enjoy if actually employed
40 by the agency to which they are assigned, in addition to

41 any corresponding or varying jurisdiction, powers,
42 privileges and immunities conferred by virtue of their
43 continued employment with the assisting agency.

44 (c) While assigned to another agency or to a
45 multijurisdictional task force, criminal justice enforcement
46 personnel shall be subject to the lawful operational
47 commands of the superior officers of the agency or task
48 force to which they are assigned, but for personnel and
49 administrative purposes, including compensation, they
50 shall remain under the control of the assisting agency.
51 These assigned personnel shall continue to be covered by
52 all employee rights and benefits provided by the assisting
53 agency, including workers' compensation, to the same
54 extent as though such personnel were functioning within
55 the normal scope of their duties.

56 (d) No request or agreement between the heads of
57 law-enforcement agencies made or entered into pursuant
58 to the provisions of this article shall remain in force and
59 effect for a period of more than twelve months unless
60 renewed in writing by the parties thereto nor shall any
61 request or agreement made or entered into pursuant to the
62 provisions of this article have force or effect until a copy
63 of said request or agreement is filed with the office of the
64 circuit clerk of the county or counties in which the
65 law-enforcement agencies involved operate. Upon filing,
66 the requests or agreements may be sealed, subject to
67 disclosure pursuant to an order of a circuit court directing
68 disclosure for good cause. Nothing in this article shall be
69 construed to limit the authority of the head of a
70 law-enforcement agency to withdraw from any agreement
71 at any time.

72 (e) Nothing contained in this article shall be construed
73 so as to grant, increase, decrease or in any manner affect
74 the civil service protection or the applicability of civil
75 service laws as to any criminal justice enforcement person-
76 nel or agency operating under the authority of this article,
77 nor shall this article in any way reduce or increase the
78 jurisdiction or authority of any criminal justice enforce-
79 ment personnel or agency, except as specifically provided
80 herein.

81 (f) Nothing contained in this article shall be construed
82 so as to authorize the permanent consolidation or merger
83 or the elimination of operations of participating federal,
84 state, county or municipal law-enforcement agencies.

CHAPTER 205

(Com. Sub. for S. B. 343—By Senators Helmick, Ross, Plymale, Bowman, Miller, Wiedebusch, Buckalew, Deem, Wooton, Blatnik, Wagner, Sharpe, Bailey, Chafin, Grubb, Dittmar, Dugan, Scott, Anderson, Manchin, Jackson, Craig, Schoonover, White, Love, Yoder, Tomblin, Mr. President, Kimble and Oliverio)

[Passed March 9, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two-c, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article twelve, chapter forty-seven of said code, all relating to allowing licensed real estate brokers who are not also licensed auctioneers and licensed auctioneers who are not also licensed real estate brokers to auction real estate when retained by certain fiduciaries.

Be it enacted by the Legislature of West Virginia:

That section one, article two-c, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section two, article twelve, chapter forty-seven of said code be amended and reenacted, all to read as follows:

Chapter

19. Agriculture.

47. Regulation of Trade.

CHAPTER 19. AGRICULTURE.

ARTICLE 2C. AUCTIONEERS.

§19-2C-1. Definitions.

1 For the purposes of this article:

2 (a) The term "auctioneer" means and includes a person
3 who sells goods or real estate at public auction for another
4 on commission or for other compensation. The term
5 "auctioneer" does not include: (1) Persons conducting
6 sales at auctions conducted by or under the direction of
7 any public authority or pursuant to any judicial order or
8 direction or to any sale required by law to be at auction;
9 (2) the owner of any real or personal property when per-
10 sonally sold at auction by such owner and such owner has
11 not personally conducted an auction within the previous
12 twelve-month period; (3) persons conducting sales pursu-
13 ant to a deed of trust or other security agreement; (4)
14 fiduciaries of estates when selling real or personal proper-
15 ty of such estate; (5) persons conducting sales on behalf
16 of charitable, religious, fraternal or other nonprofit orga-
17 nizations; and (6) persons properly licensed pursuant to
18 the provisions of article twelve, chapter forty-seven of this
19 code when conducting an auction, any portion of which
20 contains any leasehold or any estate in land whether cor-
21 poreal or incorporeal, freehold or nonfreehold, when such
22 person is retained to conduct an auction by a receiver or
23 trustee in bankruptcy, a fiduciary acting under the author-
24 ity of a deed of trust or will, or a fiduciary of a decedent's
25 estate: *Provided*, That nothing contained in this article
26 exempts persons conducting sales at public markets from
27 the provisions of article two-a of this chapter, where the
28 sale is confined solely to livestock, poultry and other agri-
29 culture and horticulture products.

30 (b) The term "public auction" means any public sale
31 of real or personal property when offers or bids are made
32 by prospective purchasers and the property sold to the
33 highest bidder.

34 (c) The term "commissioner" means the commissioner
35 of agriculture of West Virginia.

36 (d) The term "department" means the West Virginia

37 department of agriculture.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 12. REAL ESTATE COMMISSION, BROKERS AND SALESPERSONS.

§47-12-2. Definitions and exceptions.

1 (a) The term "real estate broker" within the meaning of
2 this article includes all persons, partnerships, associations
3 and corporations, foreign and domestic, who for a fee,
4 commission or other valuable consideration or who with
5 the intention or expectation of receiving or collecting the
6 same, lists, sells, purchases, exchanges, rents, manages,
7 leases or auctions any real estate or the improvements
8 thereon, including options, or who negotiates or attempts
9 to negotiate any such activity; or who advertises or holds
10 himself, herself, itself or themselves out as engaged in such
11 activities; or who directs or assists in the procuring of a
12 purchaser or prospect calculated or intended to result in a
13 real estate transaction. The term "real estate broker" shall
14 also include any person, partnership, association or corpo-
15 ration employed by or on behalf of the owner or owners
16 of lots, or other parcels of real estate, at a stated salary or
17 upon a fee, commission or otherwise to sell such real es-
18 tate, or any parts thereof, in lots or other parcels, and who
19 shall sell, manage, exchange, lease, offer, attempt or agree
20 to negotiate the sale, exchange or lease of any such lot or
21 parcel of real estate.

22 (b) The term "real estate" as used in this article in-
23 cludes leaseholds as well as any and every interest or estate
24 in land, whether corporeal or incorporeal, freehold or
25 nonfreehold, and whether said property is situated in this
26 state or elsewhere.

27 (c) The term "associate broker" means any person who
28 for compensation or other valuable consideration is em-
29 ployed by a broker to perform all the functions autho-
30 rized by a broker's license only for and on behalf of such
31 employing broker including, but not limited to, authority

32 to supervise other salespersons employed by a broker and
33 manage an office on behalf of a broker.

34 (d) The term "real estate salesperson" means and in-
35 cludes any person employed or engaged by or on behalf
36 of a licensed real estate broker to do or deal in any activity
37 as included in this section, for compensation or otherwise.

38 (e) One act in consideration of or with the expectation
39 or intention of or upon the promise of receiving compen-
40 sation by fee, commission or otherwise, in the perfor-
41 mance of any act or activity contained in this section,
42 constitutes such persons, partnerships, association or cor-
43 poration, a real estate broker and make him or her, them
44 or it subject to the provisions and requirements of this
45 article.

46 (f) The term "real estate broker" or "real estate sales-
47 person" shall not include any person, partnership, associa-
48 tion or corporation who, as a bona fide owner or lessor,
49 performs any aforesaid act:

50 (1) With reference to property owned or leased by him
51 or her to the regular employees thereof, where such acts
52 are performed in the regular course of or as an incident to
53 the management of, such property and the investment
54 therein;

55 (2) Nor shall this article be construed to include
56 attorneys-at-law, except that attorneys-at-law shall be re-
57 quired to submit to the written examination required un-
58 der section seven of this article in order to qualify for a
59 broker's license: *Provided*, That an attorney-at-law who is
60 licensed as a real estate broker prior to the effective date
61 of this section is exempt from the written examination
62 required under section seven of this article;

63 (3) Nor any person holding in good faith a duly exe-
64 cuted power of attorney from the owner authorizing the
65 final consummation and execution for the sale, purchase,
66 lease or exchange of real estate;

67 (4) Nor to the acts of any person while acting as a

68 receiver, trustee, administrator, executor, guardian or
69 under the order of any court or while acting under
70 authority of a deed of trust or will;

71 (5) Nor shall this article apply to public officers while
72 performing their duties as such;

73 (6) Nor shall this article apply to the acquisition or
74 disposition of coal, oil or gas leasehold or coal, oil or gas
75 interests;

76 (7) Nor to persons properly licensed pursuant to the
77 provisions of article two-c, chapter nineteen of this code
78 when conducting an auction, any portion of which
79 contains any leasehold or estate in land, when such person
80 is retained to conduct an auction by a receiver or trustee in
81 bankruptcy, a fiduciary acting under the authority of a
82 deed of trust or will, or a fiduciary of a decedent's estate.

CHAPTER 206

(H. B. 2569—By Delegates Prezioso, Cann, Gallagher and Ashley)

[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the amount of acreage that a trustee can hold for a church, parish, congregation or branch of a religious sect from four to ten acres.

Be it enacted by the Legislature of West Virginia:

That section eight, article one, chapter thirty-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. RELIGIOUS ORGANIZATIONS.**§35-1-8. Quantity of real estate trustee may take and hold.**

1 The trustee or trustees of any individual church,
 2 parish, congregation or branch of any religious sect,
 3 society or denomination within this state may take and
 4 hold at any one time for each church, parish or
 5 congregation not to exceed ten acres of land in any
 6 incorporated city, town or village, and not to exceed sixty
 7 acres out of such city, town or village.

CHAPTER 207

(H. B. 2515—By Delegates Beach and Farris)

[Passed March 11, 1995; in effect ninety days from passage.
 Became law without Governor's signature.]

AN ACT to amend chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven, relating generally to adopting the Uniform Unincorporated Non-profit Association Act; definitions; supplementary principles of law and equity; territorial application; real and personal property; nonprofit association as legatee, devisee or beneficiary; statement of authority as to real property; liability in tort and contract; capacity to assert and defend; standing; effect of judgment or order; disposition of personal property of inactive nonprofit association; appointment of agent to receive service of process; claim not abated by change of members or officers; venue; summons and complaint; service of process; uniformity of application and construction; short title; transition concerning real and personal property; and savings clause.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by

adding thereto a new article, designated article eleven, to read as follows:

ARTICLE 11. UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT.

- §36-11-1. Definitions.
- §36-11-2. Supplementary general principles of law and equity.
- §36-11-3. Territorial application.
- §36-11-4. Real and personal property; nonprofit association as legatee, devisee or beneficiary.
- §36-11-5. Statement of authority as to real property.
- §36-11-6. Liability in tort and contract.
- §36-11-7. Capacity to assert and defend; standing.
- §36-11-8. Effect of judgment or order.
- §36-11-9. Disposition of personal property of inactive nonprofit association.
- §36-11-10. Appointment of agent to receive service of process.
- §36-11-11. Claim not abated by change of members or officers.
- §36-11-12. Venue.
- §36-11-13. Summons and complaint; service on whom.
- §36-11-14. Uniformity of application and construction.
- §36-11-15. Short title.
- §36-11-16. Transition concerning real and personal property.
- §36-11-17. Savings clause.

§36-11-1. Definitions.

1 In this article:

2 (1) "Member" means a person who, under the rules or
3 practices of a nonprofit association, may participate in the
4 selection of persons authorized to manage the affairs of
5 the nonprofit association or in the development of policy
6 of the nonprofit association.

7 (2) "Nonprofit association" means an unincorporated
8 organization consisting of two or more members joined
9 by mutual consent for a common, nonprofit purpose.
10 However, joint tenancy, tenancy in common, or tenancy
11 by the entireties does not by itself establish a nonprofit
12 association, even if the coowners share use of the property
13 for a nonprofit purpose.

14 (3) "Person" means an individual, corporation, busi-
15 ness trust, estate, trust, partnership, association, joint ven-
16 ture, government, governmental subdivision, agency or

17 instrumentality or any other legal or commercial entity.

18 (4) "State" means a state of the United States, the Dis-
19 trict of Columbia, the Commonwealth of Puerto Rico or
20 any territory or insular possession subject to the jurisdic-
21 tion of the United States.

§36-11-2. Supplementary general principles of law and equity.

1 Principles of law and equity supplement this article
2 unless displaced by a particular provision of it.

§36-11-3. Territorial application.

1 Real and personal property in this state may be ac-
2 quired, held, encumbered and transferred by a nonprofit
3 association, whether or not the nonprofit association or a
4 member has any other relationship to this state.

§36-11-4. Real and personal property; nonprofit association as legatee, devisee or beneficiary.

1 (a) A nonprofit association in its name may acquire,
2 hold, encumber or transfer an estate or interest in real or
3 personal property.

4 (b) A nonprofit association may be a legatee, devisee
5 or beneficiary of a trust or contract.

§36-11-5. Statement of authority as to real property.

1 (a) A nonprofit association may execute and record a
2 statement of authority to transfer an estate or interest in
3 real property in the name of the nonprofit association.

4 (b) An estate or interest in real property in the name
5 of a nonprofit association may be transferred by a person
6 so authorized in a statement of authority recorded in the
7 office in the county in which a transfer of the property
8 would be recorded.

9 (c) A statement of authority must set forth:

10 (1) The name of the nonprofit association;

11 (2) The address in this state, including the street ad-
12 dress, if any, of the nonprofit association, or, if the non-
13 profit association does not have an address in this state, its

14 address out of state;

15 (3) The name or title of a person authorized to trans-
16 fer an estate or interest in real property held in the name
17 of the nonprofit association; and

18 (4) The action, procedure or vote of the nonprofit
19 association which authorizes the person to transfer the real
20 property of the nonprofit association and which authorizes
21 the person to execute the statement of authority.

22 (d) A statement of authority must be executed in the
23 same manner as a deed by a person who is not the person
24 authorized to transfer the estate or interest.

25 (e) A filing officer may collect a fee for recording a
26 statement of authority in the amount authorized for re-
27 cording a transfer of real property.

28 (f) An amendment, including a cancellation, of a
29 statement of authority must meet the requirements for
30 execution and recording of an original statement. Unless
31 canceled earlier, a recorded statement of authority or its
32 most recent amendment is canceled by operation of law
33 five years after the date of the most recent recording.

34 (g) If the record title to real property is in the name
35 of a nonprofit association and the statement of authority is
36 recorded in the office of the county in which a transfer of
37 real property would be recorded, the authority of the per-
38 son named in a statement of authority is conclusive in
39 favor of a person who gives value without notice that the
40 person lacks authority.

§36-11-6. Liability in tort and contract.

1 (a) A nonprofit association is a legal entity separate
2 from its members for the purposes of determining and
3 enforcing rights, duties and liabilities in contract and tort.

4 (b) A person may not be liable for a breach of a
5 nonprofit association's contract merely because the person
6 is a member, is authorized to participate in the manage-
7 ment of the affairs of the nonprofit association or is a
8 person considered to be a member by the nonprofit asso-
9 ciation.

10 (c) A person may not be liable for a tortious act or
11 omission for which a nonprofit association is liable merely
12 because the person is a member, is authorized to partici-
13 pate in the management of the affairs of the nonprofit
14 association or is a person considered as a member by the
15 nonprofit association.

16 (d) A tortious act or omission of a member or other
17 person for which a nonprofit association is liable may not
18 be imputed to a person merely because the person is a
19 member of the nonprofit association, is authorized to
20 participate in the management of the affairs of the non-
21 profit association or is a person considered as a member
22 by the nonprofit association.

23 (e) A member of, or a person considered to be a
24 member by, a nonprofit association may assert a claim
25 against the nonprofit association. A nonprofit association
26 may assert a claim against a member or a person consid-
27 ered to be a member by the nonprofit association.

§36-11-7. Capacity to assert and defend; standing.

1 (a) A nonprofit association, in its name, may institute,
2 defend, intervene, or participate in a judicial, administra-
3 tive or other governmental proceeding or in an arbitration,
4 mediation or any other form of alternative dispute resolu-
5 tion.

6 (b) A nonprofit association may assert a claim in its
7 name on behalf of its members if one or more members
8 of the nonprofit association have standing to assert a claim
9 in their own right, the interests the nonprofit association
10 seeks to protect are germane to its purposes, and neither
11 the claim asserted nor the relief requested requires the
12 participation of a member.

§36-11-8. Effect of judgment or order.

1 A judgment or order against a nonprofit association is
2 not by itself a judgment or order against a member.

**§36-11-9. Disposition of personal property of inactive non-
profit association.**

1 If a nonprofit association has been inactive for three

2 years or longer, a person in possession or control of per-
3 sonal property of the nonprofit association may transfer
4 the property:

5 (1) If a document of a nonprofit association specifies
6 a person to whom transfer is to be made under these cir-
7 cumstances, to that person; or

8 (2) If no person is so specified, to a nonprofit associa-
9 tion or nonprofit corporation pursuing broadly similar
10 purposes, or to a government or governmental subdivision,
11 agency or instrumentality.

§36-11-10. Appointment of agent to receive service of process.

1 (a) A nonprofit association shall file in the office of
2 the secretary of state a statement appointing an agent au-
3 thorized to receive service of process.

4 (b) A statement appointing an agent must set forth:

5 (1) The name of the nonprofit association;

6 (2) The address in this state, including the street ad-
7 dress, if any, of the nonprofit association, or, if the non-
8 profit association does not have an address in this state, its
9 address out of state; and

10 (3) The name of the person in this state authorized to
11 receive service of process and the person's address, includ-
12 ing the street address, in this state.

13 (c) A statement appointing an agent must be signed
14 and acknowledged by a person authorized to manage the
15 affairs of a nonprofit association. The statement must also
16 be signed and acknowledged by the person appointed
17 agent, who thereby accepts the appointment. The appoint-
18 ed agent may resign by filing a resignation in the office of
19 the secretary of state and giving notice to the nonprofit
20 association.

21 (d) A filing officer may collect a fee for filing a state-
22 ment appointing an agent to receive service of process, an
23 amendment, or a resignation in the amount charged for
24 filing similar documents.

25 (e) An amendment to a statement appointing an agent
26 to receive service of process must meet the requirements
27 for execution of an original statement.

§36-11-11. Claim not abated by change of members or officers.

1 A claim for relief against a nonprofit association does
2 not abate merely because of a change in its members or
3 persons authorized to manage the affairs of the nonprofit
4 association.

§36-11-12. Venue.

1 For purposes of venue, a nonprofit association is a
2 resident of a county in which it has an office or where it
3 conducts its business or activities, or where any of its offi-
4 cers or managers reside.

§36-11-13. Summons and complaint; service on whom.

1 In an action or proceeding against a nonprofit associa-
2 tion a summons and complaint must be served on an agent
3 authorized by appointment to receive service of process,
4 an officer, managing or general agent or a person autho-
5 rized to participate in the management of its affairs. If
6 none of them can be served, service may be made on a
7 member.

§36-11-14. Uniformity of application and construction.

1 This article shall be applied and construed to effectu-
2 ate its general purpose to make uniform the law with re-
3 spect to the subject of this article among states enacting it.

§36-11-15. Short title.

1 This article may be cited as the Uniform Unincorpor-
2 ated Nonprofit Association Act.

§36-11-16. Transition concerning real and personal property.

1 (a) If, before the effective date of this article, an es-
2 tate or interest in real or personal property was purported-
3 ly transferred to a nonprofit association, on the effective
4 date of this article the estate or interest vests in the non-
5 profit association unless the parties have treated the trans-
6 fer as ineffective.

7 (b) If, before the effective date of this article, the
8 transfer vested the estate or interest in another person to
9 hold the estate or interest as a fiduciary for the benefit of
10 the nonprofit association, its members, or both, on or after
11 the effective date of this article the fiduciary may transfer
12 the estate or interest to the nonprofit association in its
13 name, or the nonprofit association, by appropriate pro-
14 ceedings, may require that the estate or interest be trans-
15 ferred to it in its name.

§36-11-17. Savings clause.

1 This article does not affect an action or proceeding
2 commenced or right accrued before this article takes ef-
3 fect.

CHAPTER 208

(Com. Sub. for H. B. 2097—By Delegates Farris and Beane)

[Passed March 11, 1995; in effect ninety days from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact sections four and five, article fourteen, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to circumstances under which the requirement that appraisements of property be performed by licensed or certified appraisers does not apply; increasing the value of real estate which certain financial institutions may consider to be potential collateral for a loan below which the requirement that an appraisal of the real estate be performed by a licensed or certified appraiser does not apply from one hundred thousand dollars to two hundred fifty thousand dollars; requiring that loan customers be notified of the financial institution's intention to use an evaluation rather than an appraisal of the real estate in such circumstance and

provide the customer the opportunity to elect an evaluation by a certified or licensed appraiser; payment of the cost of such elected evaluation; increasing the membership of the real estate appraiser licensing and certification board from seven to nine members; increasing the number of members of the board who must be real estate appraisers having at least five years experience in appraisal as a principal line of work immediately preceding their appointment from two to four members; and increasing the number of members which may be appointed to the board from each congressional district from one to two members.

Be it enacted by the Legislature of West Virginia:

That sections four and five, article fourteen, 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 14. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.

§37-14-4. Exceptions to license or certification requirement.

§37-14-5. Board created; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members are disqualified from participation; compensation; records; office space; personnel.

§37-14-4. Exceptions to license or certification requirement.

1 This article does not apply to:

2 (a) A real estate broker or salesperson licensed by this
3 state who, in the ordinary course of his or her business,
4 gives an opinion to a potential seller or third party as to
5 the recommended listing price of real estate or an opinion
6 to a potential purchaser or third party as to the recom-
7 mended purchase price of real estate, when this opinion as
8 to the listing price or the purchase price is not to be re-
9 ferred to as an appraisal, no opinion is rendered as to the
10 value of the real estate and no fee is charged;

11 (b) A casual or drive-by inspection of real estate in
12 connection with a consumer loan secured by the said real

13 estate, when the inspection is not referred to as an apprais-
14 al, no opinion is rendered as to the value of the real estate
15 and no fee is charged for the inspection;

16 (c) An employee who renders an opinion as to the
17 value of real estate for his full-time employer, for the
18 employer's internal use only and performed in the regular
19 course of the employee's position, when the opinion is not
20 referred to as an appraisal and no fee is charged;

21 (d) Appraisals of personal property, including, but not
22 limited to, jewelry, household furnishings, vehicles and
23 manufactured homes not attached to real estate;

24 (e) Any officer or employee of the United States, or
25 of the state of West Virginia or a political subdivision
26 thereof, when the employee or officer is performing his
27 official duties: *Provided*, That such individual does not
28 furnish advisory service for compensation to the public or
29 act as an independent contracting party in West Virginia
30 or any subdivision thereof in connection with the appraisal
31 of real estate or real property: *Provided, however*, That
32 this exception shall not apply with respect to federally
33 related transactions as defined in Title XI of the United
34 States Code, entitled "Financial Institutions Reform, Recov-
35 ery, and Enforcement Act of 1989"; and

36 (f) Any evaluation of the value of real estate serving as
37 collateral for a loan made by a financial institution insured
38 by the federal deposit insurance corporation: *Provided*,
39 That: (1) The amount of the loan is equal to or less than
40 two hundred fifty thousand dollars; (2) the evaluation is
41 used solely by the lender in its records to document the
42 collateral value; (3) the evaluation clearly indicates on its
43 face that it is for the lender's internal use only; (4) the
44 evaluation shall not be labeled an "appraisal"; and (5) the
45 evaluation be on a form approved by the board. Individu-
46 als performing these evaluations may be compensated for
47 their services. The lender shall notify its customer if it
48 intends to use an unlicensed evaluator and give that cus-
49 tomer the opportunity to elect an evaluation, by a certified
50 or licensed appraiser, the cost of which shall be paid as

51 agreed between the lender and the customer.

§37-14-5. Board created; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members are disqualified from participation; compensation; records; office space; personnel.

1 (a) There is hereby created the West Virginia real
2 estate appraiser licensing and certification board which
3 consists of nine members appointed by the governor with
4 the advice and consent of the Senate. Each member shall
5 be a resident of the state of West Virginia. Four members
6 shall be real estate appraisers having at least five years'
7 experience in appraisal as a principal line of work imme-
8 diately preceding their appointment, two members shall be
9 selected from financial institutions having at least five
10 years' experience in real estate lending, and three members
11 who shall not be engaged in the practice of real estate
12 appraisal, real estate brokerage or sales or have any finan-
13 cial interest in such practices. No member of the board
14 may concurrently be a member of the West Virginia real
15 estate commission. Not more than two appraiser members
16 may be appointed from each congressional district.

17 (b) Appointments shall be for a three-year term, ex-
18 cept of the members first appointed, three shall serve for
19 two years and one for one year. Each real estate appraiser
20 appointed after the first day of January, one thousand nine
21 hundred ninety-one, shall have appraisal as their principal
22 work and must be a state certified real estate appraiser
23 under this article at the time of appointment and during
24 the term of appointment. No member appointed shall
25 serve for more than six consecutive years. Before entering
26 upon the performance of his duties, each member shall
27 subscribe to the oath required by section five, article four
28 of the Constitution of this state. The governor shall, within
29 sixty days following the occurrence of a vacancy on the
30 board, fill the same by appointing a person for the unex-
31 pired term of, and meeting the same requirements for
32 membership as, the person vacating said office. Any

33 member may be removed by the governor in case of in-
34 competency, neglect of duty, gross immorality or malfea-
35 sance in office.

36 (c) The board shall elect a chairman. A majority of
37 the members of the board shall constitute a quorum. The
38 board shall meet at least once in each calendar quarter on
39 a date fixed by the board. The board may, upon its own
40 motion, or shall upon the written request of three members
41 of the board, call additional meetings of the board upon at
42 least twenty-four hours' notice. No member shall partici-
43 pate in a proceeding before the board to which a corpora-
44 tion, partnership or unincorporated association is a party,
45 and of which he is or was at any time in the preceding
46 twelve months a director, officer, owner, partner, employ-
47 ee, member or stockholder. A member may disqualify
48 himself from participation in a proceeding for any other
49 cause deemed by him to be sufficient. Each member shall
50 receive fifty dollars for each day or portion thereof spent
51 in attending meetings of the board and shall be reim-
52 bursed for all reasonable and necessary expenses incurred
53 incidental to his duties as a member of the board.

54 (d) The board shall keep an accurate record of all of
55 its proceedings and make certificates thereupon as may be
56 required by law.

CHAPTER 209

(S. B. 576—Originating in the Committee on Pensions)

[Passed March 17, 1995; in effect from passage. Became law without Governor's signature.]

AN ACT to amend and reenact sections fourteen and forty-eight, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public employees retirement; service credit for constables and justices of the peace; service credit for legislative employees; reemployment after retirement; and option for holder of elected public office.

Be it enacted by the Legislature of West Virginia:

That sections fourteen and forty-eight, 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.

§5-10-48. Reemployment after retirement; option for holder of elected public office.

§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 he
3 or she is entitled based upon such rules and regulations as
4 the board of trustees shall from time to time adopt: *Pro-*
5 *vided*, That in no case shall less than ten days of service
6 rendered by a member in any calendar month be credited
7 as a month of service; nor shall less than ten months of
8 service rendered in any calendar year be credited as a year
9 of service; nor shall more than one year of service be
10 credited any member for all service rendered by him or
11 her in any calendar year; nor shall any member who was
12 not in the employ of a political subdivision within a period
13 of thirty years immediately preceding the date the political
14 subdivision became a participating public employer be
15 credited with prior service: *Provided, however*, That said
16 member is not required to have been employed by a par-
17 ticipating public employer of this state within a period of
18 fifteen years subsequent to the date that participating pub-
19 lic employer elected to become a participating employer.

20 (b) The board of trustees shall grant service credit to
21 employees of boards of health, the clerk of the House of
22 Delegates and the clerk of the state Senate, or to any for-
23 mer and present member of the state teachers retirement
24 system who have been contributing members for more
25 than three years, for service previously credited by the
26 state teachers retirement system and shall require the trans-
27 fer of the member's contributions to the system and shall

28 also require a deposit, with interest, of any withdrawals of
29 contributions any time prior to said member's retirement.
30 Repayment of withdrawals shall be as directed by the
31 board of trustees.

32 (c) Court reporters who are acting in an official ca-
33 pacity, although paid by funds other than the county com-
34 mission or state auditor, may receive prior service credit
35 for such time as served in such capacity.

36 (d) Employees of the state Legislature whose term of
37 employment is otherwise classified as temporary and who
38 are employed to perform services required by the Legisla-
39 ture for its regular sessions or during the interim between
40 regular sessions may receive service credit for the time as
41 served in that capacity in accordance with subsection (a)
42 of this section: *Provided*, That employees of the state
43 Legislature whose term of employment is otherwise classi-
44 fied as temporary and who are employed to perform ser-
45 vices required by the Legislature for at least sixty days for
46 its regular sessions or during the interim between regular
47 sessions and who have been or are so employed during
48 regular sessions or during the interim between sessions for
49 at least seven consecutive legislative sessions may receive
50 service credit for one-half year for each year served, which
51 shall be used for the purpose of calculating that member's
52 retirement annuity, notwithstanding any other provision of
53 this section: *Provided, however*, That for the purposes of
54 calculating the amount of service credit an employee has
55 served to become entitled to voluntary retirement shall be
56 calculated as provided in subsection (a) of this section.

57 (e) Former justices of the peace and constables shall
58 be entitled to credit for retirement purposes for those
59 years of service as a justice of the peace or constable:
60 *Provided*, That they have a minimum of five years con-
61 tributing service and they compensate the retirement fund
62 in an amount equal to the amount which they would have
63 contributed for a like period of time, according to a for-
64 mula determined by the retirement board, plus an amount
65 equal to the determined employer's contribution for the
66 same period. For purposes of calculating the contribu-
67 tions, the salary for constables shall be deemed to be five

68 thousand dollars per year and the salary for justices of the
69 peace shall be deemed to be seven thousand five hundred
70 dollars per year. In addition, they shall deposit the com-
71 pounded yearly interest on the aggregate of the employee
72 and employer contributions at a rate or rates to be deter-
73 mined by the retirement board: *Provided, however,* That
74 those former justices of the peace and constables who elect
75 to seek credit under this subsection shall be allowed until
76 the thirtieth day of June, one thousand nine hundred
77 ninety-five, to compensate the retirement fund as provided
78 herein.

**§5-10-48. Reemployment after retirement; option for holder of
elected public office.**

1 (a) In the event a retirant becomes employed by a
2 participating public employer, payment of his or her an-
3 nuity shall be suspended during the period of his or her
4 reemployment and he or she shall become a contributing
5 member to the retirement system. If his or her reemploy-
6 ment is for a period of one year or longer, his or her an-
7 nuity shall be recalculated and he or she shall be granted
8 an increased annuity due to such additional employment,
9 said annuity to be computed according to section
10 twenty-two of this article. A retirant may accept tempo-
11 rary employment from a participating employer so long
12 as he or she does not receive compensation in excess of
13 ten thousand dollars.

14 (b) In the event a retirant is elected to a public office
15 or appointed to hold an elected public office, he or she
16 has the option, notwithstanding subsection (a) of this sec-
17 tion, to either:

18 (1) Continue to receive payment of his or her annuity
19 while holding such public office, in addition to the salary
20 he or she may be entitled to as such office holder; or

21 (2) Suspend the payment of his or her annuity and
22 become a contributing member of the retirement system
23 as provided in subsection (a) of this section.

CHAPTER 210

(Com. Sub. for H. B. 2051—By Delegate Kiss)

[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the public employees retirement system and allowing retirants, upon the death of a spouse, to select a different annuity option; and providing that the new annuity option be of equal actuarial value with the annuity option in effect at the death of the spouse.

Be it enacted by the Legislature of West Virginia:

That section twenty-four, 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.

§5-10-24. Annuity options.

1 Prior to the effective date of his or her retirement, but
2 not thereafter except upon the death of a spouse, a
3 member may elect to receive his or her annuity as a
4 straight life annuity payable throughout his or her life, or
5 he or she may elect to receive the actuarial equivalent, at
6 the time, of his or her straight life annuity in a reduced
7 annuity payable throughout his or her life, and nominate a
8 beneficiary, in accordance with option A or B set forth
9 below:

10 *Option A — Joint and survivor annuity.* — Upon the
11 death of a retirant, who elected option A, his or her
12 reduced annuity shall be continued throughout the life of
13 and paid to the beneficiary, having an insurable interest in
14 the retirant's life, whom the retirant nominated by written
15 designation duly executed and filed with the board of

16 trustees prior to the effective date of his or her retirement;
17 or

18 *Option B — Modified joint and survivor annuity. —*
19 Upon the death of a retirant who elected option B, one
20 half of his or her reduced annuity shall be continued
21 throughout the life of and paid to the beneficiary, having
22 an insurable interest in the retirant's life, whom the retirant
23 nominated by written designation duly executed and filed
24 with the board of trustees prior to the effective date of his
25 or her retirement.

26 Upon the death of a spouse, a retirant may elect any of
27 the retirement options offered by the provisions of this
28 section in an amount adjusted on a fair basis to be of
29 equal actuarial value as the annuity prospectively in effect
30 relative to the surviving member at the time the new op-
31 tion is elected.

CHAPTER 211

(S. B. 262—By Senators Plymale, Helmick, Jackson, Manchin,
Walker, Boley and Kimble)

[Passed March 7, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article ten-c, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the tax-deferral of federal and state income tax of all employee contributions into the West Virginia public employees retirement system.

Be it enacted by the Legislature of West Virginia:

That section four, article ten-c, 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 10C. GOVERNMENT EMPLOYEES RETIREMENT PLANS.

§5-10C-4. Pick-up of members' contributions by participating public employers.

1 (a) The state of West Virginia for its public employees
2 and county board of education for its teachers shall
3 pick-up and pay the contributions which such employees
4 are required by law to make to the retirement system in
5 which they are a member for all compensation earned by
6 its member employees after the thirtieth day of June, one
7 thousand nine hundred eighty-six. Any political subdivi-
8 sion that is a participating public employer in the West
9 Virginia public employees retirement system shall pick-up
10 and pay the contributions which such employees are re-
11 quired by law to make to the retirement system in which
12 they are members for all compensation earned by its
13 member employees after the first day of January, one
14 thousand nine hundred ninety-five. Any election made
15 by a political subdivision to pick-up and pay employee
16 contributions prior to the first day of January, one thou-
17 sand nine hundred ninety-five, shall remain in effect and
18 not be altered or amended by the amendments made to
19 this section during the regular legislative session, one
20 thousand nine hundred ninety-five.

21 (b) When the participating public employer picks up
22 and pays the contributions of its member employees, the
23 contributions shall be treated as employer contributions in
24 determining the tax treatment thereof under article
25 twenty-one, chapter eleven of this code, and the federal
26 Internal Revenue Code of 1986, as amended, and the con-
27 tributions shall not be included in the gross income of the
28 employee in determining his or her tax treatment under
29 said article, and the federal Internal Revenue Code of
30 1986, as amended, until they are distributed or made avail-
31 able to the employee or his or her beneficiary. The par-
32 ticipating public employer shall pay these employee con-
33 tributions from the same source of funds used in paying
34 compensation to the employee, by effecting an equal cash
35 reduction in the gross salary of the employee, or by an
36 off-set against future salary increases, or by a combination
37 of reduction in gross salary and off-set against future
38 salary increases.

39 (c) When employee contributions are picked up and
40 paid by the participating public employer, they shall be
41 treated by the board of trustees in the same manner and to
42 the same extent as employee contributions made prior to
43 the date on which employee contributions are picked up
44 by the participating public employer.

45 (d) The amount of employee contributions picked up
46 by the participating public employer shall be paid to the
47 retirement system in such manner and form, and in such
48 frequency, as the board of trustees may require and shall
49 be accompanied by such supporting data as the board of
50 trustees shall from time to time prescribe. When paid to
51 the retirement system, each of said amounts shall be cred-
52 ited to the deposit fund account of the member for whom
53 the contribution was picked up and paid by the participat-
54 ing public employer.

CHAPTER 212

(S. B. 272—By Senators Plymale, Helmick, Manchin,
Walker, Boley and Kimble)

[Passed February 22, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article ten-d, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the employment of a legal advisor by the consolidated public retirement board.

Be it enacted by the Legislature of West Virginia:

That section two, 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-2. Chairman and vice chairman; executive secretary; employees; treasurer; legal advisor; actuary.

1 (a) The secretary of the department of administration
2 shall call the first meeting of the consolidated public re-
3 tirement board no later than the fifteenth day of January,
4 one thousand nine hundred ninety-one.

5 (b) The board shall elect from its own number a chair-
6 man and vice chairman.

7 (c) The board shall appoint an executive secretary of
8 the retirement systems. The executive secretary shall be
9 the chief administrative officer of all the systems and he or
10 she shall not be a member of the board. He or she shall
11 perform such duties as are required of him or her in this
12 article and as the board from time to time delegates to him
13 or her. The compensation of the executive secretary shall
14 be fixed by the board subject to the approval of the gover-
15 nor. The executive secretary shall, with the approval of
16 the board of trustees, employ such administrative, techni-
17 cal and clerical employees as are required in the proper
18 operation of the systems.

19 (d) Notwithstanding the provisions of section two,
20 article three of this chapter, the board shall employ and be
21 represented by an attorney licensed to practice law in the
22 state of West Virginia who is not a member of any of the
23 retirement systems administered by the board.

24 (e) An actuary, employed by the state or the board
25 pursuant to section four of this article, shall be the actuari-
26 al consultant to the board.

27 (f) Prior to the first day of July, one thousand nine
28 hundred ninety-one, the expenses of the board for the
29 administration of the teachers' defined contribution retire-
30 ment system created pursuant to article seven-b, chapter
31 eighteen of this code shall be paid by the teachers retire-
32 ment system created pursuant to article seven-a of said
33 chapter.

CHAPTER 213

(Com. Sub. for S. B. 258—By Senators Whitlow, Helmick, Ross and Sharpe)

[Passed March 9, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, four, five and six, article three-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the creation of an industrial access road fund and providing funding therefor; specifying purposes for which moneys from the fund may be used; requiring that counties and municipalities guarantee proposed projects; specifying the criteria upon which the highways commissioner is to base his or her decision to allocate funds; approval of division of highways of proposed industrial access highway; request for funds by resolution of governing body of county or municipality; consultation by the division of highways; restrictions on use of the fund; limits on amount of funds to be allocated; disbursements from the fund; and annual audit of the fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. INDUSTRIAL ACCESS ROAD FUND.

- §17-3A-1. Industrial access road fund created; construction guarantees by municipalities and counties.
- §17-3A-2. Division of highways to determine construction of industrial access roads.
- §17-3A-4. Restrictions on use of fund.
- §17-3A-5. Disbursements from fund.
- §17-3A-6. Annual audit to be made of receipts and expenditures of fund.

§17-3A-1. Industrial access road fund created; construction guarantees by municipalities and counties.

1 (a) Any other provision of this code notwithstanding,
2 there is hereby created in the state treasury the "industrial
3 access road fund", hereinafter referred to as "the fund".
4 There shall be deposited into the fund three fourths of one
5 percent of all state tax collections which are otherwise
6 specifically dedicated by the provisions of this code to the
7 state road fund or such percentage of those tax collections
8 that will produce three million dollars for each fiscal year.
9 At the end of each fiscal year, all unused moneys in the
10 fund shall revert to the state road fund.

11 (b) The moneys in the fund shall be expended by the
12 division of highways for constructing and maintaining
13 industrial access roads within counties and municipalities
14 to industrial sites on which manufacturing, distribution,
15 processing or other economic development activities, in-
16 cluding publicly owned airports, are already constructed
17 or are under firm contract to be constructed. In the event
18 there is no industrial site already constructed or for which
19 the construction is under firm contract, a county or mu-
20 nicipality may guarantee to the division of highways by
21 bond or other acceptable device that an industrial site will
22 be constructed and if no industrial site acceptable to the
23 division of highways is constructed within the time limits
24 of the bond, such bond shall be forfeited.

**§17-3A-2. Division of highways to determine construction of
industrial access roads.**

1 In determining whether or not to construct or improve
2 any industrial access road and in determining the nature
3 of the road to be constructed, the division of highways
4 shall base its decision on the costs of the industrial access
5 road in relation to the volume and nature of the traffic to
6 be generated as a result of developing the industrial site
7 within the total industrial area. In making a decision on
8 any industrial site, the total volume of traffic to be gener-
9 ated shall be considered in regard to the overall cost of the
10 project. The division of highways shall consult and work
11 in cooperation with the West Virginia development office
12 in determining the use of industrial access road funds.

13 Prior to a formal request for the use of moneys from
14 the fund to provide access to new or expanding industrial
15 sites, the location of the industrial access road shall be
16 submitted for approval of the division of highways. The
17 division of highways shall consider the cost of the indus-
18 trial access road as it relates to the project's location and as
19 it relates to the possibility of future extensions of the road
20 to serve other possible industrial sites as well as the future
21 development of the surrounding area.

22 Prior to the allocation of moneys from the fund for
23 the construction or maintenance of an industrial access
24 road to an industry proposing to locate or expand in a
25 county or municipality, the governing body of the county
26 or municipality shall, by resolution, request moneys from
27 the fund and shall be responsible for the preliminary ne-
28 gotiations with the industries and other interested parties.
29 The division of highways shall be available for consulta-
30 tion with the governing bodies of the counties or munici-
31 palities and other interested parties and may prepare sur-
32 veys, plans, engineering studies and cost estimates for the
33 proposed industrial access road.

§17-3A-4. Restrictions on use of fund.

1 (a) The fund may not be used for the adjustment of
2 utilities or for the construction of industrial access roads to
3 schools, hospitals, libraries, armories, shopping centers,
4 apartment buildings, government installations or similar
5 facilities, whether public or private. The fund may not be
6 used to construct industrial access roads on private proper-
7 ty.

8 (b) Moneys from the fund may not be allocated until
9 the governing body of the county or municipality certifies
10 to the division of highways that the industrial site is con-
11 structed and operating or is under firm contract to be
12 constructed or operated, or upon the presentation of ac-
13 ceptable surety in accordance with section one of this
14 article.

15 (c) Not more than three hundred thousand dollars of

16 unmatched moneys from the fund may be allocated for
17 use in any one county in any fiscal year. The maximum
18 amount of unmatched moneys which may be allocated
19 from the fund is ten percent of the fair market value of the
20 designated industrial establishment. The amount of un-
21 matched funds allocated may be supplemented with addi-
22 tional matched moneys from the fund, in which case the
23 matched moneys allocated from the fund may not exceed
24 one hundred fifty thousand dollars, to be matched equally
25 from sources other than the fund. The amount of
26 matched moneys which may be allocated from the fund
27 over and above the unmatched funds may not exceed five
28 percent of the fair market value of the designated industri-
29 al site.

30 (d) Funds may only be allocated to those items of
31 construction and engineering which are essential to pro-
32 viding an adequate facility to serve the anticipated traffic.
33 Funds may not be allocated for items such as storm sewers,
34 curbs, gutters and extra pavement width unless necessary
35 to extend or connect an existing access road.

§17-3A-5. Disbursements from fund.

1 Any claim of a contractor or others, not otherwise
2 provided for, for labor done or for materials, services or
3 supplies furnished to the division of highways pursuant to
4 the provisions of this article shall be audited by the com-
5 missioner of the division of highways. If the commission-
6 er determines that the claim is valid and correct, the com-
7 missioner shall issue a requisition of the division upon the
8 state auditor therefor showing the nature of the claim and
9 specifying whether the claim is for labor done or materi-
10 als, services or supplies furnished for the construction or
11 maintenance of state roads, or for other purposes, and the
12 auditor shall issue his or her warrant upon the state trea-
13 surer therefor. The treasurer shall issue the warrant to the
14 person, firm or corporation entitled thereto out of the
15 funds in the treasury provided for that purpose. The cost
16 of acquiring a right-of-way shall be paid out of the fund.

§17-3A-6. Annual audit to be made of receipts and expenditures of fund.

1 The Legislature, acting through the joint committee
2 on government and finance, shall cause an annual audit to
3 be made by a resident independent certified public ac-
4 countant of all books, accounts and records relating to all
5 receipts and expenditures of the fund. The commissioner
6 shall make available to the independent auditor or auditors
7 performing the audit all of the division's books, accounts
8 and records pertaining to all moneys received and ex-
9 pended. The auditor or auditors performing the audit
10 shall make available annually the audit report with copies
11 thereof to the members of the Legislature, the governor,
12 the commissioner of the division of highways, the secre-
13 tary of state, the state treasurer, the attorney general and
14 the state auditor. The audit report shall be available to the
15 public in the office of the secretary of state.

16 The Legislature, acting through the joint committee
17 on government and finance, shall obtain the services of a
18 resident independent certified public accountant for this
19 purpose, the cost of which shall be payable out of funds
20 appropriated by the Legislature. Any audits of the funds
21 which have been made by any official auditing agency of
22 the United States government shall be accepted in lieu of
23 the state audit.

CHAPTER 214

(Com. Sub. for S. B. 359—By Senators Tomblin, Mr. President, Jackson and
Wooton)

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section,

designated section eleven-c, relating to roads and weight limits; authorizing the commissioner of highways to determine whether certain portions of state route 61 and county route 72 in Kanawha County may be designated an industrial road; and authorizing the commissioner to set the gross weight limitations on such industrial road.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-11c. Designating an industrial road; setting weight limits.

1 (a) The commissioner of the division of highways
2 shall determine if the design, construction and safety spec-
3 ifications of a portion of state route 61 and county route
4 72, located in Kanawha County, which is eighty-five hun-
5 dredths of a mile in length, and its extension to state route
6 3 at Orgas in Boone County, meet the specifications re-
7 quired by the commissioner to designate the road an in-
8 dustrial road.

9 (b) After the determination as required by subsection
10 (a) is made and all modifications and repairs necessary to
11 meet the specifications of the division of highways are
12 completed, the commissioner may designate that portion
13 of state route 61 and county route 72, located in Kanawha
14 County, which is eighty-five hundredths of a mile in
15 length, and its extension to state route 3 at Orgas in Boone
16 County, an industrial road.

17 (c) Notwithstanding the provisions of any other sec-
18 tion of this article, the commissioner may set the gross
19 weight limitations applicable to that portion of state route
20 61 and county route 72 designated an industrial road not
21 to exceed eighty thousand pounds.

CHAPTER 215

(H. B. 2808—By Delegates Farris and Gallagher)

[Passed March 10, 1995; in effect from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact section four hundred two, article four, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to securities transactions that are exempt from registration and sales and advertising literature filing.

Be it enacted by the Legislature of West Virginia:

That section four hundred two, article four, chapter thirty-two 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.

§32-4-402. Exemptions.

1 (a) The following securities are exempt from sections
2 301 and 403:

3 (1) Any security (including a revenue obligation)
4 issued or guaranteed by the United States, any state, any
5 political subdivision of a state, or any agency or corporate
6 or other instrumentality of one or more of the foregoing;
7 or any certificate of deposit for any of the foregoing;

8 (2) Any security issued or guaranteed by Canada, any
9 Canadian province, any political subdivision of any such
10 province, any agency or corporate or other instrumentality
11 of one or more of the foregoing, or any other foreign
12 government with which the United States currently
13 maintains diplomatic relations, if the security is recognized

14 as a valid obligation by the issuer or guarantor;

15 (3) Any security issued by and representing an interest
16 in or a debt of, or guaranteed by, any bank organized
17 under the laws of the United States, or any bank, savings
18 institution or trust company organized and supervised
19 under the laws of any state;

20 (4) Any security issued by and representing an interest
21 in or a debt of, or guaranteed by, any federal savings and
22 loan association, or any building and loan or similar
23 association organized under the laws of any state and
24 authorized to do business in this state;

25 (5) Any security issued by and representing an interest
26 in or a debt of, or guaranteed by, any insurance company
27 organized under the laws of any state and authorized to do
28 business in this state;

29 (6) Any security issued or guaranteed by any federal
30 credit union or any credit union, industrial loan
31 association or similar association organized and supervised
32 under the laws of this state;

33 (7) Any security issued or guaranteed by any railroad,
34 other common carrier, public utility or holding company
35 which is: (A) Subject to the jurisdiction of the interstate
36 commerce commission; (B) a registered holding company
37 under the Public Utility Holding Company Act of 1935,
38 or a subsidiary of such a company within the meaning of
39 that act; (C) regulated in respect of its rates and charges by
40 a governmental authority of the United States or any state;
41 or (D) regulated in respect of the issuance or guarantee of
42 the security by a governmental authority of the United
43 States, any state, Canada, or any Canadian province;

44 (8) Any security listed or approved for listing upon
45 notice of issuance on the New York Stock Exchange, the
46 American Stock Exchange, or the Midwest Stock
47 Exchange, any other stock exchange approved by the
48 commissioner, the National Association of Securities
49 Dealers Automated Quotation/National Market System

50 (NASDAQ/NMS), or any other market system approved
51 by the commissioner, any other security of the same issuer
52 which is of senior or substantially equal rank, any security
53 called for by subscription rights or warrants so listed or
54 approved, or any warrant or right to purchase or subscribe
55 to any of the foregoing, except that the commissioner may
56 adopt and promulgate rules pursuant to chapter twenty-
57 nine-a of this code which, after notice to such exchange
58 or market system and an opportunity to be heard, remove
59 any such exchange or market system from this exemption
60 if the commissioner finds that the listing requirements or
61 market surveillance of such exchange or market system
62 are such that the continued availability of such exemption
63 for such exchange or market system is not in the public
64 interest and that removal is necessary for the protection of
65 investors;

66 (9) Any security issued by any person organized and
67 operated not for private profit but exclusively for
68 religious, educational, benevolent, charitable, fraternal,
69 social, athletic or reformatory purposes, or as a chamber
70 of commerce or trade or professional association, and no
71 part of the net earnings of which inures to the benefit of
72 any person, private stockholder or individual;

73 (10) Any commercial paper which arises out of a
74 current transaction or the proceeds of which have been or
75 are to be used for current transactions, and which
76 evidences an obligation to pay cash within twelve months
77 of the date of issuance, exclusive of days of grace, or any
78 renewal of such paper which is likewise limited, or any
79 guarantee of such paper or of any such renewal;

80 (11) Any investment contract issued in connection
81 with an employees' stock purchase, savings, pension,
82 profit-sharing or similar benefit plan if the commissioner
83 is notified in writing thirty days before the inception of
84 the plan or, with respect to plans which are in effect on the
85 effective date of this chapter, within sixty days thereafter
86 (or within thirty days before they are reopened if they are
87 closed on the effective date of this chapter); and

88 (12) Any security issued by an agricultural
89 cooperative association operating in this state and
90 organized under article four, chapter nineteen of this code,
91 or by a foreign cooperative association organized under
92 the laws of another state and duly qualified to transact
93 business in this state.

94 (b) The following transactions are exempt from
95 sections 301 and 403:

96 (1) Any isolated nonissuer transaction, whether
97 effected through a broker-dealer or not;

98 (2) Any nonissuer distribution of an outstanding
99 security if: (A) A recognized securities manual contains
100 the names of the issuer's officers and directors, a balance
101 sheet of the issuer as of a date within eighteen months, and
102 a profit and loss statement for either the fiscal year
103 preceding that date or the most recent year of operations;
104 or (B) the security has a fixed maturity or a fixed interest
105 or dividend provision and there has been no default
106 during the current fiscal year or within the three preceding
107 fiscal years, or during the existence of the issuer and any
108 predecessors if less than three years, in the payment of
109 principal, interest or dividends on the security;

110 (3) Any nonissuer transaction effected by or through
111 a registered broker-dealer pursuant to an unsolicited order
112 or offer to buy; but the commissioner may by rule require
113 that the customer acknowledge upon a specified form that
114 the sale was unsolicited, and that a signed copy of each
115 such form be preserved by the broker-dealer for a
116 specified period;

117 (4) Any transaction between the issuer or other person
118 on whose behalf the offering is made and an underwriter,
119 or among underwriters;

120 (5) Any transaction in a bond or other evidence of
121 indebtedness secured by a real or chattel mortgage or
122 deed of trust, or by an agreement for the sale of real estate

123 or chattels, if the entire mortgage, deed of trust, or
124 agreement, together with all the bonds or other evidences
125 of indebtedness secured thereby, is offered and sold as a
126 unit;

127 (6) Any transaction by an executor, administrator,
128 sheriff, marshal, constable, receiver, trustee in bankruptcy,
129 guardian or conservator, and any transaction constituting a
130 judicial sale;

131 (7) Any transaction executed by a bona fide pledgee
132 without any purpose of evading this chapter;

133 (8) Any offer or sale to a bank, savings institution,
134 trust company, insurance company, investment company
135 as defined in the Investment Company Act of 1940,
136 pension or profit-sharing trust, or other financial
137 institution or institutional buyer, or to a broker-dealer,
138 whether the purchaser is acting for itself or in some
139 fiduciary capacity;

140 (9) Any transaction pursuant to an offer directed by
141 the offeror to not more than ten persons (other than those
142 designated in subdivision (8) above) in this state during
143 any period of twelve consecutive months, whether or not
144 the offeror or any of the offerees is then present in this
145 state, if: (A) The seller reasonably believes that all the
146 buyers in this state (other than those designated in
147 subdivision (8) above) are purchasing for investment; and
148 (B) no commission or other remuneration is paid or given
149 directly or indirectly for soliciting any prospective buyer
150 in this state (other than those designated in subdivision (8)
151 above); but the commissioner may by rule or order, as to
152 any security or transaction or any type of security or
153 transaction, withdraw or further condition this exemption,
154 or increase or decrease the number of offerees permitted,
155 or waive the conditions in clauses (A) and (B) with or
156 without the substitution of a limitation on remuneration;

157 (10) Any offer or sale of a preorganization certificate
158 or subscription if: (A) No commission or other remun-
159 eration is paid or given directly or indirectly for soliciting

160 any prospective subscriber; (B) the number of subscribers
161 does not exceed ten; and (C) no payment is made by any
162 subscriber;

163 (11) Any transaction pursuant to an offer to existing
164 security holders of the issuer, including persons who at the
165 time of the transaction are holders of convertible
166 securities, nontransferable warrants or transferable
167 warrants exercisable within not more than ninety days of
168 their issuance, if: (A) No commission or other remun-
169 eration (other than a standby commission) is paid or given
170 directly or indirectly for soliciting any security holder in
171 this state; or (B) the issuer first files a notice specifying the
172 terms of the offer and the commissioner does not by order
173 disallow the exemption within the next five full business
174 days;

175 (12) Any offer (but not a sale) of a security for which
176 registration statements have been filed under both this
177 chapter and the Securities Act of 1933 if no stop order or
178 refusal order is in effect and no public proceeding or
179 examination looking toward such an order is pending
180 under either chapter.

181 (13) A security issued by an issuer registered as an
182 open-end management investment company or unit
183 investment trust under section (8) of the Investment
184 Company Act of 1940 if:

185 (A) (i) The issuer is advised by an investment adviser
186 that it is a depository institution exempt from registration
187 under the Investment Company Act of 1940, or that is
188 currently registered as an investment adviser, and has been
189 registered, or is affiliated with an adviser that has been
190 registered, as an investment adviser under the Investment
191 Advisers Act of 1940, for at least three years next
192 preceding an offer or sale of a security claimed to be
193 exempt under this paragraph; and the adviser has acted, or
194 is affiliated with an investment adviser that has acted, as
195 investment adviser to one or more registered investment
196 companies for at least three years next preceding an offer

197 or sale of a security claimed to be exempt under this
198 paragraph; or

199 (ii) The issuer has a sponsor that has at all times
200 throughout the three years before an offer or sale of a
201 security claimed to be exempt under this paragraph
202 sponsored one or more registered investment companies
203 or unit investment trusts the aggregate total assets of which
204 have exceeded one hundred million dollars.

205 (B) The division has received prior to any sale
206 exempted herein:

207 (i) A notice of intention to sell which has been
208 executed by the issuer which sets forth the name and
209 address of the issuer and the title of the securities to be
210 offered in this state;

211 (ii) A filing fee equal to one twentieth of one percent
212 of the maximum aggregate offering price, but such fee
213 shall not be less than fifty nor greater than fifteen hundred
214 dollars, for open-end management companies; or

215 (iii) A filing fee equal to one twentieth of one percent
216 of the maximum aggregate offering price, but such fee
217 shall not be less than fifty nor greater than fifteen hundred
218 dollars, for unit investment trusts.

219 (C) A separate notice and fee shall be required for
220 each portfolio, series or class of an open-end management
221 company.

222 (D) For the purpose of this subsection, an investment
223 adviser is affiliated with another investment adviser if it
224 controls, is controlled by or is under common control with
225 the other investment adviser.

226 (c) The commissioner may by order deny or revoke
227 any exemption specified in subdivision (9) or (11) of
228 subsection (a) or in subsection (b) of this section with
229 respect to a specific security or transaction. No such order
230 may be entered without appropriate prior notice to all

231 interested parties, opportunity for hearing, and written
232 findings of fact and conclusions of law, except that the
233 commissioner may by order summarily deny or revoke
234 any of the specified exemptions pending final determina-
235 tion of any proceeding under this subsection. Upon the
236 entry of a summary order, the commissioner shall prompt-
237 ly notify all interested parties that it has been entered and
238 of the reasons therefor and that within fifteen days of the
239 receipt of a written request the matter will be set down for
240 hearing. If no hearing is requested and none is ordered
241 by the commissioner, the order will remain in effect until
242 it is modified or vacated by the commissioner. If a hear-
243 ing is requested or ordered, the commissioner, after notice
244 of and opportunity for hearing to all interested persons,
245 may modify or vacate the order or extend it until final
246 determination. No order under this subsection may oper-
247 ate retroactively. No person may be considered to have
248 violated section 301 or 403 by reasons of any offer or sale
249 effected after the entry of an order under this subsection if
250 he sustains the burden of proof that he did not know, and
251 in the exercise of reasonable care could not have known,
252 of the order.

253 (d) In any proceeding under this chapter, the burden
254 of proving an exemption or an exception from a defini-
255 tion is upon the person claiming it.

CHAPTER 216

(S. B. 349—By Senator Dittmar)

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article eleven, chap-
ter twenty of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to prohibition on
the disposal of certain items; plans for the proper handling
of said items required; rules required; report to be prepared

and submitted; and extending for one year the implementation of the ban on the disposal of tires and yard waste.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.

§20-11-8. 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
3 lead-acid batteries in a solid waste facility in West Virginia;
4 effective the first day of June, one thousand nine hundred
5 ninety-six, it shall be unlawful to deposit tires in a solid
6 waste facility in West Virginia; and effective the first day
7 of January, one thousand nine hundred ninety-seven, it
8 shall be unlawful to deposit yard waste, including grass
9 clippings and leaves, in a solid waste facility in West Vir-
10 ginia: *Provided*, That such prohibitions do not apply to a
11 facility designed specifically to compost such yard waste
12 or otherwise recycle or reuse such items: *Provided, how-*
13 *ever*, That reasonable and necessary exceptions to such
14 prohibitions may be included as part of the rules promul-
15 gated pursuant to subsection (c) of this section.

16 (b) No later than the first day of May, one thousand
17 nine hundred ninety-five, the solid waste management
18 board shall design a comprehensive program to provide
19 for the proper handling of yard waste and lead-acid bat-
20 teries. No later than the first day of May, one thousand
21 nine hundred ninety-four, a comprehensive plan shall be
22 designed in the same manner to provide for the proper
23 handling of tires.

24 (c) No later than the first day of August, one thousand
25 nine hundred ninety-five, the division of environmental
26 protection shall promulgate rules, in accordance with
27 chapter twenty-nine-a of this code, as amended, to imple-

28 ment and enforce the program for yard waste and
29 lead-acid batteries designed pursuant to subsection (b) of
30 this section. No later than the first day of August, one
31 thousand nine hundred ninety-four, the division of envi-
32 ronmental protection shall promulgate rules, in accor-
33 dance with chapter twenty-nine-a of said code, as amend-
34 ed, to implement and enforce the program for tires de-
35 signed pursuant to subsection (b) of this section.

36 (d) For the purposes of this section, "yard waste"
37 means grass clippings, weeds, leaves, brush, garden waste,
38 shrub or tree prunings and other living or dead plant tis-
39 sues, except that, such materials which, due to inadvertent
40 contamination or mixture with other substances which
41 render the waste unsuitable for composting, shall not be
42 considered to be yard waste: *Provided*, That the same or
43 similar waste generated by commercial agricultural enter-
44 prises is excluded.

45 (e) In promulgating the rules required by subsections
46 (b) and (c) of this section, yard waste, as described in sub-
47 section (d) of this section, the division shall provide for the
48 disposal of yard waste in a manner consistent with one or
49 any combination of the following:

50 (1) Disposal in a publicly or privately operated com-
51 mercial or noncommercial composting facility.

52 (2) Disposal by composting on the property from
53 which domestic yard waste is generated or on adjoining
54 property or neighborhood property if consent is obtained
55 from the owner of the adjoining or neighborhood proper-
56 ty.

57 (3) Disposal by open burning where such activity is
58 not prohibited by this code, rules promulgated hereunder
59 or municipal or county codes or ordinances.

60 (4) Disposal in a publicly or privately operated land-
61 fill, only where none of the foregoing options are avail-
62 able. Such manner of disposal will involve only small
63 quantities of domestic yard waste generated only from the
64 property of the participating resident or tenant.

CHAPTER 217

(Com. Sub. for S. B. 202—By Senators Wiedebusch and Macnaughtan)

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and three-a, article six, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article nineteen of said chapter, all relating to establishing speed limitations generally; defining the misdemeanor offense of driving in excess of the established speed limits and providing penalties therefor; prescribing the penalty for driving less than ten miles per hour above the posted speed limit on a controlled access highway or interstate highway; describing when a certified abstract of a judgment of conviction shall not be transmitted or shall not be recorded by the division of motor vehicles if a person is convicted of driving above the speed limit on a controlled access highway or interstate highway; establishing minimum speed regulations; defining the misdemeanor offense of driving a motor vehicle at such a slow speed as to impede traffic, and providing penalties therefor; describing offenses by persons owning or controlling vehicles; and providing, under certain circumstances, for an owner present in a vehicle to be arrested for a traffic violation rather than the driver.

Be it enacted by the Legislature of West Virginia:

That sections one and three-a, article six, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section two, article nineteen of said chapter be amended and reenacted, all to read as follows:

Article

6. Speed Restrictions.

19. Parties, Procedure on Arrest and Reports in Criminal Cases.

ARTICLE 6. SPEED RESTRICTIONS.

§17C-6-1. Speed limitations generally; penalties for violation of speed limits in school zones.

§17C-6-3a. Minimum speed regulations.

§17C-6-1. Speed limitations generally; penalties for violation of speed limits in school zones.

1 (a) No person may drive a vehicle on a highway at a
2 speed greater than is reasonable and prudent under the
3 existing conditions and the actual and potential hazards.
4 In every event speed shall be so controlled as may be
5 necessary to avoid colliding with any person, vehicle or
6 other conveyance on or entering the highways in compli-
7 ance with legal requirements and the duty of all persons to
8 use due care.

9 (b) Where no special hazard exists that requires lower
10 speed for compliance with subsection (a) of this section,
11 the speed of any vehicle not in excess of the limits speci-
12 fied in this section or established as hereinafter authorized
13 is lawful, but any speed in excess of the limits specified
14 below in this subsection or established as hereinafter au-
15 thorized is unlawful.

16 (1) Fifteen miles per hour in a school zone during
17 school recess or while children are going to or leaving
18 school during opening or closing hours. A school zone is
19 all school property including school grounds and any
20 street or highway abutting such school grounds and ex-
21 tending one hundred twenty-five feet along such street or
22 highway from the school grounds. Such speed restriction
23 does not apply to vehicles traveling on a controlled-access
24 highway which is separated from the school or school
25 grounds by a fence or barrier approved by the state road
26 commissioner;

27 (2) Twenty-five miles per hour in any business or
28 residence district;

29 (3) Fifty-five miles per hour on open country high-
30 ways, except as otherwise provided by this chapter.

31 The speeds set forth in this section may be altered as
32 authorized in sections two and three of this article.

33 (c) The driver of every vehicle shall, consistent with
34 the requirements of subsection (a) of this section, drive at
35 an appropriate reduced speed when approaching and
36 crossing an intersection or railway grade crossing, when
37 approaching and going around a curve, when approaching
38 a hill crest, when traveling upon any narrow or winding
39 roadway and when special hazard exists with respect to
40 pedestrians or other traffic or by reason of weather or
41 highway conditions.

42 (d) The speed limit on controlled-access highways and
43 interstate highways, where no special hazard exists that
44 requires a lower speed, shall be not less than fifty-five
45 miles per hour and the speed limits specified in subsection
46 (b) of this section do not apply.

47 (e) Any person who violates the provisions of this
48 section is guilty of a misdemeanor, and, upon conviction
49 thereof, shall be fined not more than one hundred dollars:
50 *Provided*, That any person who violates the provisions of
51 this section after having been previously convicted under
52 the provisions of this section for a prior offense which
53 occurred within the preceding one-year period, is guilty of
54 a misdemeanor, and, upon conviction thereof, shall be
55 fined not more than two hundred dollars: *Provided, how-*
56 *ever*, That any person who violates the provisions of this
57 section after having been previously convicted under the
58 provisions of this section for two or more prior offenses
59 which occurred within the preceding two-year period, is
60 guilty of a misdemeanor, and, upon conviction thereof,
61 shall be fined not more than five hundred dollars or con-
62 fined in jail for not more than six months, or both: *Pro-*
63 *vided further*, That any person who violates subdivision
64 (1), subsection (b) of this section is guilty of a misde-
65 meanor, and, upon conviction thereof, shall be fined not
66 less than one hundred dollars nor more than five hundred
67 dollars, or shall be fined not less than one hundred dollars
68 nor more than five hundred dollars and confined in jail
69 for not more than six months, or both, for a violation of
70 said subdivision after having been previously convicted
71 for one or more violations of said subdivision which oc-
72 curred within the preceding two-year period.

73 (f) If an owner or driver is arrested under the provi-
74 sions of this section for the offense of driving above the
75 posted speed limit on a controlled access highway or inter-
76 state highway, and if the evidence shall show that the mo-
77 tor vehicle was being operated at less than ten miles per
78 hour above said speed limit, then, upon conviction thereof,
79 such person shall be fined not more than five dollars, plus
80 court costs.

81 If an owner or driver is convicted under the provisions
82 of this section for the offense of driving above the speed
83 limit on a controlled access highway or interstate highway
84 of this state, and if the evidence shall show that the motor
85 vehicle was being operated at less than ten miles per hour
86 above said speed limit, then notwithstanding the provisions
87 of section four, article three, chapter seventeen-b of this
88 code, a certified abstract of the judgment on such convic-
89 tion shall not be transmitted to the division of motor vehi-
90 cles.

91 If an owner or driver is convicted in another state for
92 the offense of driving above the maximum speed limit on
93 a controlled access highway or interstate highway, and if
94 the maximum speed limit in such other state is less than
95 the maximum speed limit for a comparable controlled
96 access highway or interstate highway in this state, and if
97 the evidence shall show that the motor vehicle was being
98 operated at less than ten miles per hour above what would
99 be the maximum speed limit for a comparable controlled
100 access highway or interstate highway in this state, then
101 notwithstanding the provisions of section four, article
102 three, chapter seventeen-b of this code, a certified abstract
103 of the judgment on such conviction shall not be transmit-
104 ted to the division of motor vehicles, or, if transmitted,
105 shall not be recorded by the division, unless within a rea-
106 sonable time after conviction, the person convicted has
107 failed to pay all fines and costs imposed by the other state.

§17C-6-3a. Minimum speed regulations.

1 (a) No person shall drive a motor vehicle at such a
2 slow speed as to impede the normal and reasonable move-
3 ment of traffic except when reduced speed is necessary for
4 safe operation or in compliance with law.

5 (b) Whenever the commissioner or local authorities
6 within their respective jurisdiction determine on the basis
7 of an engineering and traffic investigation that slow speeds
8 on any part of the highway consistently impede the nor-
9 mal and reasonable movement of traffic, the commissioner
10 or such local authority may determine and declare a mini-
11 mum speed limit below which no person shall drive a
12 vehicle except when necessary for safe operation or in
13 compliance with law.

14 (c) Any person who violates the provisions of this
15 section is guilty of a misdemeanor, and, upon conviction
16 thereof, shall be fined not more than one hundred dollars:
17 *Provided*, That any person who violates the provisions of
18 this section after having been previously convicted under
19 the provisions of this section for a prior offense which
20 occurred within the preceding one-year period, is guilty of
21 a misdemeanor, and, upon conviction thereof, shall be
22 fined not more than two hundred dollars: *Provided, how-*
23 *ever*, That any person who violates the provisions of this
24 section after having been previously convicted under the
25 provisions of this section for two or more prior offenses
26 which occurred within the preceding two-year period, is
27 guilty of a misdemeanor, and, upon conviction thereof,
28 shall be fined not more than five hundred dollars or con-
29 fined in jail for not more than six months, or both.

**ARTICLE 19. PARTIES, PROCEDURE ON ARREST AND RE-
PORTS IN CRIMINAL CASES.**

**§17C-19-2. Offenses by persons owning or controlling vehi-
cles; owner present in vehicle to be arrested
rather than driver for certain traffic violations.**

1 It is unlawful for the owner, or any other person, em-
2 ploying or otherwise directing the driver of any vehicle to
3 require or knowingly to permit the operation of such
4 vehicle upon a highway in any manner contrary to law.

5 If the owner of a motor vehicle is present in the vehi-
6 cle at a time when another driver is operating the vehicle
7 upon the highways of this state: (1) With defective or
8 improper equipment in violation of the provisions of arti-
9 cle fifteen of this chapter; (2) in violation of the weight,

10 height, length or width provisions of article seventeen of
11 this chapter; (3) with improper registration in violation of
12 the provisions of article three, chapter seventeen-a of this
13 code; or (4) with an expired vehicle inspection decal or
14 certificate in violation of the provisions of article sixteen
15 of this chapter, the owner rather than the driver shall be
16 arrested for any violation enumerated herein in lieu of an
17 arrest of the driver. If the owner of the vehicle is not pres-
18 ent therein, then the driver shall be arrested for any viola-
19 tion enumerated in this section.

CHAPTER 218

(Com. Sub. for H. B. 2046—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)

[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen-a, relating to establishing a state publications clearinghouse for libraries throughout the state in order to facilitate public access to publications issued by state agencies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PUBLIC LIBRARIES.

§10-1-18a. Establishment of state publications clearinghouse; definitions; powers of West Virginia library commission; designations by state agencies.

1 (a) There is hereby established the state depository
2 library clearinghouse which shall be under the direction of
3 the state library commission.

4 (b) As used in this section, the following terms have
5 the following meanings:

6 (1) "Public document" means any document, report,
7 directive, bibliography, rule, newsletter, pamphlet, bro-
8 chure, periodical, request for proposal, or other publica-
9 tion, whether in print or an unprinted format, that is paid
10 for, in whole or in part, by funds appropriated by the
11 Legislature and may be subject to distribution to the pub-
12 lic;

13 (2) "Depository library" means a library designated to
14 collect, catalog, maintain and make available all or particu-
15 lar selected state publications to the general public; and

16 (3) "State agency" means any state office, whether
17 legislative, executive or judicial, including, but not limited
18 to, any constitutional officer, department, division, bureau,
19 board, commission or other agency which expends state
20 appropriated funds.

21 (c) The state library commission shall establish a state
22 depository library clearinghouse to receive and distribute
23 all state public documents to the depository libraries
24 around the state.

25 (d) The commission shall designate a state library
26 staff member as director of the state publications clearing-
27 house for librarians. The director shall hold a graduate
28 degree in library science from an accredited institution of
29 higher learning. The clearinghouse shall establish require-
30 ments for eligibility to become and remain a depository
31 library.

32 (e) In designating a library as a depository library the
33 clearinghouse shall consider the geography of the state
34 and the existing federal depository libraries. West Virginia
35 University library, Marshall University library and the state
36 department of archives shall be designated as complete

37 depository libraries that shall receive two copies of all
38 public documents. The clearinghouse shall also, pursuant
39 to the requirements it establishes hereunder, designate
40 other libraries around the state as depository libraries,
41 upon request from a library.

42 (f) Each state agency shall designate one person as its
43 documents officer while notifying the clearinghouse of his
44 or her identity. The documents officer shall, prior to the
45 public release of any state public document, deposit with
46 the clearinghouse a minimum of fifteen copies as required
47 to meet the needs of the depository library system. If
48 fewer than forty copies of a public document are pro-
49 duced, no more than two such copies are required to be
50 deposited with the clearinghouse.

CHAPTER 219

(S. B. 579—By Senators Wagner, Bailey, Bowman, Buckalew, Miller,
Plymale, White and Walker)

[Passed March 11, 1995; in effect July 1, 1995. Became law without Governor's signature.]

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, all relating to continuing departments, agencies and boards; and 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, all to read as follows:

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 such
5 department, agency or board:

6 (1) On the first day of July, one thousand nine hun-
7 dred ninety-five: Division of tourism.

8 (2) On the first day of July, one thousand nine hun-
9 dred ninety-six: Division of personnel; division of correc-
10 tions; division of environmental protection; division of
11 highways; division of labor; division of rehabilitation
12 services; school building authority; workers' compensa-
13 tion; office of judges of workers' compensation; West
14 Virginia parkways, economic development and tourism
15 authority.

16 (3) On the first day of July, one thousand nine hun-
17 dred ninety-seven: Department of health and human
18 resources; tourism functions within the West Virginia de-
19 velopment office; West Virginia development office; pur-
20 chasing division within the department of administration;
21 division of culture and history.

22 (4) On the first day of July, two thousand one: Divi-
23 sion of natural resources.

***§4-10-5. Termination of agencies or boards following pre-
liminary 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 perfor-
4 mance review has been conducted upon such agency or
5 board:

6 (1) On the first day of July, one thousand nine hun-
7 dred ninety-five: Commission on charitable organiza-
8 tions; information system advisory commission; West
9 Virginia labor-management council; rural health initiative
10 advisory panel.

*Clerk's Note: This section was also amended by S. B. 567 (Chapter 88), which passed prior to this act.

11 (2) On the first day of July, one thousand nine hun-
12 dred ninety-six: U.S. geological survey program and
13 whitewater commission within the division of natural re-
14 sources; state geological and economic survey; unemploy-
15 ment compensation; board of investments; state building
16 commission; parks functions of the division of natural
17 resources; public employees insurance agency advisory
18 board; juvenile facilities review panel; West Virginia cable
19 television advisory board; emergency medical services
20 advisory council; office of water resources within the divi-
21 sion of environmental protection; West Virginia state po-
22 lice; human rights commission; board of examiners in
23 counseling.

24 (3) On the first day of July, one thousand nine hun-
25 dred ninety-seven: The driver's licensing advisory board;
26 West Virginia health care cost review authority; governor's
27 cabinet on children and families; oil and gas conservation
28 commission; child support enforcement division; West
29 Virginia commission for national and community service;
30 West Virginia contractors' licensing board.

31 (4) On the first day of July, one thousand nine hun-
32 dred ninety-eight: State lottery commission; the following
33 divisions or programs of the department of agriculture:
34 Meat inspection program and soil conservation committee;
35 women's commission; state board of risk and insurance
36 management; board of examiners of land surveyors; com-
37 mission on uniform state laws; council of finance and
38 administration; forest management review commission;
39 West Virginia's membership in the interstate commission
40 on the Potomac River basin; legislative oversight commis-
41 sion on education accountability; board of examiners in
42 speech pathology and audiology; board of social work
43 examiners; family law masters system.

44 (5) On the first day of July, one thousand nine hun-
45 dred ninety-nine: Board of banking and financial institu-
46 tions; capitol building commission; tree fruit industry
47 self-improvement assessment program; public service
48 commission.

49 (6) On the first day of July, two thousand: Family
50 protection services board; environmental quality board;

51 West Virginia's membership in the Ohio River valley water
 52 sanitation commission; ethics commission; oil and gas
 53 inspectors' examining board; veterans' council; West
 54 Virginia's membership in the southern regional education
 55 board.

56 (7) On the first day of July, two thousand one:
 57 Marketing and development division of the department of
 58 agriculture; real estate commission; board of architects;
 59 public employees insurance agency; public employees
 60 insurance agency finance board; center for professional
 61 development; rural health advisory panel.

CHAPTER 220

(H. B. 2558—By Delegates J. Martin, Michael, Love, Fragale, Osborne,
 Willison and Nesbitt)

[Passed March 11, 1995; in effect July 1, 1995.
 Became law without Governor's signature.]

AN ACT to amend and reenact section one, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the state building commission and changing the compensation of citizen members.

Be it enacted by the Legislature of West Virginia:

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

§5-6-1. Name of state office building commission changed; composition; appointment, terms and qualifications of members; chairman and secretary; compensation and expenses; powers and duties generally; frequency of meetings; continuation.

1 "The state office building commission of West Virgin-
2 ia," heretofore created, shall continue in existence but on
3 and after the ninth day of February, one thousand nine
4 hundred sixty-six, shall be known and designated as "The
5 state building commission of West Virginia" and shall
6 continue as a body corporate and as an agency of the state
7 of West Virginia. On and after the date aforesaid, the
8 commission shall consist of the governor, attorney general,
9 state treasurer and four additional members to be appoint-
10 ed by the governor by and with the advice and consent of
11 the Senate. The terms of office for said members to be
12 appointed by the governor shall be four years, except that
13 the terms of office of the first four members so appointed
14 by the governor shall be for one, two, three and four years,
15 respectively. No more than three of such members so
16 appointed by the governor shall be members of the same
17 political party, nor shall any of said members be members
18 or employees of the executive, legislative or judicial
19 branches of government of West Virginia or any political
20 subdivision thereof. The governor shall be chairman of
21 the commission. The secretary of state shall be a member
22 of the commission and serve as its secretary, but shall not
23 have the right to vote upon matters before the commis-
24 sion. All members of the commission shall be citizens and
25 residents of this state. The members of the commission
26 shall be paid or reimbursed for their necessary expenses
27 incurred under this article, but shall receive no compensa-
28 tion for their services as members or officers of the com-
29 mission: *Provided*, That each member of the commission
30 appointed by the governor shall, in addition to such reim-
31 bursement for necessary expenses, receive an amount not
32 to exceed the same compensation as is paid to members of
33 the Legislature for their interim duties as recommended
34 by the citizens legislative compensation commission and
35 authorized by law for each day or substantial portion
36 thereof that he is engaged in the work of the commission.
37 Such expenses and per diem shall be paid solely from
38 funds provided under the authority of this article, and the
39 commission shall not proceed to exercise or carry out any
40 authority or power herein given it to bind said commission

41 beyond the extent to which money has been provided
 42 under the authority of this article. On or before the fif-
 43 teenth day of each month, the commission shall prepare
 44 and transmit to the president and minority leader of the
 45 Senate and the speaker and the minority leader of the
 46 House of Delegates a report covering the activities of the
 47 said commission for the preceding calendar month.

48 Pursuant to the provisions of article ten, chapter four
 49 of this code, the Legislature hereby finds and declares that
 50 the state building commission should be continued and
 51 reestablished. Accordingly, notwithstanding the provi-
 52 sions of article ten, chapter four of this code, the state
 53 building commission shall continue to exist until the first
 54 day of July, one thousand nine hundred ninety-six.

CHAPTER 221

(S. B. 578—By Senators Wagner, Bailey, Bowman, Buckalew, Miller,
 Plymale, Walker and White)

(Passed March 8, 1995; in effect July 1, 1995. Approved by the Governor.)

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

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

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

39 (c) The director shall be responsible for the adminis-
40 tration and management of the public employees insur-
41 ance agency as provided for in this article and in connec-

42 tion therewith shall have the power and authority to make
 43 all rules and regulations necessary to effectuate the provi-
 44 sions of this article. Nothing in section four or five of this
 45 article shall limit the director's ability to manage on a
 46 day-to-day basis the group insurance plans required or
 47 authorized by this article, including, but not limited to,
 48 administrative contracting, studies, analyses and audits,
 49 eligibility determinations, utilization management provi-
 50 sions and incentives, provider negotiations, provider con-
 51 tracting and payment, designation of covered and
 52 noncovered services, offering of additional coverage op-
 53 tions or cost containment incentives, pursuit of coordina-
 54 tion of benefits and subrogation, or any other actions
 55 which would serve to implement the plan or plans de-
 56 signed by the finance board.

57 (d) The public employees insurance agency shall
 58 terminate in the manner provided in article ten, chapter
 59 four of this code, on the first day of July, two thousand
 60 one, unless extended by legislation enacted before the
 61 termination date: *Provided*, That the public employees
 62 insurance agency advisory board, created in section six of
 63 this article, shall terminate in the manner provided in arti-
 64 cle ten, chapter four of this code on the first day of July,
 65 one thousand nine hundred ninety-six.

CHAPTER 222

(S. B. 341—By Senators Wagner, Bailey, Bowman, Buckalew,
 Walker and Yoder)

[Passed March 8, 1995; in effect July 1, 1995. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**§5-16-4. Public employees insurance agency finance board created; qualifications, terms and removal of members; quorum; compensation and expenses; termination date.**

1 (a) There is hereby created the public employees in-
2 surance agency finance board, which shall consist of the
3 director and four members appointed by the governor
4 with the advice and consent of the Senate for terms of four
5 years and until the appointment of their successors: *Pro-*
6 *vided*, That the members initially appointed by the gover-
7 nor shall be appointed not later than the tenth day of Sep-
8 tember, one thousand nine hundred ninety, and may serve
9 and may perform the duties required by this article until
10 such time as the Senate may convene to give its advice and
11 consent. Of the members first appointed, one shall be
12 appointed for a term of one year, one for two years, one
13 for three years and one for four years. Members may be
14 reappointed for successive terms. No more than three
15 members (including the director) may be of the same
16 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 em-
20 ployees and two shall be selected from the public at large.
21 The two members appointed from the public shall each
22 have experience in the financing, development or manage-
23 ment of employee benefit programs. All new appoint-
24 ments made subsequent to the first day of July, one thou-
25 sand nine hundred ninety-four, shall be selected to repre-
26 sent the different geographical areas within the state and
27 all members shall be residents of West Virginia. No mem-
28 ber may be removed from office by the governor except
29 for official misconduct, incompetence, neglect of duty,
30 neglect of fiduciary duty or other specific responsibility
31 imposed by this article, or gross immorality.

32 (c) The director shall serve as chairperson of the fi-
33 nance board, which shall meet at such time and place as
34 shall be specified by the call of the director or upon the

35 written request to the director of at least two members.
36 Notice of each meeting shall be given in writing to each
37 member by the director at least three days in advance of
38 the meeting. Three members shall constitute a quorum.
39 The board shall pay each member the same compensation
40 and expense reimbursement as is paid to members of the
41 Legislature for their interim duties as recommended by
42 the citizens legislative compensation commission and
43 authorized by law for each day or portion thereof
44 engaged in the discharge of official duties.

45 (d) Pursuant to the provisions of article ten, chapter
46 four of this code, the finance board shall terminate on the
47 first day of July, two thousand one, unless extended by
48 legislation enacted before the termination date.

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

CHAPTER 223

(H. B. 2276—By Delegates J. Martin, Love, Michael, Fragale,
Osborne, Harrison and Willison)

[Passed March 10, 1995; in effect July 1, 1995. Approved by the Governor.]

AN ACT to amend and reenact section five, article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the emergency medical services advisory council.

Be it enacted by the Legislature of West Virginia:

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

§16-4C-5. Emergency medical services advisory council; duties, composition, appointment, meetings, compensation and expenses, continuation.

1 The emergency medical services advisory council,
2 heretofore created and established by former section seven
3 of this article, shall be continued for the purpose of
4 developing, with the director, standards for emergency
5 medical service personnel and for the purpose of
6 providing advice to the office of emergency medical
7 services and the director thereof, as established by section
8 four of this article with respect to reviewing and making
9 recommendations for and providing assistance to the
10 establishment and maintenance of adequate emergency
11 medical services for all portions of this state.

12 The council shall have the duty to advise the director in
13 all matters pertaining to his duties and functions in
14 relation to carrying out the purposes of this article.

15 The council shall be composed of thirteen members
16 appointed by the governor by and with the advice and
17 consent of the Senate. The mountain state emergency
18 medical services association shall submit to the governor a
19 list of six names of representatives from their association
20 and a list of three names shall be submitted to the
21 governor of representatives of their respective organiza-
22 tions by the West Virginia association of county officials,
23 West Virginia state firemen's association, West Virginia

24 hospital association, West Virginia state medical associa-
25 tion, West Virginia chapter of the American college of
26 emergency physicians, West Virginia emergency medical
27 services administrators association and the state depart-
28 ment of education. The governor shall appoint from the
29 respective lists submitted two persons who represent the
30 mountain state emergency medical services association,
31 one of whom shall be a paramedic and one of whom shall
32 be an emergency medical technician, and one person from
33 the West Virginia association of county officials, West
34 Virginia state firemen's association, West Virginia hospital
35 association, West Virginia state medical association, West
36 Virginia chapter of the American college of emergency
37 physicians, West Virginia emergency medical services
38 administrators association and the state department of
39 education. The governor shall in addition appoint one
40 person to represent emergency medical service providers
41 operating within the state, one person to represent small
42 emergency medical service providers operating within this
43 state and two persons to represent the general public. Not
44 more than five of the members shall be appointed from
45 any one congressional district. No member shall serve
46 more than four consecutive terms.

47 The council shall choose its own chairman and meet at
48 the call of the director at least twice a year.

49 The members of such council may be reimbursed for
50 any and all reasonable and necessary expenses actually
51 incurred in the performance of their duties.

52 The Legislature hereby finds and declares that the
53 emergency medical services advisory council should be
54 continued and reestablished. Accordingly, notwithstanding
55 the provisions of article ten, chapter four of this code, the
56 emergency medical services advisory council shall
57 continue to exist until the first day of July, one thousand
58 nine hundred ninety-six, to allow for completion of a
59 preliminary performance review through the joint
60 committee on government operations.

CHAPTER 224

(H. B. 2325—By Delegates J. Martin, Love, Michael, Fragale, Osborne,
Nesbitt and Harrison)

[Passed March 10, 1995; in effect July 1, 1995. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

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

§17-2A-1. Duties of state road commissioner transferred to division of highways; department to act through commissioner of highways; 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 Virginia
4 division of highways. All duties and responsibilities
5 heretofore imposed upon the state road commissioner and
6 the powers exercised by him are hereby transferred to the
7 West Virginia division of highways and such duties and
8 responsibilities shall be performed by the said division
9 and the powers may be exercised thereby through the
10 West Virginia commissioner of highways, who shall be the
11 chief executive officer of the division.

12 Pursuant to the provisions of article ten, chapter four
13 of this code, the West Virginia division of highways shall
14 continue to exist until the first day of July, one thousand

15 nine hundred ninety-six, to allow for monitoring of com-
16 pliance with recommendations contained in the full per-
17 formance audit and to allow for further review of the divi-
18 sion by the joint committee on government operations.

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

CHAPTER 225

(H. B. 2824—By Delegates J. Martin, Varner, Love, Thompson,
Stalnaker and Sprouse)

[Passed March 10, 1995; in effect July 1, 1995. Approved by the Governor.]

AN ACT to amend article nine-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen, relating to continuing the school building authority.

Be it enacted by the Legislature of West Virginia:

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

§18-9D-17. Continuation.

1 The Legislature hereby finds and declares that the
2 school building authority shall continue to exist until the
3 first day of July, one thousand nine hundred ninety-six, to
4 allow for the completion of a full performance audit
5 through the joint committee on government operations
6 pursuant to the provisions of article ten, chapter four of
7 this code.

CHAPTER 226

(S. B. 193—By Senators Wagner, Bailey, Bowman, Buckalew, Miller,
Wiedebusch and Yoder)

[Passed March 6, 1995; in effect July 1, 1995. Approved by the Governor.]

AN ACT to amend and reenact section two, article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the division of rehabilitation services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10A. VOCATIONAL REHABILITATION.

§18-10A-2. Division of rehabilitation services.

1 The division of rehabilitation services is hereby trans-
2 ferred to the department of education and the arts created
3 in article one, chapter five-f of this code. The secretary
4 shall appoint any such board, commission or council over
5 the division to the extent required by federal law to quali-
6 fy for federal funds for providing rehabilitation services
7 for disabled persons. The secretary and such boards,
8 commissions or councils as he or she is required by feder-
9 al law to appoint are authorized and directed to cooperate
10 with the federal government to the fullest extent in an
11 effort to provide rehabilitation services for disabled per-
12 sons.

13 References in this article or article ten-b of this chapter
14 to the state board of vocational education, the state board
15 of rehabilitation or the state board as the governing board
16 of vocational or other rehabilitation services or facilities
17 shall mean the secretary of education and the arts. All
18 references in the code to the division of vocational reha-
19 bilitation shall mean the division of rehabilitation services
20 and all references to the director of the division of voca-

21 tional rehabilitation shall mean the director of the division
22 of rehabilitation services.

23 Notwithstanding the provisions of article ten, chapter
24 four of this code, the division of rehabilitation services
25 shall terminate on the first day of July, one thousand nine
26 hundred ninety-six, to allow for the completion of a full
27 performance audit by the joint committee on government
28 operations.

CHAPTER 227

(S. B. 192—By Senators Wagner, Bailey, Bowman, Miller, White,
Wiedebusch and Yoder)

[Passed March 8, 1995; in effect July 1, 1995. Approved by the Governor.]

AN ACT to amend and reenact section one, article three-a, chap-
ter eighteen-a of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to continua-
tion of the center for professional development.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. CENTER FOR PROFESSIONAL DEVELOPMENT.

**§18A-3A-1. Center for professional development continued;
intent; advisory council.**

1 (a) Teaching is a profession that directly correlates to
2 the social and economic well-being of a society and its
3 citizens. Superior teaching is essential to a well educated
4 and productive populace. The intent of this article is to
5 recognize the value of professional involvement by expe-
6 rienced educators in building and maintaining a superior
7 teaching force and to establish avenues for applying such

8 involvement.

9 In furtherance of this intent, the center for profession-
10 al development is continued and reestablished. The gen-
11 eral mission of the center is to study matters relating to the
12 quality of teaching and management in the schools of
13 West Virginia and to promote the implementation of pro-
14 grams and practices to assure the highest quality in such
15 teaching and management. The center shall also perform
16 such duties as are assigned to it by law.

17 The center shall consist of nine persons as members:
18 The secretary of education and the arts, ex officio; the
19 state superintendent of schools, ex officio; one member of
20 the state board of education, elected by the state board;
21 two experienced educators, of whom one shall be a work-
22 ing classroom teacher, appointed by the governor by and
23 with the advice and consent of the Senate; and four citi-
24 zens of the state who are knowledgeable in matters rele-
25 vant to the issues addressed by the center appointed by the
26 governor by and with the advice and consent of the Sen-
27 ate. No two appointees shall be residents within the same
28 region. The state superintendent of schools shall convene
29 the first meeting of the center to elect a chair, vice chair
30 and secretary.

31 The election and appointment of members shall be
32 made as soon as possible after the effective date of this
33 section. Of the initial appointed members, three shall be
34 appointed for two-year terms and four shall be appointed
35 for four-year terms. All successive appointments shall be
36 for four-year terms.

37 The center for professional development shall meet at
38 least quarterly and the appointed members shall be paid
39 for reasonable and necessary expenses actually incurred in
40 the performance of their official duties from funds appro-
41 priated or otherwise made available for such purposes
42 upon submission of an itemized statement therefor.

43 The center may employ and fix the compensation of
44 an executive director and such other persons as may be

45 necessary to carry out the mission and duties of the center.
46 When practical, personnel employed by state higher edu-
47 cation agencies and state, regional and county public edu-
48 cation agencies shall be made available to the center to
49 assist in the operation of projects of limited duration.

50 The center shall contract with existing agencies or
51 agencies created after the effective date of this section or
52 others to provide training programs in the most efficient
53 manner. Existing programs currently based in agencies of
54 the state shall be continued in the agency of their origin
55 unless the center establishes a compelling need to transfer
56 or cancel the existing program. The center shall recom-
57 mend to the governor the transfer of funds to the provid-
58 ing agency, if needed, to provide programs approved by
59 the center.

60 (b) To assist the center for professional development
61 in the performance of its duties related to teacher educa-
62 tion and professional development, there is continued an
63 advisory council on professional development which shall
64 consist of eleven persons as follows: An employee of the
65 center who shall chair the advisory council; two shall be
66 professors or associate or assistant professors of teacher
67 education, one from a public institution and one from a
68 private institution of higher education in this state offering
69 programs leading to certification to teach in the public
70 schools of this state; two county school superintendents,
71 one of whom shall be from a district with a student enroll-
72 ment above the statewide average and one of whom shall
73 be from a district with a student enrollment below such
74 average; two school principals, one of whom shall be from
75 a school including elementary grade levels and one of
76 whom shall be from a school including secondary grade
77 levels; and four professional instructional personnel, two
78 of whom shall be from a school including elementary
79 grade levels and two of whom shall be from a school in-
80 cluding secondary grade levels. To the extent possible,
81 the principals and instructional personnel shall be appoint-
82 ed from the members of county staff development coun-

83 cils. Except for the employee of the center, the members
84 shall be appointed jointly by the secretary of education
85 and the arts and the state superintendent for two-year
86 terms which overlap so that one member from each of the
87 classes shall be appointed in each successive year, except
88 that two members from the professional instructional per-
89 sonnel class shall be appointed in each successive year.
90 No two members of the council shall be from the same
91 college or university or school district. Members of the
92 council shall be granted release time from their employ-
93 ment for attending meetings of the council.

94 Pursuant to the provisions of article ten, chapter four
95 of this code, the center for professional development and
96 advisory council shall continue to exist until the first day
97 of July, two thousand one.

CHAPTER 228

(S. B. 38—By Senators Wagner, Bailey, Bowman, Jackson,
Scott, Walker and Wooton)

[Passed March 8, 1995; in effect July 1, 1995. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

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

1 (a) In recognition that article ten, chapter four of this
2 code requires a preliminary performance review of the
3 rural resource division of the department of agriculture
4 and that performance standards must be stated before such
5 audit can be performed, the rural resources division is
6 hereby formally established and renamed the marketing
7 and development division in the department of agricul-
8 ture. The duties of the division are to establish marketing,
9 promotional and development programs to advance West
10 Virginia agriculture in the domestic and international
11 markets; to provide grading, inspection and market news
12 services to the various elements of the West Virginia agri-
13 cultural industry; and to regulate and license individuals
14 involved in the marketing of agricultural products.

15 (b) After having conducted a preliminary perfor-
16 mance review and fiscal audit through its joint committee
17 on government operations, pursuant to section nine, article
18 ten, chapter four of this code, the Legislature hereby finds
19 and declares the marketing and development division
20 should be continued and reestablished. Accordingly,
21 notwithstanding the provisions of section four of said
22 article, the marketing and development division shall con-
23 tinue to exist until the first day of July, two thousand one.

CHAPTER 229

(H. B. 2659—By Delegates J. Martin, Love, Michael, Osborne,
Stainaker, Harrison and Willison)

[Passed March 10, 1995; in effect July 1, 1995. 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 continuing the division of natural resources and the parks section 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:

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

1 A division of natural resources, the office of director
2 of the division of natural resources, and a natural resourc-
3 es commission are hereby created and established in the
4 state government with jurisdiction, powers, functions, ser-
5 vices and enforcement processes as provided in this chap-
6 ter and elsewhere by law.

7 Pursuant to the provisions of article ten, chapter four
8 of this code, the division of natural resources shall contin-
9 ue to exist until the first day of July, two thousand one.

10 Pursuant to the provisions of article ten, chapter four
11 of this code, the parks section and parks functions of the
12 division of natural resources, transferred to the division of
13 natural resources pursuant to the provisions of section
14 twelve, article one, chapter five-b of this code, shall contin-
15 ue to exist within the division of natural resources until the
16 first day of July, one thousand nine hundred ninety-six, to
17 allow for monitoring of compliance with recommenda-
18 tions contained in the preliminary performance review and
19 to allow for further review by the joint committee on gov-
20 ernment operations.

CHAPTER 230

(H. B. 2660—By Delegates J. Martin, Love, Michael, Fragale, Osborne,
Nesbitt and Willison)

[Passed March 10, 1995; in effect July 1, 1995. 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 continuing 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:

§21-1-5. Reestablishment of division; findings.

1 After having conducted a performance audit through its
2 joint committee on government operations, pursuant to
3 article ten, chapter four of this code, the Legislature here-
4 by finds and declares that the division of labor should be
5 continued and reestablished. Accordingly, notwithstanding
6 the provisions of article ten, chapter four of this code, the
7 division of labor shall continue to exist until the first day
8 of July, one thousand nine hundred ninety-six, to allow
9 for monitoring of compliance with recommendations
10 contained in the performance audit and to allow for
11 further review of the division by the joint committee on
12 government operations.

CHAPTER 231

(S. B. 39—By Senators Wagner, Bailey, Bowman, Jackson, Scott, Walker and Wooton)

[Passed February 20, 1995; in effect July 1, 1995. Approved by the Governor.]

AN ACT to amend and reenact section four, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the division of environmental protection.

Be it enacted by the Legislature of West Virginia:

That section four, article one, 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 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-4. Division of environmental protection continued; appointment of director.

1 Pursuant to the provisions of article ten, chapter four
2 of this code, the division of environmental protection shall
3 continue to exist until the first day of July, one thousand
4 nine hundred ninety-six, to allow for the completion of a
5 performance audit by the joint committee on government
6 operations.



CHAPTER 232

(S. B. 194—By Senators Wagner, Bailey, Bowman, Buckalew, Miller, Wiedebusch and Yoder)

[Passed March 3, 1995; in effect July 1, 1995. Approved by the Governor.]

AN ACT to amend and reenact section seven, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the office of water resources within the division of environmental protection.

Be it enacted by the Legislature of West Virginia:

That section seven, article one, 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 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-7. Offices within division; continuation of the water resources section.

1 Consistent with the provisions of this article the direc-
2 tor shall, at a minimum, maintain the following offices
3 within the division:

4 (1) The office of abandoned mine lands and reclama-
5 tion, which is charged, at a minimum, with administering
6 and enforcing, under the supervision of the director, the
7 provisions of article two of this chapter;

8 (2) The office of mining and reclamation, which is
9 charged, at a minimum, with administering and enforcing,
10 under the supervision of the director, the provisions of
11 articles three and four of this chapter;

12 (3) The office of air quality, which is charged, at a
13 minimum, with administering and enforcing, under the
14 supervision of the director, the provisions of article five of
15 this chapter;

16 (4) The office of oil and gas, which is charged, at a
17 minimum, with administering and enforcing, under the
18 supervision of the director, the provisions of articles six,
19 seven, eight, nine and ten of this chapter;

20 (5) The office of water resources, which is charged, at
21 a minimum, with administering and enforcing, under the

22 supervision of the director, the provisions of articles
23 eleven, twelve, thirteen and fourteen of this chapter; and

24 (6) The office of waste management, which is charged,
25 at a minimum, with administering and enforcing, under
26 the supervision of the director, the provisions of articles
27 fifteen, sixteen, seventeen, eighteen, nineteen and twenty of
28 this chapter.

29 Pursuant to the provisions of article ten, chapter four
30 of this code, the office of water resources within the
31 division of environmental protection shall continue to
32 exist until the first day of July, one thousand nine hundred
33 ninety-six, to allow for the completion of a preliminary
34 performance review by the joint committee on govern-
35 ment operations.

CHAPTER 233

(H. B. 2482—By Delegates J. Martin, Michael, Love, Osborne, Nesbitt,
Harrison and Willison)

[Passed March 10, 1995; in effect July 1, 1995. 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:

§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 hundred
4 ninety-six, to allow for monitoring of compliance with
5 recommendations contained in the performance audit and
6 to allow for further review of the division by the joint
7 committee on government operations.

CHAPTER 234

(H. B. 2279—By Delegates J. Martin, Love, Michael, Fragale, Osborne,
Nesbitt and Harrison)

[Passed March 10, 1995; in effect July 1, 1995. Approved by the Governor.]

AN ACT to repeal sections three, four and sixteen, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two, ten, eleven and fifteen, article nineteen, chapter twenty-nine of said code, all relating to terminating the commission on charitable organizations.

Be it enacted by the Legislature of West Virginia:

That sections three, four and sixteen, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections two, ten, eleven and fifteen, article nineteen, chapter twenty-nine of said code be amended and reenacted, all to read as follows:

§29-19-2. Definitions.

§29-19-10. Information filed to become public records.

§29-19-11. Records to be kept by charitable organizations, professional fund-raising counsel and professional solicitors.

§29-19-15. Enforcement and penalties.

§29-19-2. Definitions.

1 As used in this article:

2 (1) "Charitable organization" means a person who is or

3 holds itself out to be a benevolent, educational, philan-
4 thropic, humane, patriotic, religious or eleemosynary
5 organization, or any person who solicits or obtains
6 contributions solicited from the public for charitable
7 purposes, or any person who in any manner employs any
8 appeal for contributions which may be reasonably
9 interpreted to suggest that any part of such contributions
10 will be used for charitable purposes. A chapter, branch,
11 area, office or similar affiliate or any person soliciting
12 contributions within the state for a charitable organization
13 which has its principal place of business outside the state is
14 a charitable organization for the purposes of this article.

15 (2) "Contribution" means the promise or grant of any
16 money or property of any kind or value.

17 (3) "Solicit" and "solicitation" means the request or
18 appeal, directly or indirectly, for any contribution on the
19 plea or representation that such contribution will be used
20 for a charitable purpose, including, without limitation, the
21 following methods of requesting such contribution:

22 (a) Any oral or written request;

23 (b) Any announcement to the press, over the radio or
24 television, or by telephone or telegraph, concerning an
25 appeal or campaign to which the public is requested to
26 make a contribution for any charitable purpose connected
27 therewith;

28 (c) The distribution, circulation, posting or publishing
29 of any handbill, written advertisement or other publication
30 which directly or by implication seeks to obtain public
31 support; or

32 (d) The sale of, offer or attempt to sell, any advertise-
33 ment, advertising space, subscription, ticket or any service
34 or tangible item in connection with which any appeal is
35 made for any charitable purpose or where the name of
36 any charitable or civic organization is used or referred to
37 in any such appeal as an inducement or reason for making
38 any such sale, or when or where in connection with any

39 such sale, any statement is made that the whole or any part
40 of the proceeds from any such sale will be donated to any
41 charitable purpose.

42 "Solicitation", as defined herein, shall be deemed to
43 occur when the request is made, at the place the request is
44 received, whether or not the person making the same
45 actually receives any contribution.

46 (4) "Federated fund-raising organization" means a
47 federation of independent charitable organizations which
48 have voluntarily joined together, including, but not limited
49 to, a united fund or community chest, for purposes of
50 raising and distributing money for and among themselves
51 and where membership does not confer operating
52 authority and control of the individual agencies upon the
53 federated group organization.

54 (5) "Parent organization" is that part of a charitable
55 organization which coordinates, supervises or exercises
56 control over policy, fund raising and expenditures, or
57 assists, receives funds from or advises one or more
58 chapters, branches or affiliates in the state.

59 (6) "Person" means any individual, organization, trust,
60 foundation, group, association, partnership, corporation,
61 society or any combination of them.

62 (7) "Professional fund-raising counsel" means any
63 person who for a flat fixed fee under a written agreement
64 plans, conducts, manages, carries on, advises or acts as a
65 consultant, whether directly or indirectly, in connection
66 with soliciting contributions for, or on behalf of any
67 charitable organization but who actually solicits no
68 contributions as a part of such services. A bona fide
69 salaried officer or employee of a charitable organization
70 maintaining a permanent establishment within the state
71 shall not be deemed to be a professional fund-raising
72 counsel.

73 (8) "Professional solicitor" means any person who, for
74 a financial or other consideration, solicits contributions

75 for, or on behalf of a charitable organization, whether
76 such solicitation is performed personally or through said
77 person's agents, servants or employees specially employed
78 by, or for a charitable organization, who are engaged in
79 the solicitation of contributions under the direction of
80 such person, or a person who plans, conducts, manages,
81 carries on, advises or acts as a consultant to a charitable
82 organization in connection with the solicitation of
83 contributions but does not qualify as "professional
84 fund-raising counsel" within the meaning of this article. A
85 bona fide salaried officer or employee of a charitable
86 organization maintaining a permanent establishment
87 within the state is not a professional solicitor.

88 No attorney, investment counselor or banker, who
89 advises any person to make a contribution to a charitable
90 organization, shall be considered, as the result of such
91 advice, a professional fund-raising counsel or a profes-
92 sional solicitor.

§29-19-10. Information filed to become public records.

1 Registration statements and applications, reports,
2 professional fund-raising counsel contracts or professional
3 solicitor contracts, and all other documents and informa-
4 tion required to be filed under this article or by the
5 secretary of state shall become public records in the office
6 of the secretary of state, and shall be open to the general
7 public for inspection at such time and under such
8 conditions as the secretary of state may prescribe.

**§29-19-11. Records to be kept by charitable organizations,
professional fund-raising counsel and profes-
sional solicitors.**

1 Every charitable organization, professional fund
2 raising counsel and professional solicitor subject to the
3 provisions of this article shall, in accordance with the rules
4 prescribed by the secretary of state, keep true fiscal
5 records as to its activities in this state as may be covered by
6 this article in such form as will enable it accurately to
7 provide the information required by this article. Upon

8 demand, such records shall be made available to the
9 secretary of state, or the attorney general for inspection.
10 Such records shall be retained for a period of at least three
11 years after the end of the period of registration to which
12 they relate.

§29-19-15. Enforcement and penalties.

1 (a) The secretary of state, upon his or her own motion,
2 or upon complaint of any person, may, if he or she finds
3 reasonable ground to suspect a violation, investigate any
4 charitable organization, professional fund-raising counsel
5 or professional solicitor to determine whether such
6 charitable organization, professional fund-raising counsel
7 or professional solicitor has violated the provisions of this
8 article or has filed any application or other information
9 required under this article which contains false or
10 misleading statements.

11 (b) In addition to the foregoing, any person who
12 willfully and knowingly violates any provision of this
13 article, or who shall willfully and knowingly give false or
14 incorrect information to the secretary of state in filing
15 statements or reports required by this article, whether such
16 report or statement is verified or not, shall be guilty of a
17 misdemeanor, and, upon conviction thereof, shall be fined
18 upon first conviction thereof in an amount not less than
19 one hundred dollars nor more than five hundred dollars,
20 or be imprisoned in the county jail for not more than six
21 months, or be both fined and imprisoned, and for the
22 second and any subsequent offense to pay a fine of not
23 less than five hundred dollars nor more than one thousand
24 dollars, or be imprisoned for not more than one year, or
25 be both fined and imprisoned.

26 (c) Whenever the secretary of state, attorney general or
27 any prosecuting attorney has reason to believe that any
28 charitable organization, professional fund-raising counsel
29 or professional solicitor is operating in violation of the
30 provisions of this article, the secretary of state, attorney
31 general or prosecuting attorney may bring an action in the

32 name of the state against such charitable organization and
33 its officers, such professional fund-raising counsel or
34 professional solicitor or any other person who has violated
35 this article in the circuit court of the county wherein the
36 cause of action arises to enjoin such charitable organiza-
37 tion or professional fund-raising counsel or professional
38 solicitor or other person from continuing such violation,
39 solicitation or collection, or from engaging therein or
40 from doing any acts in furtherance thereof and for such
41 other relief as the court deems appropriate.

42 (d) In addition to the foregoing, any charitable
43 organization, professional fund-raising counsel or
44 professional solicitor who willfully and knowingly violates
45 any provisions of this article by employing any device,
46 scheme, artifice, false representation or promise with intent
47 to defraud or obtain money or other property shall be
48 guilty of a misdemeanor, and, upon conviction thereof, for
49 a first offense, shall be fined not less than one hundred
50 dollars nor more than five hundred dollars, or be confined
51 in the county jail not more than six months, or be both
52 fined and imprisoned; and for a second and any
53 subsequent offense, shall be fined not less than five
54 hundred dollars nor more than one thousand dollars, or
55 confined in the county jail not more than one year, or be
56 both fined and imprisoned.

57 At any proceeding under this section, the court shall
58 also determine whether it is possible to return to the
59 contributors the contributions which were thereby
60 obtained.

61 If the court finds that the said contributions are readily
62 returnable to the original contributors, it may order the
63 money to be placed in the custody and control of a
64 general receiver, appointed pursuant to the provisions of
65 article six, chapter fifty-one of this code, who shall be
66 responsible for its proper disbursement to such contribu-
67 tors.

68 If the court finds that: (1) It is impossible to obtain

69 the names of over one half the persons who were solicited
70 and in violation of this article, or (2) if the majority of
71 individual contributions was of an amount less than five
72 dollars, or (3) if the cost to the state of returning these
73 contributions is equal to or more than the total sum to be
74 refunded, the court shall order the money to be placed in
75 the custody and control of a general receiver appointed
76 pursuant to the provisions of article six, chapter fifty-one
77 of this code. The general receiver shall maintain this
78 money pursuant to the provisions of article eight, chapter
79 thirty-six of this code.

CHAPTER 235

(H. B. 2278—By Delegates J. Martin, Love, Michael, Fragale,
Osborne, Nesbitt and Willison)

[Passed March 10, 1995; in effect July 1, 1995. 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 continuing the board of architects.

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:

§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 the
3 people against the unauthorized, unqualified and
4 improper practice of architecture, the West Virginia board
5 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 of
9 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 for
14 not fewer than ten years previous to his appointment. The
15 members of the board in office on the date this article
16 takes effect, in the year one thousand nine hundred ninety,
17 shall, unless sooner removed, continue to serve until their
18 respective terms expire and until their successors have
19 been appointed and have qualified. Each member shall be
20 appointed for a term of five years.

21 The board shall pay each member the same compensa-
22 tion and expense reimbursement as is paid to members of
23 the Legislature for their interim duties as recommended
24 by the citizens legislative compensation commission and
25 authorized by law for each day or portion thereof
26 engaged in the discharge of official duties.

27 Pursuant to the provisions of chapter twenty-nine-a of
28 this code, the board, in addition to the authority, powers
29 and duties granted to it by this article, has the authority to
30 promulgate rules relating to the regulation of the practice
31 of architecture and may include rules pertaining to the
32 registration of architects. Any disciplinary proceedings
33 held by the board shall be held in accordance with the
34 provisions of the administrative procedures act for
35 contested cases pursuant to the provisions of article five of
36 said chapter.

37 Pursuant to the provisions of article ten, chapter four
38 of this code, the West Virginia board of architects shall
39 continue to exist until the first day of July, two thousand
40 one.

CHAPTER 236

(H. B. 2277—By Delegates J. Martin, Love, Michael, Osborne, Nesbitt, Harrison
and Willison)

[Passed March 10, 1995; in effect July 1, 1995. 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 continuing the real estate commission.

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:

§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; continuation of commission.

1 There shall be a commission known as the "West
2 Virginia Real Estate Commission", which commission shall
3 be a corporation and as such may sue and be sued, may
4 contract and be contracted with and shall have a common
5 seal. The commission shall consist of three persons to be
6 appointed by the governor by and with the advice and
7 consent of the Senate. Two of such appointees each shall
8 have been a resident and a citizen of this state for at least
9 six years prior to his or her appointment and whose
10 vocation for at least ten years shall have been that of a real
11 estate broker or real estate salesperson and the third shall
12 be a representative of the public generally. Members in
13 office on the date this section becomes effective shall
14 continue in office until their respective terms expire. The

15 term of the members of said commission shall be for four
16 years and until their successors are appointed and qualify.
17 No more than two members of such commission shall
18 belong to the same political party. No member shall be a
19 candidate for or hold any other public office or be a
20 member of any political committee while acting as such
21 commissioner. In case any commissioner be a candidate
22 for or hold any other public office or be a member of any
23 political committee, his or her office as such commissioner
24 shall ipso facto be vacated. Members to fill vacancies shall
25 be appointed by the governor for the unexpired term. No
26 member may be removed from office by the governor
27 except for official misconduct, incompetency, neglect of
28 duty, gross immorality or other good cause shown and
29 then only in the manner prescribed by law for the removal
30 by the governor of state elective officers. The governor
31 shall designate one member of the commission as the
32 chairman thereof and the members shall choose one of the
33 members thereof as secretary. Two members of the
34 commission shall constitute a quorum for the conduct of
35 official business.

36 (a) The commission shall do all things necessary and
37 convenient for carrying into effect the provisions of this
38 article and may from time to time promulgate reasonable,
39 fair and impartial rules and regulations in accordance with
40 the provisions of article three, chapter twenty-nine-a of
41 this code. The board shall pay each member the same
42 compensation and expense reimbursement as is paid to
43 members of the Legislature for their interim duties as
44 recommended by the citizens legislative compensation
45 commission and authorized by law for each day or
46 portion thereof engaged in the discharge of official duties.

47 (b) The commission shall employ an executive director
48 and such clerks, investigators and assistants as it shall deem
49 necessary to discharge the duties imposed by the
50 provisions of this article and to effect its purposes, and the
51 commission shall determine the duties and fix the
52 compensation of such executive director, clerks,

53 investigators and assistants, subject to the general laws of
54 the state.

55 (c) The commission shall adopt a seal by which it shall
56 authenticate its proceedings. Copies of all records and
57 papers in the office of the commission, duly certified and
58 authenticated by the seal of said commission, shall be
59 received in evidence in all courts equally and with like
60 effect as the original. All records kept in the office of the
61 commission under authority of this article shall be open to
62 public inspection under reasonable rules and regulations
63 as shall be prescribed by the commission.

64 (d) After having conducted a preliminary perfor-
65 mance review through its joint committee on government
66 operations, pursuant to article ten, chapter four of this
67 code, the Legislature hereby finds and declares that the
68 West Virginia real estate commission should be continued
69 and reestablished. Accordingly, notwithstanding the provi-
70 sions of said article, the West Virginia real estate commis-
71 sion shall continue to exist until the first day of July, two
72 thousand one.

CHAPTER 237

(S. B. 433—By Senators Wooton, Anderson, Yoder, Wagner and Scott)

[Passed March 9, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and eight, article nine, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the supervision of public offices by the tax commissioner as ex officio the chief inspector and supervisor of public offices; making certain technical revisions; clarifying the authority of the chief inspector to administer and to enforce the law; authorizing the chief inspector to promulgate and to enforce rules; and increasing the costs the chief inspector may recover for the conduct of audits of certain municipally owned utilities and park systems.

Be it enacted by the Legislature of West Virginia:

That sections two and eight, article nine, 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 9. SUPERVISION OF PUBLIC OFFICES.

§6-9-2. Uniform system of accounting and reporting for local governmental offices and agencies; form and uniform system for receipts; additional power and authority.

§6-9-8. Payment of cost of services of chief inspector; revolving fund.

§6-9-2. Uniform system of accounting and reporting for local governmental offices and agencies; form and uniform system for receipts; additional power and authority.

1 The chief inspector shall formulate, prescribe and
2 install a system of accounting and reporting in conformity
3 with the provisions of this article, which shall be uniform
4 for all local governmental offices and agencies and for all
5 public accounts of the same class and which shall exhibit
6 true accounts and detailed statements for all public funds
7 collected, received and expended for any purpose by all
8 local governmental officers, employees or other persons.
9 Such accounts shall show the receipt, use and disposition
10 of all public property under the control of such local
11 governmental officers, employees or other persons, and
12 any income derived therefrom and of all sources of such
13 public income, the amounts due and received from each
14 source, all receipts, vouchers and other documents kept or
15 required to be kept and necessary to identify and prove
16 the validity of every transaction, all statements and reports
17 made or required to be made for the internal administra-
18 tion of the office to which they pertain and all reports
19 published or required to be published for the information
20 of the people regarding any and all details of the financial
21 administration of such public affairs. The chief inspector
22 shall prescribe receipt forms for all such local governmen-
23 tal offices and agencies and shall formulate, prescribe and
24 install a uniform system with respect to the utilization,
25 processing and disposition of receipts given as evidence of
26 moneys or property collected or received by such local
27 governmental offices and agencies. The chief inspector
28 shall also formulate, prescribe and install a system of ac-

29 counting for the civil accounts of the offices of the magis-
30 trates, which shall exhibit true accounts and detailed state-
31 ments of the services rendered, the name and address of
32 the persons for whom rendered, the charges made and
33 collected therefor and such other information as may be
34 necessary to identify the transaction.

35 The chief inspector is vested and charged with the
36 duties of administering and enforcing the provisions of
37 this article and is authorized to promulgate and to enforce
38 such rules as may be necessary to implement such admin-
39 istration and enforcement. The power and authority herein
40 granted shall be in addition to all other power and authori-
41 ty vested by law in the state tax commissioner as chief
42 inspector or otherwise.

§6-9-8. Payment of cost of services of chief inspector; revolving fund.

1 The cost of any service or act performed by the chief
2 inspector under the provisions of this article as to any
3 county or district office, officer or institution shall be paid
4 by the county commission of the county; the cost thereof
5 as to any board of education shall be paid by such board;
6 the cost thereof as to any municipal corporation shall be
7 paid by the authorities thereof: *Provided*, That in municipa-
8 lities in which the total revenue from all taxes does not
9 exceed the sum of two thousand dollars annually, such
10 cost including the per diem and all actual costs and ex-
11 penses of such services shall not exceed the sum of sixty
12 dollars. The cost of this service shall be the actual cost
13 and expense of the service performed, including transpor-
14 tation, hotel, meals, materials, per diem compensation of
15 deputies, assistants, clerical help and such other costs as
16 may be necessary to enable them to perform the services
17 required, but such costs shall not exceed the sum of two
18 thousand dollars for services rendered to a Class III or a
19 Class IV municipality: *Provided, however*, That the chief
20 inspector may charge up to an additional one thousand
21 dollars for costs incurred for each service or act per-
22 formed for a utility or park system owned by a Class III or
23 Class IV municipality. The chief inspector shall render to
24 the agency liable for such cost a statement thereof as soon
25 after the same was incurred as practicable and it shall be
26 the duty of such agency to allow the same and cause it to

27 be paid promptly in the manner that other claims and
28 accounts are allowed and paid and such total amount shall
29 constitute a debt against the local agency due the state.
30 Whenever there is in the state treasury a sum of money
31 due any such county commission, board of education or
32 municipality from any source, upon the application of the
33 chief inspector, the same shall be at once applied on the
34 debt aforesaid against the county commission, board of
35 education or municipality and the fact of such application
36 of such fund shall be reported by the auditor to the said
37 county commission, board of education or municipality,
38 which report shall be a receipt for the amount therein
39 named. All money received by the chief inspector from
40 this source shall be paid into the state treasury, shall be
41 deposited to the credit of an account to be known as chief
42 inspector's fund and shall be expended only for the pur-
43 pose of covering the cost of such services, unless otherwise
44 directed by the Legislature. The cost of any such exami-
45 nation, service or act by the chief inspector made neces-
46 sary, or such part thereof as was made necessary, by the
47 willful fault of any officer or employee, may be recovered
48 by the chief inspector from such person, on motion, on
49 ten days' notice in any court having jurisdiction.

50 For the purpose of permitting payments to be made at
51 definite periods to deputy inspectors and assistants for per
52 diem compensation and expenses, there is hereby created
53 a revolving fund for the chief inspector's office. The fund
54 shall be accumulated and administered as follows:

55 (1) There shall be appropriated from the state fund
56 general revenue the sum of twenty-five thousand dollars to
57 be transferred to this fund to create a revolving fund
58 which, together with other payments into this fund as pro-
59 vided in this article, shall constitute a fund to defray the
60 cost of this service.

61 (2) Payments received for the cost of services of the
62 chief inspector's office shall be deposited into this revolv-
63 ing fund, which shall be known as the chief inspector's
64 fund.

65 (3) Any appropriations made to this fund shall not be
66 deemed to have expired at the end of any fiscal period.

CHAPTER 238

(Com. Sub. for H. B. 2434—By Delegates Riggs, Trump, Linch and Staton)

[Passed March 11, 1995; in effect ninety days from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact section three, article four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to including real property designated as "wetlands" in the definition of "farm" which is Class II property for tax and levy purposes.

Be it enacted by the Legislature of West Virginia:

That section three, article 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 4. ASSESSMENT OF REAL PROPERTY.

§11-4-3. Definitions.

1 For the purpose of giving effect to the "Tax
2 Limitations Amendment" this chapter shall be interpreted
3 in accordance with the following definitions, unless the
4 context clearly requires a different meaning:

5 "Owner" means the person who is possessed of the
6 freehold, whether in fee or for life. A person seized or
7 entitled in fee subject to a mortgage or deed of trust
8 securing a debt or liability is deemed the owner until the
9 mortgagee or trustee takes possession, after which such
10 mortgagee or trustee shall be deemed the owner. A
11 person who has an equitable estate of freehold, or is a
12 purchaser of a freehold estate who is in possession before
13 transfer of legal title is also deemed the owner.

14 "Used and occupied by the owner thereof exclusively
15 for residential purpose" means actual habitation by the

16 owner of all or a portion of a parcel of real property as a
17 place of abode to the exclusion of any commercial use. If
18 a license is required for an activity on the premises or if an
19 activity is conducted thereon which involves the use of
20 equipment of a character not commonly employed solely
21 for domestic as distinguished from commercial purposes,
22 the use may not be construed to be exclusively residential.

23 "Farm" means a tract or contiguous tracts of land used
24 for agriculture, horticulture or grazing and includes all
25 real property designated as "wetlands" by the United States
26 army corps of engineers or the United States fish and
27 wildlife service.

28 "Occupied and cultivated" means subjected as a unit
29 to farm purposes, whether used for habitation or not, and
30 although parts may be lying fallow, in timber or in waste-
31 lands.

CHAPTER 239

(S. B. 524—By Senators Helmick, Love and Ross)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend article six-a, chapter eleven 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 the property tax treatment of personal property installed at a coal waste disposal power project.

Be it enacted by the Legislature of West Virginia:

That article six-a, 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 five, to read as follows:

ARTICLE 6A. POLLUTION CONTROL FACILITIES TAX TREATMENT.

§11-6A-5. Coal waste disposal power projects.

1 (a) Notwithstanding any other provisions of this arti-
2 cle, a coal waste disposal power project designed, con-
3 structed or installed to reclaim, burn and dispose of coal
4 wastes in compliance with applicable air and water quality
5 standards and which meets the criteria for financing under
6 section twenty-one, article two-c, chapter thirteen of this
7 code shall, for purposes of section three of this article, be
8 subject to the provisions of this section.

9 (b) All items of personal property installed at a coal
10 waste disposal power project shall be deemed a pollution
11 control facility for purposes of this article, subject to an
12 allocation of value as contemplated by section four of this
13 article, as provided by this subsection. In allocating value,
14 the tax commissioner shall accord salvage valuation to a
15 portion of the total personal property at the project. The
16 portion shall be equal to the ratio of tons of West Virginia
17 coal waste burned and disposed of at the project to the
18 total tons of coal and coal waste burned and disposed at
19 the project during the previous calendar year: *Provided,*
20 That with respect to a project placed in service prior to the
21 effective date of this section at which project such ratio for
22 the year ended the thirty-first day of December, one thou-
23 sand nine hundred ninety-four, was less than seventy per-
24 cent, the tax commissioner shall award salvage valuation to
25 sixty-three percent of the total personal property at the
26 project for tax years after the effective date of this section,
27 notwithstanding the actual ratio for any calendar year.
28 The remaining portion of the personal property at the
29 project, but in no event less than twenty-five percent of
30 that total, shall be valued without regard to this article:
31 *Provided, however,* That the facility shall not qualify as a
32 pollution control facility under this subsection if it burns
33 coal, coal waste or fuel waste from outside the state of West
34 Virginia after the effective date of this section.

35 The provisions of this section are not intended to be
36 applied retroactively.

CHAPTER 240

(Com. Sub. for H. B. 2270—By Delegates Kiss (By Request), Rowe, Mezzatesta, J. Martin, Staton, Ashley and Faircloth)

[Passed March 8, 1995; 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 six-c, relating to establishing a special method for appraising dealer inventory; inventory to include house trailers and factory-built homes; reporting market value; legislative intent; and tax commissioner rules.

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 six-c, to read as follows:

ARTICLE 6C. SPECIAL METHOD FOR APPRAISING DEALER VEHICLE INVENTORY.

- §11-6C-1. Inventory included within scope of article.
- §11-6C-2. Method for determining market value of dealer vehicle inventory.
- §11-6C-3. Owner to file return estimating market value.
- §11-6C-4. Determination of tax on dealer vehicle inventory.
- §11-6C-5. Intent of this article; tax commissioner to promulgate regulations.

§11-6C-1. Inventory included within scope of article.

- 1 Notwithstanding any other provisions of law, inventory
- 2 of vehicles, as that term is defined in section one, article
- 3 one, chapter seventeen-b of this code, that is held for sale
- 4 or lease by new or used vehicle dealers licensed under the
- 5 provisions of article *[six-c,] chapter seventeen-a of this
- 6 code, provided that house trailers and factory-built homes
- 7 shall be included within the scope of this article, consisting
- 8 of individual units of personal new or used property, each

*Clerk's Note: The reference to article six-c, chapter seventeen-a in the first paragraph of section one appears to be incorrect. The correct reference should be to article six, chapter seventeen-a.

9 unit of which, upon its sale to a retail purchaser, must, as a
10 matter of law, be titled in the name of the retail purchaser
11 and registered with the division of motor vehicles, shall be
12 appraised for assessment purposes, as set forth in this
13 article.

14 This article does not apply to units of inventory which
15 are included in fleet sales, transactions between dealers or
16 classified as heavy duty trucks of sixteen thousand pounds
17 or more gross vehicular weight. For purposes of this
18 article, inventory subject to the provisions of this article
19 shall be denoted "dealer vehicle inventory".

**§11-6C-2. Method for determining market value of dealer
vehicle inventory.**

1 For purposes of appraisal, the market value of dealer
2 vehicle inventory, as of the first day of July of each year,
3 shall be the gross sales or total annual sales of such
4 inventory made by such dealer during the preceding
5 calendar year, divided by twelve, for a dealer with respect
6 to which or whom sales were made during the entire
7 preceding year. For the purposes of this article, "gross
8 sales" or "total annual sales" means the amount received in
9 money, credits, property, services or other consideration
10 from sales within this state without deduction on account
11 of the cost of the property sold, amounts paid for interest
12 or any other expenses whatsoever. Gross sales or total
13 annual sales shall not be reduced by the value of an item
14 of tangible personal property which is traded in for the
15 purpose of reducing the purchase price of the item
16 purchased. In the case of dealers who were not in business
17 during the entire calendar year immediately preceding the
18 first day of July of that calendar year, the assessor shall
19 estimate the market value of such inventory based on such
20 data as may be available to him or her: *Provided*, That the
21 assessor may extrapolate estimates using such sales data as
22 may be available and reliable when sales are made for a
23 period of three months or more during the prior year:
24 *Provided, however*, That there shall be excluded from the
25 appraisal calculations the value of those units which were
26 not physically held as inventory by the owner of the
27 inventory at any time during the preceding year. In all

28 cases, the market value, so derived, shall serve as the basis
29 for calculating the appraised value.

§11-6C-3. Owner to file return estimating market value.

1 The owner of dealer vehicle inventory shall report the
2 market value of such inventory, derived as set forth in
3 section two of this article, to the assessor, as a part of the
4 return required by law to be filed annually pursuant to the
5 provisions of this chapter.

§11-6C-4. Determination of tax on dealer vehicle inventory.

1 The annual amount of tax levied upon the dealer
2 vehicle inventory pursuant to article eight of this chapter
3 shall be based upon the market value as determined
4 pursuant to this article, times the assessment percentage
5 then provided by law.

§11-6C-5. Intent of this article; tax commissioner to promulgate regulations.

1 (a) This article is adopted to address the lack of
2 uniformity, audit difficulties and business management
3 issues arising in this state with respect to the assessment of
4 the personal property held as new and used dealer vehicle
5 inventory. Accordingly, the Legislature finds and declares
6 that the adoption of this article will provide a more reliable
7 and uniform method of determining market value of
8 dealer vehicle inventory; minimize audit problems associ-
9 ated with such property; provide a predictable revenue
10 stream for levying bodies; maximize the owner's ability to
11 manage inventory; and provide clear guidance to local
12 authorities by superseding the wide variety of otherwise
13 lawful appraisal methods now in use in this state.

14 (b) The tax commissioner shall have the power to
15 promulgate such rules and regulations as may be
16 necessary to implement the provisions of this article:
17 *Provided*, That the tax commissioner shall provide to the
18 joint committee on government and finance by the first
19 day of January for the next two fiscal years a report
20 detailing the results of the administration of this article.

CHAPTER 241

(Com. Sub. for H. B. 2267—By Mr. Speaker, Mr. Chambers, and Delegates Ashley, Staton, Kiss, Browning, Wallace and Ryan)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, two-d, two-e, two-m and two-n, article thirteen, 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 two-o, all relating to the business of gas storage; providing effective date; notice of retirement from service; changing the business and occupation tax on the business of generating or producing electricity on and after the first day of June, one thousand nine hundred ninety-five, by replacing the kilowatt hour generating tax with a capacity utilization tax; providing transition rules for taxpayers subject to gross receipts tax during the year one thousand nine hundred ninety-four; providing definitions of terms; establishing rate of tax imposed upon taxable generating capacity of each generating unit; establishing rate of tax for each generating unit which has installed a flue gas desulfurization system; providing certain exceptions for large users; providing for the taxation of electricity not generated or produced in this state but sold in this state; providing rules relating to retirement of units, transfer of units, placing units in inactive reserve, new units and peaking units; requiring rules pertaining to proration and allocation issues; confirming related provisions in business and occupation tax and industrial expansion and revitalization credit and business and occupation tax credit against business franchise tax; and providing effective date.

Be it enacted by the Legislature of West Virginia:

That sections two, two-d, two-e, two-m and two-n, article thirteen, chapter eleven of the code of West Virginia, one thou-

sand 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 two-o, all to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

- §11-13-2. Imposition of privilege tax.
- §11-13-2d. Public service or utility business.
- §11-13-2e. Business of gas storage; effective date.
- §11-13-2m. Business of generating or producing electric power; exception; rates.
- §11-13-2n. Business of generating or producing or selling electric power; exemptions; rates.
- §11-13-2o. Business of generating or producing or selling electricity on and after the first day of June, one thousand nine hundred ninety-five; definitions; rate of tax; exemptions; effective date.

§11-13-2. Imposition of privilege tax.

1 (a) *Periods before July 1, 1987.* — For taxable years
2 or months thereof ending prior to the first day of July,
3 one thousand nine hundred eighty-seven, there is hereby
4 levied and shall be collected annual privilege taxes against
5 the persons, on account of the business and other activities,
6 and in the amounts to be determined by the application of
7 rates against values or gross income as set forth in sections
8 two-a to two-m, both inclusive, of this article and the appli-
9 cation of the surtax rate against gross income as set forth
10 in section two-k: *Provided*, That on the first day of July,
11 one thousand nine hundred eighty-five, the taxes imposed
12 by this section, at the rates set forth in sections two-b
13 through two-m, both inclusive, of this article, and in effect
14 on the first day of January, one thousand nine hundred
15 eighty-five, exclusive of any surtaxes, shall be reduced by
16 five percent for taxable months beginning on and after
17 said first day of July: *Provided, however*, That on and
18 after the first day of July, one thousand nine hundred
19 eighty-five, the rate of tax under section two-b of this
20 article shall not be less than eight tenths of one percent:
21 *Provided further*, That there shall be no such reduction of

22 the rates set forth in section two-a or two-l of this article.

23 (b) *Periods after June 30, 1987.* — For taxable years
24 or months beginning after the thirtieth day of June, one
25 thousand nine hundred eighty-seven, there is hereby lev-
26 ied and shall be collected annual privilege taxes against
27 the persons, on account of the business and other activities,
28 and in the amount to be determined by the application of
29 rates against values or gross income as set forth in sections
30 two-d and two-m of this article: *Provided*, That on and
31 after the first day of July, one thousand nine hundred
32 eighty-seven, the rates applicable to the privileges exer-
33 cised in sections two-d and two-m of this article shall be
34 restored and returned to those which were in effect as to
35 such privileges on the first day of January, one thousand
36 nine hundred eighty-five: *Provided, however*, That for
37 taxable months or taxable years beginning after the
38 twenty-eighth day of February, one thousand nine hun-
39 dred eighty-nine, there is hereby levied and shall be col-
40 lected annual privilege taxes against the persons, on ac-
41 count of the business and other activities, and in the
42 amount to be determined by the application of rates
43 against the measure of the tax as set forth in sections
44 two-d, two-e, two-m and two-n of this article: *Provided*
45 *further*, That for taxable months or taxable years begin-
46 ning after the thirty-first day of May, one thousand nine
47 hundred ninety-five, there is hereby levied and shall be
48 collected annual privilege taxes against the persons, on
49 account of the business and other activities, and in the
50 amount to be determined by the application of rates
51 against the measure of the tax as set forth in sections
52 two-d, two-e, two-m, two-n and two-o of this article.

53 (c) If any person liable for any tax under section
54 two-m shall ship or transport his products or any part
55 thereof out of the state without making sale of such prod-
56 ucts, the value of the products in the condition or form in
57 which they exist immediately before transportation out of
58 the state shall be the basis for the assessment of the tax
59 imposed in such section, except in those instances in which

60 another measure of the tax is expressly provided. The tax
61 commissioner shall prescribe equitable and uniform rules
62 for ascertaining such value.

63 (d) In determining value, however, as regards sales
64 from one to another of affiliated companies or persons, or
65 under other circumstances where the relation between the
66 buyer and seller is such that the gross proceeds from the
67 sale are not indicative of the true value of the subject mat-
68 ter of the sale, the tax commissioner shall prescribe uni-
69 form and equitable rules for determining the value upon
70 which such privilege tax shall be levied, corresponding as
71 nearly as possible to the gross proceeds from the sale of
72 similar products of like quality or character where no
73 common interest exists between the buyer and seller but
74 the circumstances and conditions are otherwise similar.

§11-13-2d. Public service or utility business.

1 (a) Upon any person engaging or continuing within
2 this state in any public service or utility business, except
3 railroad, railroad car, express, pipeline, telephone and
4 telegraph companies, water carriers by steamboat or
5 steamship and motor carriers, the tax imposed by section
6 two of this article shall be equal to the gross income of the
7 business derived from such activity or activities multiplied
8 by the respective rates as follows:

9 (1) Street and interurban and electric railways, one and
10 four-tenths percent;

11 (2) Water companies, four and four-tenths percent,
12 except as to income received by municipally owned water
13 plants;

14 (3) Electric light and power companies, four percent
15 on sales and demand charges for domestic purposes and
16 commercial lighting and four percent on sales and de-
17 mand charges for all other purposes, and except as to
18 income received by municipally owned plants producing
19 or purchasing electricity and distributing same: *Provid-*
20 *ed*, That electric light and power companies which engage

21 in the supplying of public service but which do not gener-
22 ate or produce in this state the electric power they supply
23 shall be taxed on the gross income derived from sales of
24 power which they do not generate in this state at the rate
25 of three percent on sales and demand charges for domes-
26 tic purposes and commercial lighting and three percent on
27 sales and demand charges for all other purposes, except as
28 to income received by municipally owned plants: *Provid-*
29 *ed, however,* That the sale of electric power under this
30 section shall be taxed at the rate of two percent on that
31 portion of the gross proceeds derived from the sale of
32 electric power to a plant location of a customer engaged in
33 a manufacturing activity, if the contract demand at such
34 plant location exceeds two hundred thousand kilowatts per
35 hour per year, or if the usage of such plant location ex-
36 ceeds two hundred thousand kilowatts per hour in a year:
37 *Provided further,* That the sale of electric power under this
38 section shall be exempt from the tax imposed by this sec-
39 tion and section two of this article if it is separately me-
40 tered and consumed in an electrolytic process for the
41 manufacture of chlorine in this state, or is separately me-
42 tered and consumed in the manufacture of ferroalloy in
43 this state, and the rate reduction herein provided to the
44 taxpayer shall be passed on to the manufacturer of the
45 chlorine or ferroalloy. As used in this section, the term
46 "ferroalloy" means any of various alloys of iron and one
47 or more other elements used as a raw material in the pro-
48 duction of steel: *And provided further,* That the term does
49 not include the final production of steel;

50 (4) Natural gas companies, four and twenty-nine hun-
51 dredths percent on the gross income: *Provided,* That the
52 sale of natural gas under this section shall be exempt from
53 the tax imposed by this section and section two of this
54 article to the extent that the natural gas is separately me-
55 tered and is gas from which the purchaser derives hydro-
56 gen and carbon monoxide for use in the manufacture of
57 chemicals in this state, and the full economic benefit of the
58 exception herein provided to the taxpayer shall be passed
59 on to such purchaser of the natural gas: *Provided, howev-*

60 *er*, That there shall be no exemption for the sale of any
61 natural gas from which the purchaser derives carbon mon-
62 oxide or hydrogen for the purpose of resale;

63 (5) Toll bridge companies, four and twenty-nine hun-
64 dredths percent; and

65 (6) Upon all other public service or utility business,
66 two and eighty-six hundredths percent.

67 (b) The measure of this tax shall not include gross
68 income derived from commerce between this state and
69 other states of the United States or between this state and
70 foreign countries. The measure of the tax under this sec-
71 tion shall include only gross income received from the
72 supplying of public service. The gross income of the
73 taxpayer from any other activity shall be included in the
74 measure of the tax imposed upon such other activity by
75 the appropriate section or sections of this article.

76 (c) Beginning the first day of March, one thousand
77 nine hundred eighty-nine, electric light and power compa-
78 nies shall determine their liability for payment of tax un-
79 der this section and sections two-m and two-n of this arti-
80 cle. If for taxable months beginning on or after the first
81 day of March, one thousand nine hundred eighty-nine,
82 liability for tax under section two-n of this article is equal
83 to or greater than the sum of the power company's liability
84 for payment of tax under subdivision (3), subsection (a)
85 of this section and section two-m of this article, then the
86 company shall pay the tax due under section two-n of this
87 article and not the tax due under subdivision (3), subsec-
88 tion (a) of this section and section two-m of this article. If
89 tax liability under section two-n is less, then tax shall be
90 paid under subdivision (3), subsection (a) of this section
91 and section two-m of this article and the tax due under
92 section two-n shall not be paid. The provisions of subdivi-
93 sion (3), subsection (a) of this section shall expire and
94 become null and void for taxable years beginning on or
95 after the first day of January, one thousand nine hundred
96 ninety-eight.

97 (d) Notwithstanding the provisions of subsection (c)
98 of this section, beginning the first day of June, one thou-
99 sand nine hundred ninety-five, electric light and power
100 companies that actually paid tax based on the provisions
101 of subdivision (3), subsection (a) of this section or section
102 two-m of this article for every taxable month in one thou-
103 sand nine hundred ninety-four shall determine their liabil-
104 ity for payment of tax under this article in accordance
105 with subdivision (1) of this subsection. All other electric
106 light and power companies shall determine their liability
107 for payment of tax under this article exclusively under
108 section two-o of this article.

109 (1) If for taxable months beginning on or after the
110 first day of June, one thousand nine hundred ninety-five,
111 liability for tax under section two-o of this article is equal
112 to or greater than the sum of the power company's liability
113 for payment of tax under subdivision (3), subsection (a)
114 of this section and section two-m of this article, then the
115 company shall pay the tax due under section two-o of this
116 article and not the tax due under subdivision (3) subsec-
117 tion (a) of this section and section two-m of this article. If
118 tax liability under section two-o is less, then the tax shall
119 be paid under subdivision (3), subsection (a) of this sec-
120 tion and section two-m of this article and the tax due un-
121 der section two-o shall not be paid.

122 (2) The provisions of subdivision (3), subsection (a)
123 of this section shall expire and become null and void for
124 taxable years beginning on or after the first day of Janu-
125 ary, one thousand nine hundred ninety-eight.

§11-13-2e. Business of gas storage; effective date.

1 (a) *Rate of tax.* — Upon every person engaging or
2 continuing within this state in any gas storage business
3 utilizing one or more gas storage reservoirs located within
4 this state, the tax imposed by section two of this article
5 shall be equal to five cents multiplied by the sum of either
6 (1) the net number of dekatherms of gas injected into
7 such a gas storage reservoir during a tax month or (2) the

8 net number of dekatherms of gas withdrawn from such a
9 gas storage reservoir during a tax month, whichever is
10 applicable for that month, whether or not such gas is
11 owned by, or is injected or withdrawn for, the storage
12 operator or any other person. Fractional parts of
13 dekatherms shall be included in the measure of tax as
14 provided in regulations promulgated by the tax commis-
15 sioner: *Provided*, That effective the first day of July, one
16 thousand nine hundred ninety-five, the net number of
17 dekatherms of gas injected or the net number of
18 dekatherms withdrawn shall not exceed the storage utiliza-
19 tion index as defined in this subsection. For purposes of
20 this section, the term "storage utilization index" means the
21 utilization of storage reservoir, through the operation of
22 existing and functional facilities available for storage use
23 during the five year base period ending the thirty-first day
24 of December, one thousand nine hundred ninety-four, and
25 the storage utilization index shall be the five year average
26 of taxable dekatherms as determined for each taxable
27 period of the stated base period.

28 (b) *Effective date.* — The measure of tax under this
29 section shall include gas injected into, or withdrawn from,
30 a gas storage reservoir after the twenty-eighth day of Feb-
31 ruary, one thousand nine hundred eighty-nine.

32 (c) *Administration; installment payments.* — The tax
33 due under this section shall be administered, collected and
34 enforced as provided in this article and articles nine and
35 ten of this chapter. The tax due under this section shall be
36 remitted in periodic installments as provided in section
37 four of this article, except that such periodic installment
38 payments shall be remitted on or before the twentieth day
39 of the month following the month or quarter in which the
40 tax accrues.

41 (d) *Notice of retirement from service.*—A taxpayer
42 subject to the tax due under this section shall provide
43 written notice to the joint committee on government and
44 finance and the department of tax and revenue eighteen
45 months prior to the retirement from service of a storage

46 reservoir.

§11-13-2m. Business of generating or producing electric power; exception; rates.

1 (a) Upon every person engaging or continuing within
2 this state in the business of generating or producing elec-
3 tric power for sale, profit or commercial use, either direct-
4 ly or through the activity of others, in whole or in part,
5 when the sale thereof is not subject to tax under section
6 two-d of this article, the amount of the tax to be equal to
7 the value of the electric power, as shown by the gross pro-
8 ceeds derived from the sale thereof by the generator or
9 producer of the same multiplied by a rate of four percent,
10 except that the rate shall be two percent on that portion of
11 the gross proceeds derived from the sale of electric power
12 to a plant location of a customer engaged in a manufac-
13 turing activity, if the contract demand at such plant loca-
14 tion exceeds two hundred thousand kilowatts per hour per
15 year, or if the usage at such plant location exceeds two
16 hundred thousand kilowatts per hour in a year.

17 (b) The measure of this tax shall be the value of all
18 electric power generated or produced in this state for sale,
19 profit or commercial use, regardless of the place of sale or
20 the fact that transmission may be to points outside this
21 state: *Provided*, That the gross income received by mu-
22 nicipally owned plants generating or producing electricity
23 shall not be subject to tax under this article.

24 (c) Beginning the first day of March, one thousand
25 nine hundred eighty-nine, every person taxable under this
26 section shall determine their liability for payment of tax
27 under this section and under subdivision (3), subsection
28 (a), section two-d of this article and section two-n of this
29 article. If for taxable months beginning on or after the
30 first day of March, one thousand nine hundred
31 eighty-nine such person's liability for payment of tax
32 under this section and subdivision (3), subsection (a),
33 section two-d of this article is less than the amount of such
34 person's liability for payment of tax under section two-n

35 of this article, then such person shall pay the tax due un-
36 der section two-n and not the sum of the amount of tax
37 due under this section and under subdivision (3), subsec-
38 tion (a), section two-d of this article. If the tax due under
39 section two-n of this article is less, then the amount of tax
40 due under this section and subdivision (3), subsection (a),
41 section two-d of this article shall be paid. The provisions
42 of this section shall expire and become null and void for
43 taxable years beginning on or after the first day of Janu-
44 ary, one thousand nine hundred ninety-eight.

45 (d) Beginning the first day of June, one thousand
46 nine hundred ninety-five, electric light and power compa-
47 nies that actually paid tax based on the provisions of sub-
48 division (3), subsection (a), section two-d of this article or
49 this section for every taxable month in one-thousand nine
50 hundred ninety-four shall determine their liability for
51 payment of tax under this article in accordance with sub-
52 division (1) of this subsection. All other electric light and
53 power companies shall determine their liability for pay-
54 ment of tax under this article exclusively under section
55 two-o of this article.

56 (1) If for taxable months beginning on or after the
57 first day of June, one thousand nine hundred ninety-five,
58 liability for tax under section two-o of this article is equal
59 to or greater than the sum of the power company's liability
60 for payment of tax under subdivision (3), subsection (a),
61 section two-d of this article and this section, then the com-
62 pany shall pay the tax due under section two-o of this
63 article and not the tax due under subdivision (3), subsec-
64 tion (a), section two-d of this article and this section. If
65 tax liability under section two-o is less, then the tax shall
66 be paid under subdivision (3), subsection (a), section
67 two-d of this article and this section and the tax due under
68 section two-o shall not be paid.

69 (2) The provisions of this section shall expire and
70 become null and void for taxable years beginning on or
71 after the first day of January, one thousand nine hundred
72 ninety-eight. Notwithstanding this subsection or any other

73 provision of this chapter to the contrary, an electric light
74 and power company that generates and produces power in
75 this state shall continue to be deemed to be an "industrial
76 taxpayer" for purposes of subdivision (8), subsection (b),
77 section two, article thirteen-d of this chapter, and gross
78 income of an electric light and power company from the
79 generation and production of power in this state and sales
80 and demand charges for electric power sold in this state
81 shall continue to be deemed "gross income of the business
82 subject to tax under article thirteen of this chapter" for
83 purposes of subsection (b), section seventeen, article
84 twenty-three of this chapter all to the extent of and in
85 accordance with the law in effect immediately preceding
86 the effective date of this section as amended in one thou-
87 sand nine hundred ninety-five.

**§11-13-2n. Business of generating or producing or selling
electric power; exemptions; rates.**

1 (a) *Rate of tax.* — Upon every person engaging or
2 continuing within this state in the business of generating
3 or producing electricity for sale, profit or commercial use,
4 either directly or indirectly through the activity of others,
5 in whole or in part, or in the business of selling electricity
6 to consumers, or in both businesses, the tax imposed by
7 section two of this article shall be equal to:

8 (1) Twenty-six hundredths of one cent times the kilo-
9 watt hours of net generation available for sale that was
10 generated or produced in this state by the taxpayer during
11 the taxable year, except that this rate shall be five hun-
12 dredths of one cent times the kilowatt hours of net genera-
13 tion available for sale that was generated or produced in
14 this state by the taxpayer and sold to a plant location of a
15 customer engaged in manufacturing activity if the contract
16 demand at such plant location exceeds two hundred thou-
17 sand kilowatts per hour per year or if the usage at such
18 plant location exceeds two hundred thousand kilowatts per
19 hour in a year: *Provided*, That in order to encourage the
20 development of industry to improve the environment of
21 this state, the tax imposed by this section on any person

22 generating or producing electric power and an alternative
23 form of energy at a facility located within this state sub-
24 stantially from gob or other mine refuse shall be equal to
25 five hundredths of one cent times the kilowatt hours of net
26 generation or production available for sale. The measure
27 of tax under this paragraph shall be equal to the total
28 kilowatt hours of net generation available for sale that was
29 generated or produced in this state by the taxpayer during
30 the taxable year, regardless of the place of sale or use, or
31 the fact that transmission may be made to points outside
32 this state.

33 (2) Nineteen hundredths of one cent times the kilowatt
34 hours of electricity sold to consumers in this state that
35 were not generated or produced in this state by the tax-
36 payer, except that the rate shall be five hundredths of one
37 cent times the kilowatt hours of electricity not generated
38 or produced in this state by the taxpayer which is sold to a
39 plant location in this state of a customer engaged in manu-
40 facturing activity if the contract demand at such plant
41 location exceeds two hundred thousand kilowatts per hour
42 per year or if the usage at such plant location exceeds two
43 hundred thousand kilowatts per hour in a year. The mea-
44 sure of tax under this paragraph shall be equal to the total
45 kilowatt hours of electricity sold to consumers in this state
46 during the taxable year, that were not generated or pro-
47 duced in this state by the taxpayer, to be determined by
48 subtracting from the total kilowatt hours of electricity sold
49 to consumers in the state the net kilowatt hours of electric-
50 ity generated or produced in the state by the taxpayer
51 during the taxable year.

52 The West Virginia public service commission shall,
53 upon application of a public utility, allow an immediate
54 pass-through to the utility's customers in this state in the
55 form of a rate surcharge the increase enacted by the Leg-
56 islature during its third extraordinary session, one thou-
57 sand nine hundred ninety, in the tax imposed by this
58 article upon electricity generated or produced in this state
59 and sold to consumers in this state and upon electricity not

60 generated or produced in this state that is sold to consum-
61 ers in this state.

62 (b) *Exemptions.* — The provisions of this section
63 shall not apply to:

64 (1) Kilowatt hours of electricity generated and sold, or
65 purchased and resold, by a municipally owned plant.

66 (2) Kilowatt hours of electric power that are separately
67 metered and consumed in an electrolytic process for the
68 manufacture of chlorine.

69 (3) Kilowatt hours of electric power that are separately
70 metered and consumed in the manufacture of ferroalloy.
71 As used in this paragraph, the term "ferroalloy" means any
72 of the various alloys of iron and one or more other ele-
73 ments used as a raw material in the production of steel but
74 shall not include electric power used in the production of
75 steel.

76 (4) The full economic benefits provided to the taxpay-
77 er by subdivisions (2) and (3) of this subsection shall be
78 passed on to the manufacturer of the chlorine or
79 ferroalloy.

80 (c) *Credit.* — Any person taxable under subdivision
81 (2), subsection (a) of this section shall be allowed a credit
82 against the amount of tax due under that paragraph for
83 any electric power generation taxes paid by the taxpayer
84 with respect to such electric power to the state in which
85 such power was generated or produced. The amount of
86 credit allowed shall not exceed the tax liability arising
87 under subdivision (2), subsection (a) of this section with
88 respect to the sale of such power.

89 (d) *Transition rule.* — Beginning the first day of
90 March, one thousand nine hundred eighty-nine, electric
91 light and power companies shall determine their liability
92 for payment of tax under this section and sections two-d
93 and two-m of this article. If for taxable months beginning
94 on or after the first day of March, one thousand nine hun-

95 dred eighty-nine, liability for tax under section two-n of
96 this article is equal to or greater than the sum of the power
97 company's liability for payment of tax under subdivision
98 (3), subsection (a), section two-d and section two-m of this
99 article, then the company shall pay the tax due under
100 section two-n of this article and not the tax due under
101 subdivision (3), subsection (a) of section two-d and section
102 two-m of this article. If tax liability under section two-n is
103 less, then tax shall be paid under paragraph (3), subsection
104 (a), section two-d and section two-m of this article and the
105 tax due under section two-n shall not be paid. The provi-
106 sions of this subsection (d) shall expire and become null
107 and void for taxable years beginning on or after the first
108 day of January, one thousand nine hundred ninety-eight.

109 (e) *Effective date.* — The amendments to this section
110 made in the year one thousand nine hundred ninety shall
111 take effect on the first day of October, one thousand nine
112 hundred ninety: *Provided,* That as to calendar months
113 ending before such date, the tax rates specified in this
114 section, as then in effect shall be fully and completely
115 preserved.

116 (f) Beginning the first day of June, one thousand nine
117 hundred ninety-five and thereafter, electric light and pow-
118 er companies shall not determine their tax liability under
119 this section.

**§11-13-2o. Business of generating or producing or selling
electricity on and after the first day of June,
one thousand nine hundred ninety-five; defini-
tions; rate of tax; exemptions; effective date.**

1 (a) *Definitions.* — As used in this section:

2 (1) "Average four-year generation" is computed by
3 dividing by four the sum of a generating unit's net genera-
4 tion, expressed in kilowatt hours, for calendar years one
5 thousand nine hundred ninety-one, one thousand nine
6 hundred ninety-two, one thousand nine hundred
7 ninety-three, and one thousand nine hundred ninety-four.
8 For any generating unit which was newly installed and

9 placed into commercial operation after the first day of
10 January, one thousand nine hundred ninety-one and prior
11 to the effective date of this section, "average four-year
12 generation" is computed by dividing such unit's net gener-
13 ation for the period beginning with the month in which
14 the unit was placed into commercial operation and ending
15 with the month preceding the effective date of this section
16 by the number of months in such period and multiplying
17 the resulting amount by twelve with the result being a
18 representative twelve-month average of the unit's net gen-
19 eration while in an operational status.

20 (2) "Capacity factor" means a fraction, the numerator
21 of which is average four-year generation and the denomi-
22 nator of which is the maximum possible annual genera-
23 tion.

24 (3) "Generating unit" means a mechanical apparatus or
25 structure which through the operation of its component
26 parts is capable of generating or producing electricity and
27 is regularly used for this purpose.

28 (4) "Inactive reserve" means the removal of a generat-
29 ing unit from commercial service for a period of not less
30 than twelve consecutive months as a result of lack of need
31 for generation from the generating unit or as a result of
32 the requirements of state or federal law or the removal of a
33 generating unit from commercial service for any period as
34 a result of any physical exigency which is beyond the
35 reasonable control of the taxpayer.

36 (5) "Maximum possible annual generation" means the
37 product, expressed in kilowatt hours, of official capability
38 times eight thousand seven hundred sixty hours.

39 (6) "Official capability" means the nameplate capacity
40 rating of a generating unit expressed in kilowatts.

41 (7) "Peaking unit" means a generating unit designed
42 for the limited purpose of meeting peak demands for
43 electricity or filling emergency electricity requirements.

44 (8) "Retired from service" means the removal of a
45 generating unit from commercial service for a period of at
46 least twelve consecutive months with the intent that the unit
47 will not thereafter be returned to active service.

48 (9) "Taxable generating capacity" means the product,
49 expressed in kilowatts, of the capacity factor times the
50 official capability of a generating unit, subject to the mod-
51 ifications set forth in subdivisions (2) and (3), subsection
52 (c) of this section.

53 (10) "Net generation" for a period means the kilowatt
54 hours of net generation available for sale generated or
55 produced by the generating unit in this state during such
56 period less the following:

57 (A) Twenty-one twenty-sixths of the kilowatt hours of
58 electricity generated at the generating unit and sold during
59 such period to a plant location of a customer engaged in
60 manufacturing activity if the contract demand at such
61 plant location exceeds two hundred thousand kilowatts per
62 hour in a year or where the usage at such plant location
63 exceeds two hundred thousand kilowatts per hour in a
64 year;

65 (B) Twenty-one twenty-sixths of the kilowatt hours of
66 electricity produced or generated at the generating unit
67 during such period by any person producing electric
68 power and an alternative form of energy at a facility locat-
69 ed in this state substantially from gob or other mine re-
70 fuse;

71 (C) The total kilowatt hours of electricity generated at
72 the generating unit exempted from tax during such period
73 by subsection (b), section two-n of this article.

74 (b) *Rate of tax.* — Upon every person engaging or
75 continuing within this state in the business of generating
76 or producing electricity for sale, profit or commercial use,
77 either directly or indirectly through the activity of others,
78 in whole or in part, or in the business of selling electricity
79 to consumers, or in both businesses, the tax imposed by

80 section two of this article shall be equal to:

81 (1) For taxpayers who generate or produce electricity
82 for sale, profit or commercial use, the product of
83 twenty-two dollars and seventy-eight cents multiplied by
84 the taxable generating capacity of each generating unit in
85 this state owned or leased by the taxpayer, subject to the
86 modifications set forth in subsection (c) of this section:
87 *Provided*, That with respect to each generating unit in this
88 state which has installed a flue gas desulfurization system,
89 the tax imposed by section two of this article shall, on and
90 after the thirty-first day of January, one thousand nine
91 hundred ninety-six, be equal to the product of twenty
92 dollars and seventy cents multiplied by the taxable gener-
93 ating capacity of the units, subject to the modifications set
94 forth in subsection (c) of this section: *Provided, however*,
95 That with respect to kilowatt hours sold to or used by a
96 plant location engaged in manufacturing activity in which
97 the contract demand at such plant location exceeds two
98 hundred thousand kilowatts per hour per year or if the
99 usage at such plant location exceeds two hundred thou-
100 sand kilowatts per hour in a year, in no event shall the tax
101 imposed by this article with respect to the sale or use of
102 such electricity exceed five hundredths of one cent times
103 the kilowatt hours sold to or used by a plant engaged in
104 such a manufacturing activity; and,

105 (2) For taxpayers who sell electricity to consumers in
106 this state that is not generated or produced in this state by
107 the taxpayer, nineteen hundredths of one cent times the
108 kilowatt hours of electricity sold to consumers in this state
109 that were not generated or produced in this state by the
110 taxpayer, except that the rate shall be five hundredths of
111 one cent times the kilowatt hours of electricity not gener-
112 ated or produced in this state by the taxpayer which is sold
113 to a plant location in this state of a customer engaged in
114 manufacturing activity if the contract demand at such
115 plant location exceeds two hundred thousand kilowatts per
116 hour per year or if the usage at such plant location ex-
117 ceeds two hundred thousand kilowatts per hour in a year.

118 The measure of tax under this subdivision (2) shall be
119 equal to the total kilowatt hours of electricity sold to con-
120 sumers in the state during the taxable year, that were not
121 generated or produced in this state by the taxpayer, to be
122 determined by subtracting from the total kilowatt hours of
123 electricity sold to consumers in the state the net kilowatt
124 hours of electricity generated or produced in the state by
125 the taxpayer during the taxable year. The provisions of
126 this subdivision (2) shall not apply to those kilowatt hours
127 exempt under subsection (b), section two-n of this article.
128 Any person taxable under this subdivision (2) shall be
129 allowed a credit against the amount of tax due under this
130 subdivision (2) for any electric power generation taxes or
131 a tax similar to the tax imposed by subdivision (1) of this
132 subsection (b) paid by the taxpayer with respect to such
133 electric power to the state in which such power was gener-
134 ated or produced. The amount of credit allowed shall not
135 exceed the tax liability arising under this subdivision (2)
136 with respect to the sale of such power.

137 (c) The following provisions are applicable to taxpay-
138 ers subject to tax under subdivision (1), subsection (b) of
139 this section:

140 (1) *Retired units; inactive reserve.* — If a generating
141 unit is retired from service or placed in inactive reserve, a
142 taxpayer shall not be liable for tax computed with respect
143 to the taxable generating capacity of the unit for the peri-
144 od that the unit is inactive or retired. The taxpayer shall
145 provide written notice to the joint committee on govern-
146 ment and finance, as well as to any other entity as may be
147 otherwise provided by law, eighteen months prior to retir-
148 ing any generating unit from service in this state.

149 (2) *New generating units.* — If a new generating unit,
150 other than a peaking unit, is placed in initial service on or
151 after the effective date of this section, the generating unit's
152 taxable generating capacity shall equal forty percent of
153 the official capability of the unit.

154 (3) *Peaking units.* — If a peaking unit is placed in

155 initial service on or after the effective date of this section,
156 the generating unit's taxable generating capacity shall
157 equal five percent of the official capability of the unit.

158 (4) *Transfers of interests in generating units.* — If a
159 taxpayer acquires an interest in a generating unit, the tax-
160 payer shall include the computation of taxable generating
161 capacity of said unit in the determination of the taxpayer's
162 tax liability as of the date of the acquisition. Conversely,
163 if a taxpayer transfers an interest in a generating unit, the
164 taxpayer shall not for periods thereafter be liable for tax
165 computed with respect to the taxable generating capacity
166 of such transferred unit.

167 (5) *Proration, allocation.* — The tax commissioner
168 shall promulgate rules in conformity with the provisions
169 of article three, chapter twenty-nine-a of this code to pro-
170 vide for the administration of this section and to equitably
171 prorate taxes for a taxable year in which a generating unit
172 is first placed in service, retired or placed in inactive re-
173 serve, or in which a taxpayer acquires or transfers an inter-
174 est in a generating unit, to equitably allocate and reallocate
175 adjustments to net generation, and to equitably allocate
176 taxes among multiple taxpayers with interests in a single
177 generating unit, it being the intent of the Legislature to
178 prohibit multiple taxation of the same taxable generating
179 capacity.

180 So as to provide for an orderly transition with respect
181 to the rate making effect of this section, those electric light
182 and power companies which, as of the effective date of this
183 section, are permitted by the West Virginia public service
184 commission to utilize deferred accounting for purposes of
185 recovery from ratepayers of any portion of business and
186 occupation tax expense under this article shall be permit-
187 ted, until such time that action pursuant to a rate applica-
188 tion or order of the commission provides for appropriate
189 alternative rate making treatment for such expense, to
190 recover the tax expense imposed by this section by means
191 of deferred accounting to the extent that the tax expense
192 imposed by this section exceeds the level of business and

193 occupation tax under this article currently allowed in rates.

194 (6) *Electricity generated by manufacturer or affiliate*
195 *for use in manufacturing activity.*— When electricity used
196 in a manufacturing activity is generated in this state by the
197 person who owns the manufacturing facility in which the
198 electricity is used and the electricity generating unit or
199 units producing the electricity so used are owned by such
200 manufacturer, or by a member of the manufacturer's con-
201 trolled group, as defined in section 267 of the Internal
202 Revenue Code of 1986, as amended, the generation of the
203 electricity shall not be taxable under this article: *Provid-*
204 *ed,* That any electricity generated or produced at the
205 generating unit or units which is sold or used for purposes
206 other than in the manufacturing activity shall be taxed
207 under this section and the amount of tax payable shall be
208 adjusted to be equal to an amount which is proportional to
209 the electricity sold for purposes other than the manufac-
210 turing activity. The department of tax and revenue shall
211 promulgate rules in accordance with article three, chapter
212 twenty-nine-a of the code: *Provided,* That the rules shall
213 be promulgated as emergency rules.

214 (d) Beginning the first day of June, one thousand
215 nine hundred ninety-five, electric light and power compa-
216 nies that actually paid tax based on the provisions of sub-
217 division (3), subsection (a), section two-d of this article or
218 section two-m of this article for every taxable month in
219 one thousand nine hundred ninety-four shall determine
220 their liability for payment of tax under this article in ac-
221 cordance with subdivisions (1) and (2) of this subsection.
222 All other electric light and power companies shall deter-
223 mine their liability for payment of tax under this article
224 exclusively under this section beginning the first day of
225 June, one thousand nine hundred ninety-five and thereaf-
226 ter.

227 (1) If for taxable months beginning on or after the
228 first day of June, one thousand nine hundred ninety-five,
229 liability for tax under section two-o of this article is equal
230 to or greater than the sum of the power company's liability

231 for payment of tax under subdivision (3), subsection (a),
232 section two-d of this article and this section, then the com-
233 pany shall pay the tax due under section two-o of this
234 article and not the tax due under subdivision (3), subsec-
235 tion (a), section two-d of this article and section two-m of
236 this article. If tax liability under this section is less, then
237 the tax shall be paid under subdivision (3), subsection (a),
238 section two-d of this article and section two-m and the tax
239 due under this section shall not be paid.

240 (2) Notwithstanding subdivision (1) of this subsection,
241 for taxable years beginning on or after the first day of
242 January, one thousand nine hundred ninety-eight, all elec-
243 tric light and power companies shall determine their liabil-
244 ity for payment of tax under this article exclusively under
245 this section.

CHAPTER 242

(Com. Sub. for S. B. 207—By Senators Craigo, Blatnik, White, Sharpe, Dittmar,
Jackson, Manchin, Chafin, Wooton, Boley, Ross, Deem, Kimble,
Scott, Bowman, Buckalew, Schoonover, Wiedebusch, Walker,
Tomblin, Mr. President, Wagner, Plymale and Minear)

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article thirteen-a, 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 five-a, all relating to dedicating ten percent of the oil and gas severance tax revenues for the benefit of counties and municipalities; providing definitions; creating funds and setting certain budgeting requirements for cities and counties; and phasing in the dedication of the ten percent of said oil and gas tax revenues.

Be it enacted by the Legislature of West Virginia:

That section two, article thirteen-a, 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 five-a, all to read as follows:

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-2. Definitions.

§11-13A-5a. Dedication of ten percent of oil and gas severance tax for benefit of counties and municipalities; distribution of major portion of such dedicated tax to oil and gas producing counties; distribution of minor portion of such dedicated tax to all counties and municipalities; reports; rules; creation of special funds in the office of state treasurer; methods and formulae for distribution of such dedicated tax; expenditure of funds by counties and municipalities for public purposes; and requiring special county and municipal budgets and reports thereon.

§11-13A-2. Definitions.

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

7 (b) *General terms defined.* — Definitions in this sub-
8 section apply to all persons subject to the taxes imposed
9 by this article.

10 (1) "Business" includes all activities engaged in, or
11 caused to be engaged in, with the object of gain or eco-
12 nomic benefit, direct or indirect, and whether engaged in
13 for profit, or not for profit, or by a governmental entity:
14 *Provided,* That "business" does not include services ren-
15 dered by an employee within the scope of his or her con-
16 tract of employment. Employee services, services by a
17 partner on behalf of his or her partnership and services by
18 a member of any other business entity on behalf of that
19 entity are the business of the employer, or partnership, or
20 other business entity as the case may be, and reportable as
21 such for purposes of the taxes imposed by this article.

22 (2) "Corporation" includes associations, joint-stock

23 companies and insurance companies. It also includes
24 governmental entities when and to the extent such govern-
25 mental entities engage in activities taxable under this arti-
26 cle.

27 (3) "Delegate" in the phrase "or his delegate", when
28 used in reference to the tax commissioner, means any
29 officer or employee of the state tax division of the depart-
30 ment of tax and revenue duly authorized by the tax com-
31 missioner directly, or indirectly by one or more
32 redelegations of authority, to perform the function men-
33 tioned or described in this article or regulations promul-
34 gated thereunder.

35 (4) "Fiduciary" means and includes a guardian, trustee,
36 executor, administrator, receiver, conservator or any per-
37 son acting in any fiduciary capacity for any person.

38 (5) "Gross proceeds" means the value, whether in mon-
39 ey or other property, actually proceeding from the sale or
40 lease of tangible personal property, or from the rendering
41 of services, without any deduction for the cost of property
42 sold or leased or expenses of any kind.

43 (6) "Includes" and "including" when used in a defini-
44 tion contained in this article shall not be deemed to ex-
45 clude other things otherwise within the meaning of the
46 term being defined.

47 (7) "Partner" includes a member of a syndicate, group,
48 pool, joint venture or other organization which is a "part-
49 nership" as defined in this section.

50 (8) "Partnership" includes a syndicate, group, pool,
51 joint venture or other unincorporated organization
52 through or by means of which any privilege taxable under
53 this article is exercised, and which is not within the mean-
54 ing of this article a trust or estate or corporation. "Partner-
55 ship" includes a limited liability company which is treated
56 as a partnership for federal income tax purposes.

57 (9) "Person" or "company" are herein used inter-
58 changeably and include any individual, firm, partnership,
59 mining partnership, joint venture, association, corporation,

60 trust or other entity, or any other group or combination
61 acting as a unit, and the plural as well as the singular num-
62 ber, unless the intention to give a more limited meaning is
63 declared by the context.

64 (10) "Sale" includes any transfer of the ownership or
65 title to property, whether for money or in exchange for
66 other property or services, or any combination thereof.
67 "Sale" includes a lease of property, whether the transaction
68 be characterized as a rental, lease, hire, bailment or license
69 to use. "Sale" also includes rendering services for a con-
70 sideration, whether direct or indirect.

71 (11) "Service" includes all activities engaged in by a
72 person for a consideration, which involve the rendering of
73 a service as distinguished from the sale of tangible person-
74 al property: *Provided*, That "service" does not include:
75 (A) Services rendered by an employee to his or her em-
76 ployer under a contract of employment; (B) contracting;
77 or (C) severing or processing natural resources.

78 (12) "Tax" means any tax imposed by this article and,
79 for purposes of administration and collection of such tax,
80 it includes any interest, additions to tax or penalties im-
81 posed with respect thereto under article ten of this chapter.

82 (13) "Tax commissioner" or "commissioner" means
83 the tax commissioner of the state of West Virginia or his
84 or her delegate.

85 (14) "Taxable year" means the calendar year, or the
86 fiscal year ending during such calendar year, upon the
87 basis of which a tax liability is computed under this article.
88 In the case of a return made under this article, or regula-
89 tions of the tax commissioner, for a fractional part of a
90 year, the term "taxable year" means the period for which
91 such return is made.

92 (15) "Taxpayer" means any person subject to any tax
93 imposed by this article.

94 (16) "This code" means the code of West Virginia, one
95 thousand nine hundred thirty-one, as amended.

96 (17) "This state" means the state of West Virginia.

97 (18) "Withholding agent" means any person required
98 by law to deduct and withhold any tax imposed by this
99 article or under regulations promulgated by the tax com-
100 missioner.

101 (c) *Specific definitions for producers of natural re-*
102 *sources.* —

103 (1) "Barrel of oil" means forty-two U.S. gallons of two
104 hundred thirty-one cubic inches of liquid at a standard
105 temperature of sixty degrees Fahrenheit.

106 (2) "Coal" means and includes any material composed
107 predominantly of hydrocarbons in a solid state.

108 (3) "Cubic foot of gas" means the volume of gas con-
109 tained in one cubic foot at a standard pressure base of
110 fourteen point seventy-three pounds per square inch (ab-
111 solute) and a standard temperature of sixty degrees Fahr-
112 enheit.

113 (4) "Economic interest" for the purpose of this article
114 is synonymous with the economic interest ownership re-
115 quired by Section 611 of the Internal Revenue Code in
116 effect on the thirty-first day of December, one thousand
117 nine hundred eighty-five, entitling the taxpayer to a deple-
118 tion deduction for income tax purposes: *Provided*, That a
119 person who only receives an arm's length royalty shall not
120 be considered as having an economic interest.

121 (5) "Extraction of ores or minerals from the ground"
122 includes extraction by mine owners or operators of ores or
123 minerals from the waste or residue of prior mining only
124 when such extraction is sold.

125 (6) "Gross value" in the case of natural resources
126 means the market value of the natural resource product, in
127 the immediate vicinity, where severed, determined after
128 application of post production processing generally ap-
129 plied by the industry to obtain commercially marketable
130 or usable natural resource products. For all natural re-
131 sources, "gross value" is to be reported as follows:

132 (A) For natural resources severed or processed (or
133 both severed and processed) and sold during a reporting
134 period, gross value is the gross proceeds received or re-
135 ceivable by the taxpayer.

136 (B) In a transaction involving related parties, gross
137 value shall not be less than the fair market value for natu-
138 ral resources of similar grade and quality.

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

142 (D) If severed natural resources are purchased for the
143 purpose of processing and resale, the gross value is the
144 amount received or receivable during the reporting period
145 reduced by the amount paid or payable to the taxpayer
146 actually severing the natural resource. If natural resources
147 are severed outside the state of West Virginia and brought
148 into the state of West Virginia by the taxpayer for the
149 purpose of processing and sale, the gross value is the
150 amount received or receivable during the reporting period
151 reduced by the fair market value of natural resources of
152 similar grade and quality and in the same condition imme-
153 diately preceding the processing of the natural resources
154 in this state.

155 (E) If severed natural resources are purchased for the
156 purpose of processing and consumption, the gross value is
157 the fair market value of processed natural resources of
158 similar grade and quality reduced by the amount paid or
159 payable to the taxpayer actually severing the natural re-
160 source. If severed natural resources are severed outside
161 the state of West Virginia and brought into the state of
162 West Virginia by the taxpayer for the purpose of process-
163 ing and consumption, the gross value is the fair market
164 value of processed natural resources of similar grade and
165 quality reduced by the fair market value of natural re-
166 sources of similar grade and quality and in the same con-
167 dition immediately preceding the processing of the natural
168 resources.

169 (F) In all instances, the gross value shall be reduced by
170 the amount of any federal energy tax imposed upon the

171 taxpayer after the first day of June, one thousand nine
172 hundred ninety-three, but shall not be reduced by any
173 state or federal taxes, royalties, sales commissions or any
174 other expense.

175 (G) For natural gas, gross value is the value of the
176 natural gas at the wellhead immediately preceding trans-
177 portation and transmission.

178 (H) For limestone or sandstone quarried or mined,
179 gross value is the value of such stone immediately upon
180 severance from the earth.

181 (7) "Mining" includes not merely the extraction of
182 ores or minerals from the ground but also those treatment
183 processes necessary or incidental thereto.

184 (8) "Natural resources" means all forms of minerals
185 including, but not limited to, rock, stone, limestone, coal,
186 shale, gravel, sand, clay, natural gas, oil and natural gas
187 liquids which are contained in or on the soils or waters of
188 this state, and includes standing timber.

189 (9) "Processed" or "processing" as applied to:

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

192 (B) Limestone or sandstone quarried or mined shall
193 not include any treatment process or transportation after
194 the limestone or sandstone is severed from the earth.

195 (10) "Related parties" means two or more persons,
196 organizations or businesses owned or controlled directly
197 or indirectly by the same interests. Control exists if a
198 contract or lease, either written or oral, is entered into
199 whereby one party mines or processes natural resources
200 owned or held by another party and the owner or lessor
201 participates in the severing, processing or marketing of the
202 natural resources or receives any value other than an arm's
203 length passive royalty interest. In the case of related par-
204 ties, the tax commissioner may apportion or allocate the
205 receipts between or among such persons, organizations or
206 businesses if he determines that such apportionment or

207 allocation is necessary to more clearly reflect gross value.

208 (11) "Severing" or "severed" means the physical re-
209 moval of the natural resources from the earth or waters of
210 this state by any means: *Provided*, That "severing" or
211 "severed" shall not include the removal of natural gas from
212 underground storage facilities into which the natural gas
213 has been mechanically injected following its initial remov-
214 al from earth: *Provided, however*, That "severing" or
215 "severed" oil and natural gas shall not include any separa-
216 tion process of oil or natural gas commonly employed to
217 obtain marketable natural resource products.

218 (12) "Stock" includes shares in an association,
219 joint-stock company or corporation.

220 (13) "Taxpayer" means and includes any individual,
221 partnership, joint venture, association, corporation, receiv-
222 er, trustee, guardian, executor, administrator, fiduciary or
223 representative of any kind engaged in the business of
224 severing or processing (or both severing and processing)
225 natural resources in this state for sale or use. In instances
226 where contracts (either oral or written) are entered into
227 whereby persons, organizations or businesses are engaged
228 in the business of severing or processing (or both severing
229 and processing) a natural resource but do not obtain title
230 to or do not have an economic interest therein, the party
231 who owns the natural resource immediately after its sever-
232 ance or has an economic interest therein is the taxpayer.

233 (d) *Specific definitions for persons providing health*
234 *care items or services. —*

235 (1) "Behavioral health services" means health care
236 related services provided by a behavioral health center as
237 defined in section one, article two-a, chapter twenty-seven
238 of this code or section one, article nine of said chapter.

239 (2) "Community care services" means home and com-
240 munity care services furnished by a provider pursuant to
241 an individual plan of care, which also includes senior citi-
242 zens groups that provide such services, but does not in-
243 clude services of home health agencies.

§11-13A-5a. Dedication of ten percent of oil and gas severance tax for benefit of counties and municipalities; distribution of major portion of such dedicated tax to oil and gas producing counties; distribution of minor portion of such dedicated tax to all counties and municipalities; reports; rules; creation of special funds in the office of state treasurer; methods and formulae for distribution of such dedicated tax; expenditure of funds by counties and municipalities for public purposes; and requiring special county and municipal budgets and reports thereon.

1 (a) Effective the first day of July, one thousand nine
2 hundred ninety-six, five percent of the tax attributable to
3 the severance of oil and gas imposed by section three-a of
4 this article is hereby dedicated for the use and benefit of
5 counties and municipalities within this state and shall be
6 distributed to such counties and municipalities as hereinaf-
7 ter provided. Effective the first day of July, one thousand
8 nine hundred ninety-seven, and thereafter, ten percent of
9 the tax attributable to the severance of oil and gas imposed
10 by section three-a of this article is hereby dedicated for
11 the use and benefit of counties and municipalities within
12 this state and shall be distributed to such counties and
13 municipalities as hereinafter provided.

14 (b) Seventy-five percent of this dedicated tax shall,
15 after appropriation thereof by the Legislature, be distribut-
16 ed by the state treasurer in the manner hereinafter speci-
17 fied, to the various counties of this state in which the oil
18 and gas upon which this additional tax is imposed was
19 located at the time it was removed from the ground.
20 Those counties are hereinafter in this section referred to as
21 the "oil and gas producing counties". The remaining
22 twenty-five percent of the net proceeds of this additional
23 tax on coal shall be distributed, after appropriation, among
24 all the counties and municipalities of this state in the man-
25 ner hereinafter specified.

26 (c) The tax commissioner is hereby granted plenary

27 power and authority to promulgate reasonable rules re-
28 quiring the furnishing by oil and gas producers of such
29 additional information as may be necessary to compute
30 the allocation required under the provisions of subsection
31 (f) of this section. The tax commissioner is also hereby
32 granted plenary power and authority to promulgate such
33 other reasonable rules as may be necessary to implement
34 the provisions of this section.

35 (d) In order to provide a procedure for the distribu-
36 tion of seventy-five percent of such dedicated tax on oil
37 and gas to such oil and gas producing counties, there is
38 hereby created in the state treasurer's office the special
39 fund known as the "oil and gas county revenue fund"; and
40 in order to provide a procedure for the distribution of the
41 remaining twenty-five percent of such dedicated tax on oil
42 and gas to all counties and municipalities of the state,
43 without regard to oil and gas having been produced there-
44 in, there is also hereby created in the state treasurer's office
45 the special fund known as the "all counties and municipal-
46 ities revenue fund".

47 Seventy-five percent of such dedicated tax on oil and
48 gas shall be deposited in the "oil and gas county revenue
49 fund" and twenty-five percent of such dedicated tax on oil
50 and gas shall be deposited in the "all counties and munic-
51 ipalities revenue fund", from time to time, as such proceeds
52 are received by the tax commissioner. The moneys in
53 such funds shall, after appropriation thereof by the Legis-
54 lature, be distributed to the respective counties and munic-
55 ipalities entitled thereto in the manner set forth in subsec-
56 tion (e) of this section.

57 (e) The moneys in the "oil and gas county revenue
58 fund" and the moneys in the "all counties and municipali-
59 ties revenue fund" shall be allocated among and distribut-
60 ed annually to the counties and municipalities entitled
61 thereto by the state treasurer in the manner hereinafter
62 specified. On or before each distribution date, the state
63 treasurer shall determine the total amount of moneys in
64 each fund which will be available for distribution to the

65 respective counties and municipalities entitled thereto on
66 that distribution date. The amount to which an oil and gas
67 producing county is entitled from the "oil and gas county
68 revenue fund" shall be determined in accordance with
69 subsection (f) of this section, and the amount to which
70 every county and municipality shall be entitled from the
71 "all counties and municipalities revenue fund" shall be
72 determined in accordance with subsection (g) of this sec-
73 tion. After determining as set forth in subsections (f) and
74 (g) of this section the amount each county and municipal-
75 ity is entitled to receive from the respective fund or funds,
76 a warrant of the state auditor for the sum due to such
77 county or municipality shall issue and a check drawn
78 thereon making payment of such sum shall thereafter be
79 distributed to such county or municipality.

80 (f) The amount to which an oil and gas producing
81 county is entitled from the "oil and gas county revenue
82 fund" shall be determined by:

83 (1) In the case of moneys derived from tax on the
84 severance of gas:

85 (A) Dividing the total amount of moneys in such fund
86 derived from tax on the severance of gas then available for
87 distribution by the total volume of cubic feet of gas ex-
88 tracted in this state during the preceding year; and

89 (B) Multiplying the quotient thus obtained by the
90 number of cubic feet of gas taken from the ground in
91 such county during the preceding year; and

92 (2) In the case of moneys derived from tax on the
93 severance of oil:

94 (A) Dividing the total amount of moneys in such fund
95 derived from tax on the severance of oil then available for
96 distribution by the total number of barrels of oil extracted
97 in this state during the preceding year; and

98 (B) Multiplying the quotient thus obtained by the
99 number of barrels of oil taken from the ground in such
100 county during the preceding year.

101 (g) The amount to which each county and municipali-
102 ty is entitled from the "all counties and municipalities
103 revenue fund" shall be determined in accordance with the
104 provisions of this subsection. For purposes of this subsec-
105 tion "population" means the population as determined by
106 the most recent decennial census taken under the authority
107 of the United States:

108 (1) The treasurer shall first apportion the total amount
109 of moneys available in the "all counties and municipalities
110 revenue fund" by multiplying the total amount in such
111 fund by the percentage which the population of each
112 county bears to the total population of the state. The
113 amount thus apportioned for each county is the county's
114 "base share".

115 (2) Each county's "base share" shall then be subdivid-
116 ed into two portions. One portion is determined by multi-
117 plying the "base share" by that percentage which the total
118 population of all unincorporated areas within the county
119 bears to the total population of the county, and the other
120 portion is determined by multiplying the "base share" by
121 that percentage which the total population of all municipi-
122 palities within the county bears to the total population of
123 the county. The former portion shall be paid to the coun-
124 ty and the latter portion shall be the "municipalities' por-
125 tion" of the county's "base share". The percentage of such
126 latter portion to which each municipality in the county is
127 entitled shall be determined by multiplying the total of
128 such latter portion by the percentage which the population
129 of each municipality within the county bears to the total
130 population of all municipalities within the county.

131 (h) Moneys distributed to any county or municipality
132 under the provisions of this section, from either or both
133 special funds, shall be deposited in the county or municipi-
134 pal general fund and may be expended by the county
135 commission or governing body of the municipality for
136 such purposes as the county commission or governing
137 body shall determine to be in the best interest of its re-
138 spective county or municipality: *Provided*, That in coun-

139 ties with population in excess of two hundred thousand at
140 least seventy-five percent of such funds received from the
141 oil and gas county revenue fund shall be apportioned to,
142 and expended within the oil and gas producing area or
143 areas of the county, said coal-producing areas of each
144 county to be determined generally by the state tax com-
145 missioner: *Provided, however,* That the moneys distribut-
146 ed to any county or municipality under the provisions of
147 this section shall not be budgeted for personal services in
148 an amount to exceed one fourth of the total amount of
149 such moneys.

150 (i) On or before the twenty-eighth day of March, one
151 thousand nine hundred ninety-seven, and each
152 twenty-eighth day of March thereafter, each county com-
153 mission or governing body of a municipality receiving
154 any such moneys shall submit to the tax commissioner on
155 forms provided by the tax commissioner a special budget,
156 detailing how such moneys are to be spent during the
157 subsequent fiscal year. Such budget shall be followed in
158 expending such moneys unless a subsequent budget is
159 approved by the state tax commissioner. All unexpended
160 balances remaining in the county or municipality general
161 fund at the close of a fiscal year shall remain in the gener-
162 al fund and may be expended by the county or municipi-
163 pality without restriction.

164 (j) On or before the fifteenth day of December, one
165 thousand nine hundred ninety-six, and each fifteenth day
166 of December thereafter, the tax commissioner shall deliver
167 to the clerk of the Senate and the clerk of the House of
168 Delegates a consolidated report of such budgets, created
169 by subsection (i) of this section, for all county commis-
170 sions and municipalities as of the fifteenth day of July of
171 the current year.

172 (k) The state tax commissioner shall retain for the
173 benefit of the state from the dedicated tax attributable to
174 the severance of oil and gas the amount of thirty-five
175 thousand dollars annually as a fee for the administration
176 of such additional tax by the tax commissioner.

CHAPTER 243

(H. B. 2829—By Delegates Browning, Petersen, Leach,
Warner, Border, Walters and Leggett)

[Passed March 10, 1995; in effect ninety days from passage.
Became law without Governor's signature.]

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 thirteen-I, relating to taxation, establishing a tax credit for the employment of those persons who were staff members employed at the Colin Anderson facility and lost their job as a result of the closure of such center; providing definitions; setting effective dates; setting forth legislative purpose; setting forth the amount of the credit and the application of the credit; setting limitations; credit forfeiture; providing for distribution of notice of the availability of the credit and providing for legislative rules.

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 13I, to read as follows:

ARTICLE 13I. TAX CREDIT FOR EMPLOYING FORMER EMPLOYEES OF COLIN ANDERSON CENTER WHO LOST THEIR JOBS DUE TO THE CLOSURE OF COLIN ANDERSON CENTER.

§11-13I-1. Legislative purpose.

§11-13I-2. Credit allowed; amount and duration of credit; recapture of credit and effective date.

§11-13I-3. Application of credit; limitation of credit; tax commissioner to promulgate forms and legislative rule; notice of credit.

§11-13I-1. Legislative purpose.

1 The Legislature finds and declares that the Colin
2 Anderson Center employees were good employees and

3 performed a valuable service for the residents of the
4 center, and the public comments regarding the closure of
5 Colin Anderson indicated that the main objection to the
6 closure was the care which the residents of Colin Anderson
7 would receive elsewhere. In recognition of the expertise
8 of these employees and their dedication to their duties and
9 the people whom they cared for, the Legislature finds that
10 it is in the best interests of the state to encourage the
11 employment of those persons who are unemployed as a
12 result of the closing of the Colin Anderson Center.

**§11-13I-2. Credit allowed; amount and duration of credit;
recapture of credit and effective date.**

1 (a) There shall be allowed to eligible taxpayers a credit
2 against the taxes imposed in articles twenty-one,
3 twenty-three and twenty-four of this chapter. For the
4 purpose of this article, "eligible taxpayer" means a person,
5 firm, partnership, corporation or other entity who employs
6 a person or persons who lost his or her job as a result of
7 the closure of the Colin Anderson Center. Such credit
8 shall be in an amount equal to one-half of the cost to the
9 state of unemployment compensation which shall be
10 determined based on the unemployment compensation
11 cost to the state of an employee who earns twenty-one
12 thousand dollars per year and shall be further determined
13 as if such person was unemployed for and drew a full
14 sixteen weeks of unemployment benefits. In the event an
15 eligible taxpayer employs more than one such person, the
16 credit allowed shall be multiplied by the number of
17 persons so employed.

18 (b) The credit set forth in this article shall apply to
19 personal income tax liabilities, corporation net income tax
20 liabilities and business franchise tax liabilities arising after
21 the thirty-first day of December, one thousand nine
22 hundred ninety-five. The credit established in this article
23 shall expire and may not be claimed for those tax years
24 ending after the thirty-first day of December, one
25 thousand nine hundred ninety-eight and in order to claim
26 this credit an eligible taxpayer shall have employed a
27 person who lost his or her job after December 31, one
28 thousand nine hundred ninety-five as a result of the

29 closing of Colin Anderson Center and must be employed
30 after said date and prior to December thirty-one, one
31 thousand nine hundred ninety seven.

32 (c) As a condition of receiving the credit established
33 in this article, the eligible taxpayer shall employ the
34 person or persons for a period of time at least equal to one
35 year. In the event such person is employed for less than
36 one year the credit herein shall be recaptured at the rate of
37 twenty percent of the dollar value of the credit for each
38 month under twelve months the person works.

**§11-13I-3. Application of credit; limitation of credit; tax
commissioner to promulgate forms and legis-
lative rule; notice of credit.**

1 (a) The credit allowed in this article shall be first
2 applied to a taxpayer's business franchise tax liability, and
3 then to either the taxpayer's personal income tax liability
4 or corporation net income tax liability, as the case may be.

5 (b) The credit allowed in this article shall not exceed
6 ten thousand dollars per year and shall not be refundable,
7 nor carried forward nor backward to other tax years.

8 (c) The state tax commissioner shall promulgate
9 legislative rules pursuant to chapter twenty-nine-a of this
10 code regarding the applicability, method of claiming of
11 the credit, recapture of the credit and documentation
12 necessary to claim the credit herein allowed.

13 (d) The state tax commissioner shall develop a written
14 notice setting forth the availability of this credit and shall
15 transmit this notice to the department of health and human
16 resources to be distributed to potential employers of the
17 Colin Anderson Center to make such employers aware of
18 the tax credit allowed herein. The department of health
19 and human resources shall distribute notice of the credit
20 allowed herein as widely as possible to potential
21 employers.

CHAPTER 244

(S. B. 277—By Senators Craig, Dugan, Blatnik, Miller,
Wiedebusch, Helmick, Dittmar, Manchin, White,
Sharpe, Bowman, Ross, Anderson, Scott, Deem,
Schoonover, Yoder, Whitlow, Boley and Plymale)

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and eleven-a, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exemptions from the excise tax on gasoline; specifically exempting units of county government buying gasoline or special fuel in bulk quantities; and providing for a refund of tax paid when the fuel is not purchased in bulk quantities.

Be it enacted by the Legislature of West Virginia:

That sections five and eleven-a, article fourteen, 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 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-5. Exemptions from tax.

§11-14-11a. Refund of tax on gasoline or special fuel paid by any municipality, county, county board of education, volunteer fire department, nonprofit ambulance service and emergency rescue service.

§11-14-5. Exemptions from tax.

1 There shall be exempted from the excise tax on gaso-
2 line or special fuel imposed by this article the following:

3 (1) All gallons of gasoline or special fuel exported
4 from this state to any other state or nation.

5 (2) All gallons of gasoline or special fuel sold to and
6 purchased by the United States or any agency thereof
7 when delivered in bulk quantities of five hundred gallons
8 or more.

9 (3) All gallons of gasoline or special fuel sold to and
10 purchased by a county board of education when delivered
11 in bulk quantities of five hundred gallons or more.

12 (4) All gallons of gasoline or special fuel sold pursu-
13 ant to a government contract, in bulk quantities of five
14 hundred gallons or more, for use in conjunction with any
15 municipal, county, state or federal civil defense or emer-
16 gency service program, or to any person on whom is im-
17 posed a requirement to maintain an inventory of gasoline
18 or special fuel for the purpose of any such program:
19 *Provided*, That fueling facilities used for these purposes
20 are not capable of fueling motor vehicles and the person
21 in charge of the program has in his or her possession a
22 letter of authority from the tax commissioner certifying
23 his or her right to such exemption.

24 (5) All gallons of gasoline or special fuel imported
25 into this state in the fuel supply tank or tanks of a motor
26 vehicle, other than in the fuel supply tank of a vehicle
27 being hauled. This exemption does not relieve a person
28 owning or operating as a motor carrier of any taxes im-
29 posed by article fourteen-a of this chapter.

30 (6) All gallons of gasoline and special fuel used and
31 consumed in stationary off-highway turbine engines.

32 (7) All gallons of special fuel for heating any public
33 or private dwelling, building or other premises.

34 (8) All gallons of special fuel for boilers.

35 (9) All gallons of gasoline or special fuel used as a dry
36 cleaning solvent or commercial or industrial solvent.

37 (10) All gallons of gasoline or special fuel used as
38 lubricants, ingredients or components of any manufac-
39 tured product or compound.

40 (11) All gallons of gasoline or special fuel sold to any
41 municipality or agency thereof for use in vehicles or
42 equipment owned and operated by such municipality or
43 agency thereof and when purchased for delivery in bulk

44 quantities of five hundred gallons or more.

45 (12) All gallons of gasoline or special fuel sold to any
46 urban mass transportation authority, created pursuant to
47 the provisions of article twenty-seven, chapter eight of this
48 code, for use in an urban mass transportation system.

49 (13) All gallons of gasoline or special fuel sold for use
50 as aircraft fuel.

51 (14) All gallons of gasoline or special fuel sold for use
52 or used as a fuel for commercial watercraft.

53 (15) All gallons of special fuel sold for use or con-
54 sumed in railroad diesel locomotives.

55 (16) All gallons of gasoline or special fuel sold to and
56 purchased by a unit of county government when delivered
57 in bulk quantities of five hundred gallons or more.

**§11-14-11a. Refund of tax on gasoline or special fuel paid by
any municipality, county, county board of
education, volunteer fire department, nonprof-
it ambulance service and emergency rescue
service.**

1 (a) Upon application by a municipality, county or
2 county board of education, or upon application and certif-
3 ication by the county commission to the state tax commis-
4 sioner that an organization in the county is a bona fide
5 volunteer fire department, nonprofit ambulance service or
6 emergency rescue service, the tax imposed by this article
7 and paid by any municipality, unit of county government
8 or any such organization shall be refunded.

9 (b) The tax shall be refunded upon presentation to the
10 commissioner of an affidavit accompanied by the original
11 or top copy sales slips or invoices, or certified copies
12 thereof, from the distributor or producer or retail dealer,
13 showing the purchases, together with evidence of payment
14 thereof, which affidavit shall set forth the total amount of
15 the gasoline or special fuel purchased and consumed by
16 the user and the commissioner upon the receipt of the

17 affidavit and the paid sales slips or invoices shall cause to
18 be refunded the tax paid on gasoline or special fuel pur-
19 chased and consumed as provided in this section.

20 (c) The right to receive any refund under the provi-
21 sions of this section is not assignable and any assignment
22 thereof is void and of no effect, nor shall any payment be
23 made to any person other than the original person entitled
24 thereto using gasoline or special fuel as set forth in this
25 section. The commissioner shall cause a refund to be
26 made under the authority of this section only when the
27 application for the refund is filed with the commissioner,
28 upon forms prescribed by the commissioner, no later than
29 the thirty-first day of August for purchases of fuel made
30 during the preceding fiscal year ending the thirtieth day
31 of June. Any claim for a refund not timely filed shall not
32 be construed to be or constitute a moral obligation of the
33 state of West Virginia for payment. The claim for refund
34 is also subject to the provisions of section fourteen, article
35 ten of this chapter: *Provided*, That the refund established
36 in this section for counties and municipalities shall only
37 apply to those purchases of gasoline and special fuels
38 made after the thirtieth day of June, one thousand nine
39 hundred ninety-five.

CHAPTER 245

(H. B. 2830—By Delegates Kiss, Browning, Compton and Wallace)

[Passed March 11, 1995; in effect from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact section eight-f, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the historic buildings preservation tax credit against the personal income tax and extending the credit to expire on the last day of December, one thousand nine hundred ninety-seven.

Be it enacted by the Legislature of West Virginia:

That section eight-f, 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.

§11-21-8f. Termination of credit by law.

1 The tax credit allowed by this section shall be termi-
2 nated on the thirty-first day of December, one thousand
3 nine hundred ninety-seven: *Provided*, That for those reha-
4 bilitation projects for which a completed Part 2 (Descrip-
5 tion of Rehabilitation) of the historic preservation certifi-
6 cation application was filed with the West Virginia division
7 of culture and history prior to that date and subsequently
8 approved in accordance with section eight-c of this article,
9 the credit shall continue to be allowed pursuant to this
10 article.

11 The West Virginia division of culture and history shall
12 provide a full disclosure of applications for credit made
13 and of credits granted pursuant to this section to the joint
14 committee on government and finance and to the gover-
15 nor annually. The first report shall be presented on or
16 before the first day of January, one thousand nine hun-
17 dred ninety-five.

CHAPTER 246

(S. B. 172—By Senators Whitlow, Helmick, Walker, Plymale, Blatnik,
Sharpe, Boley, Dugan, Kimble and Minear)

[Passed February 6, 1995; 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-three; 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 laws
3 of the United States relating to income taxes, unless a
4 different meaning is clearly required. Any reference in
5 this article to the laws of the United States shall mean the
6 provisions of the Internal Revenue Code of 1986, as
7 amended, and such other provisions of the laws of the
8 United States as relate to the determination of income for
9 federal income tax purposes. All amendments made to
10 the laws of the United States prior to the first day of Janu-
11 ary, one thousand nine hundred ninety-five, shall be given
12 effect in determining the taxes imposed by this article for
13 any taxable year beginning the first day of January, one
14 thousand nine hundred ninety-four, or thereafter, but no
15 amendment to the laws of the United States made on or
16 after the first day of January, one thousand nine hundred
17 ninety-five, shall be given any effect. .

18 (b) *Effective date.* — The amendments to this section
19 enacted in the year one thousand nine hundred ninety-five
20 shall be retroactive and shall apply to taxable years begin-
21 ning on or after the first day of January, one thousand
22 nine hundred ninety-four, to the extent allowable under
23 federal income tax law. With respect to taxable years that
24 begin prior to the first day of January, one thousand nine
25 hundred ninety-four, the law in effect for each of those
26 years shall be fully preserved as to such year.

CHAPTER 247

(S. B. 564—By Senators Wooton, Ross, Deem, Schoonover,
Dittmar, Miller and Anderson)

[Passed March 11, 1995; in effect from passage. Became law without Governor's signature.]

AN ACT to amend and reenact section six, article twenty-two, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section eight, article one, chapter eleven-a of said code; to amend and reenact sections two, three, five, ten, thirteen, sixteen, eighteen, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-seven, twenty-eight, twenty-nine, forty-five, forty-six, forty-seven, fifty, fifty-one, fifty-two, fifty-four, fifty-five, fifty-six, fifty-seven, fifty-eight, fifty-nine, sixty, sixty-one, sixty-four and sixty-six, article three of said chapter; and to further amend said article by adding thereto six new sections, designated sections sixty-nine, seventy, seventy-one, seventy-two, seventy-three and seventy-four, all relating to the taxation of real property; and the disposition of lands for the nonpayment of taxes.

Be it enacted by the Legislature of West Virginia:

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

Chapter**11. Taxation.****11A. Collection and Enforcement of Property Taxes.****CHAPTER 11. TAXATION.****ARTICLE 22. EXCISE TAX ON PRIVILEGE OF TRANSFERRING
REAL PROPERTY.****§11-22-6. Duties of clerk; declaration of consideration or
value; filing of sales listing form for tax com-
missioner; disposition and use of proceeds.**

1 When any instrument on which the tax as herein pro-
2 vided is imposed is offered for recordation, the clerk of
3 the county commission shall ascertain and compute the
4 amount of the tax due thereon and shall ascertain if
5 stamps in the proper amount are attached thereto as a
6 prerequisite to acceptance of the instrument for recorda-
7 tion.

8 When offered for recording, each instrument subject
9 to the tax as herein provided shall have appended on the
10 face or at the end thereof, a statement or declaration
11 signed by the grantor, grantee or other responsible party
12 familiar with the transaction therein involved declaring the
13 consideration paid for or the value of the property thereby
14 conveyed. Such declaration may be in the following lan-
15 guage:

16 "DECLARATION OF CONSIDERATION OR VALUE

17 I hereby declare:

18 (a) The total consideration paid for the property con-
19 veyed by the document to which this declaration is ap-
20 pended is \$_____; or

21 (b) The true and actual value of the property trans-
22 ferred by the document to which this declaration is ap-
23 pended is, to the best of my knowledge and belief
24 \$_____; or

25 (c) The proportion of all the property included in the
26 document to which this declaration is appended which is
27 real property located in West Virginia is _____%; the

28 value of all the property \$_____; the value of real
29 estate in West Virginia is \$_____; or

30 (d) This deed conveys real estate located in more than
31 one county in West Virginia; the total consideration paid
32 for, or actual cash value of, all the real estate located in
33 West Virginia conveyed by this document is \$_____;
34 and documentary stamps showing payment of all of the
35 excise tax on all of said real estate are attached to an exe-
36 cuted counterpart of this deed recorded in
37 _____ County.

38 Given under my hand this _____ day of
39 _____, 19__.

40 Signed _____ (Indi-
41 cate whether grantor, grantee, or other interest in convey-
42 ance). _____ Address"

43 Such declaration shall be considered by the clerk in
44 ascertaining the correct number of stamps required, and if
45 declaration (d) is used, no stamps shall be required on the
46 duplicate deed to which it is attached and such duplicate
47 deed shall be admitted to record and when recorded shall
48 have the same effect for all purposes as if stamps were
49 attached thereto.

50 On or after the first day of July, one thousand nine
51 hundred eighty-three, the clerk shall not record any docu-
52 ment with stamps affixed unless there is tendered with the
53 document a completed and verified sales listing form for
54 the benefit and use of the state tax commissioner.
55 Preprinted forms for this purpose shall be provided each
56 clerk by the tax commissioner:

57 The forms shall require the following information: (1)
58 If the last deed in the chain of title represents the last
59 transfer of the property, the names of the grantor and
60 grantee and the deedbook and page number; or (2) if the
61 last transfer was not made by deed, the source of the
62 grantor's title, if known; or (3) if the source of the grant-
63 or's title is unknown, a description of the property and the
64 name of the person to whom real property taxes are as-
65 sessed as set forth in the landbook prepared by the asses-

66 sor. In all cases the forms shall require the tax map and
67 parcel number of the property, the district or municipality
68 in which the real property or the greater portion thereof
69 lies, the address of the property, the consideration or value
70 in money, including any other valuable goods or services,
71 upon which the buyer and seller agree to consummate the
72 sale and any other financing arrangements affecting value.
73 The sales listing form required by this paragraph is to be
74 completed in addition to, and not in lieu of, the declara-
75 tion required by this section: *Provided*, That the tax com-
76 missioner may design and provide a form which combines
77 into one form the contents of the declaration and the sales
78 listing form required herein and recordation and filing of
79 that form may be used as an alternative to filing the sales
80 listing form required herein: *Provided, however*, That the
81 filing with the clerk of a duplicate deed containing the
82 sales listing form information required by this section
83 shall also satisfy the requirements of this section regarding
84 the sales listing form. The clerk shall, at the end of the
85 month, pay all of the proceeds collected from the sale of
86 stamps for the county excise tax into the county general
87 fund for use of the county.

88 On or before the tenth day of each month the clerk
89 shall deliver to the tax commissioner, or a person designat-
90 ed by the tax commissioner, the sales listing forms or such
91 other alternative forms as may be authorized by this sec-
92 tion for documents recorded during the preceding month.

93 The sales listing form required by this section shall
94 also include a portion thereof for the information required
95 of a person claiming a lien against the real property de-
96 scribed in the document who desires to file a statement
97 pursuant to the provisions of subsection (a), section three,
98 article three, chapter eleven-a of this code. Upon receipt
99 of the form, the clerk shall, no later than the end of the
100 business day upon which it was received, provide a copy
101 of the statement to the assessor and a copy thereof to the
102 sheriff. The assessor shall note the lien and any new own-
103 er of the real property indicated on the sales listing form
104 upon his land books. The sheriff shall promptly compare
105 the information contained in the sales listing form with his
106 records and shall:

107 (1) Provide the lienholder such notice as the lienhold-
108 er would thereafter otherwise be entitled to receive pursu-
109 ant to the provisions of chapter eleven-a of this code had
110 the lienholder provided the information in the form of a
111 statement as permitted by the provisions of section three,
112 article three of said chapter;

113 (2) Provide any other person listed on the sales listing
114 form such notice as the person would thereafter otherwise
115 be entitled to receive as a result of the person's interest in
116 the real property pursuant to the provisions of chapter
117 eleven-a of this code;

118 (3) Deliver to any person listed on the sales listing
119 form as the new owner of the real property described in
120 the document a copy of any subsequently issued tax ticket
121 required to be sent by the provisions of section eight,
122 article one, chapter eleven-a of this code; and

123 (4) Promptly notify any person listed on the sales
124 listing form as the lienholder or the new owner of the real
125 property of any due and unpaid taxes assessed against the
126 property.

CHAPTER 11A. COLLECTION AND ENFORCEMENT OF PROPERTY TAXES.

Article

1. **Accrual and Collection of Taxes.**
3. **Collection and Enforcement of Property Taxes.**

ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.

§11A-1-8. Notice of time and place for payment; mailing of tax tickets.

1 (a) The sheriff may give notice by posting at not less
2 than six public places in each magisterial district, for at
3 least ten days before the time appointed, that between the
4 fifteenth day of July and the thirty-first day of August he
5 will attend at one or more of the most public and conve-
6 nient places in each district, such places to be specified in
7 the notice, for the purpose of receiving taxes due by the
8 people residing or paying taxes in such district. The no-
9 tice shall also state that those who pay the first installment
10 of their taxes on or before the first day of September will

11 be entitled to a discount of two and one-half percent.
12 Like notice may be given that between the fifteenth day of
13 January and the twenty-eighth day of February he will
14 again appear in each district for the collection of taxes,
15 and that those who pay their second installment on or
16 before the first day of March will be entitled to the same
17 discount. Failure of the sheriff to post such lists shall not
18 impair the right to collect such taxes, the right to collect
19 any interest or penalty imposed as a result of the failure to
20 pay such taxes or the methods of enforcing the payment
21 of such taxes, interest or penalty.

22 The county commission of any county may order that
23 the above notice shall also be given by advertisement.
24 Such an order, once entered, shall continue in effect until
25 rescinded by the county commission. Upon entry of such
26 order, the sheriff shall, besides posting as required above,
27 publish the proper notice as a Class II legal advertisement
28 in compliance with the provisions of article three, chapter
29 fifty-nine of this code, and the publication area for such
30 publication shall be the county. Such notice shall be so
31 published within fourteen consecutive days next preceding
32 the fifteenth day of July or the fifteenth day of January as
33 the case may be. For every failure so to advertise, the
34 sheriff shall forfeit one hundred dollars.

35 Notwithstanding the foregoing provisions, the sheriff
36 shall send to every person owing real or personal property
37 taxes a copy of such taxpayers annual tax ticket or tickets
38 showing what tax is due and how such tax may be paid.
39 Such copy shall be sent to the last known address of such
40 taxpayer by first class United States mail.

41 Failure of the sheriff to send or failure of the taxpayer
42 to receive such copy shall not impair the right to collect
43 such taxes, the right to collect any interest or penalty im-
44 posed as a result of the failure to pay such taxes or the
45 method of enforcing the payment of such taxes, interest or
46 penalty.

47 At such time as the sheriff prepares the delinquent list
48 for real property, he shall compare such list with a copy of
49 the landbooks most recently delivered by the assessor to
50 the board of review and equalization pursuant to section

51 nineteen, article three, chapter eleven of this code. The
52 assessor shall make a copy of said landbooks available to
53 the sheriff. If property on the delinquent list should ap-
54 pear as a transfer on said landbooks with the delinquent
55 owner as the transferor, the sheriff shall send to the trans-
56 feree at his last known address by first class United States
57 mail a copy of the annual tax ticket or tickets showing
58 what taxes are due upon the real property of such transfer-
59 ee and how they may be paid as prescribed in this section.

60 Failure of the sheriff to send or failure of the taxpayer
61 to receive such copy shall not impair the right to collect
62 such taxes, the right to collect any interest or penalty im-
63 posed as a result of the failure to pay such taxes or the
64 method of enforcing the payment of such taxes, interest or
65 penalty.

66 (b) In addition to the notice of real or property taxes
67 owed, provided in this section, the county commission of
68 any county may order that the sheriff include in the mail-
69 ing notice of any taxes or other fees owed to the county or
70 a municipality in the county.

71 (c) (1) The sheriff may accept credit cards in payment
72 of any of the taxes, interest or penalty described in this
73 section. The type of credit card accepted shall be at the
74 discretion of the sheriff.

75 (2) The sheriff may set a fee to be added to each cred-
76 it card transaction equal to the charge paid by the state,
77 county, sheriff or taxpayer for the use of the credit card
78 by the taxpayer. Except for fees imposed pursuant to this
79 subdivision, no other fees for the use of a credit card may
80 be imposed upon the taxpayer.

81 (3) Except as provided in subsection (a) of this sec-
82 tion, in no event shall the sheriff discount or otherwise
83 reduce the tax liability of a taxpayer who has elected to
84 use a credit card for the payment of the tax liability.

85 (d) The tax commissioner may promulgate legislative
86 rules to provide for the payment of tax liability by install-
87 ment payments other than those prescribed in subsection
88 (a) of this section.

ARTICLE 3. COLLECTION AND ENFORCEMENT OF PROPERTY TAXES.

- § 11A-3-2. Second publication of list of delinquent real estate; notice.
- § 11A-3-3. Waiver of notice by person claiming lien.
- § 11A-3-5. Sale by sheriff; immunity; penalty; mandamus.
- § 11A-3-10. Sheriff to account for proceeds; disposition of surplus.
- § 11A-3-13. Publication by sheriff of sales list.
- § 11A-3-16. Subsequent tax payments by purchaser.
- § 11A-3-18. Limitations on tax certificates.
- § 11A-3-21. Notice to redeem.
- § 11A-3-22. Service of notice.
- § 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-3-27. Deed to purchaser; record.
- § 11A-3-28. Compelling service of notice or execution of deed.
- § 11A-3-29. One deed for adjoining pieces of real estate within the same tax district.
- § 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-3-50. 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-3-54. Notice to redeem.
- § 11A-3-55. Service of notice.
- § 11A-3-56. Redemption from purchase; receipt; list of redemptions; 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 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 adjoining pieces of real estate within the same tax district.
- § 11A-3-64. Sheriff to receive proceeds of deputy commissioners; sale and redemptions from the deputy commissioner; disposition.
- § 11A-3-66. Compensation of deputy commissioner.
- § 11A-3-69. Effect of repeal.
- § 11A-3-70. Release of title to, and taxes on, lands on which all taxes paid for ten years.
- § 11A-3-71. Deeds of deputy commissioner conveying coal, oil, gas, timber and other natural resources.
- § 11A-3-72. Release of taxes and interest.

§11A-3-73. Release of taxes, interest and charges on land assessed by erroneous description, etc.; misdescription, etc., not to result in forfeiture or subject land to the authority and control of the auditor.

§11A-3-74. Severability.

§11A-3-2. Second publication of list of delinquent real estate; notice.

1 (a) On or before the tenth day of September of each
2 year, the sheriff shall prepare a second list of delinquent
3 lands, which shall include all real estate in his county re-
4 maining delinquent as of the first day of September, to-
5 gether 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 of
12 the courthouse of the county, between the hours of ten in
13 the morning and four in the afternoon, on the ____ day
14 of _____, 19____.

15 Tax liens on each unredeemed tract or lot, or each
16 unredeemed part thereof or undivided interest therein, will
17 be sold at public auction to the highest bidder in an
18 amount which shall not be less than the taxes, interest and
19 charges which shall be due thereon to the date of sale, as
20 set forth in the following table:

21 Name of 22 person 23 charged with 24 taxes	Quantity of land	Local description	Total amount of taxes, interest and charges due to date of sale

25 Any of the aforesaid tracts or lots, or part thereof or
26 an undivided interest therein, may be redeemed by the

27 payment to the undersigned sheriff (or collector) before
28 sale, of the total amount of taxes, interest and charges due
29 thereon up to the date of redemption.

30 Given under my hand this _____ day of
31 _____, 19____.

32

33 _____
Sheriff (or collector).

34 The sheriff shall publish the list and notice prior to the
35 sale date fixed in the notice as a Class III-0 legal advertise-
36 ment in compliance with the provisions of article three,
37 chapter fifty-nine of this code, and the publication area
38 for such publication shall be the county.

39 (b) In addition to such publication, no less than thirty
40 days prior to the sale the sheriff shall send a notice of such
41 delinquency and the date of sale by certified mail: (1) To
42 the last known address of each person listed in the land
43 books whose taxes are delinquent; (2) to each person
44 having a lien on real property upon which the taxes are
45 due as disclosed by a statement filed with the sheriff pur-
46 suant to the provisions of section three of this article; (3)
47 to each other person with an interest in the property or
48 with a fiduciary relationship to a person with an interest in
49 the property who has in writing delivered to the sheriff on
50 a form prescribed by the tax commissioner a request for
51 such notice of delinquency; and (4) in the case of proper-
52 ty which includes a mineral interest but does not include
53 an interest in the surface other than an interest for the
54 purpose of developing the minerals, to each person who
55 has in writing delivered to the sheriff, on a form pre-
56 scribed by the tax commissioner, a request for such notice
57 which identifies the person as an owner of an interest in
58 the surface of real property that is included in the bound-
59 aries of such property: *Provided*, That in a case where one
60 owner owns more than one parcel of real property upon
61 which taxes are delinquent, the sheriff may, at his option,
62 mail separate notices to the owner and each lienholder for
63 each parcel or may prepare and mail to the owner and
64 each 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 of
67 all parcels of property on which taxes are delinquent. In
68 no event shall failure to receive the mailed notice by the
69 landowner or lienholder affect the validity of the title of
70 the property conveyed if it is conveyed pursuant to section
71 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 seven dollars and
74 fifty cents shall be added to the taxes, interest and charges
75 already due on each item and all such charges shall be
76 stated in the 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 per
80 addressee shall be added to the taxes, interest and charges
81 already due on each item and all such charges shall be
82 stated in the list as a part of the total amount due.

83 (d) Any person whose taxes were delinquent on the
84 first day of September may have his name removed from
85 the delinquent list prior to the time the same is delivered to
86 the newspapers for publication by paying to the sheriff the
87 full amount of taxes and costs owed by such person at the
88 date of such redemption. In such case, the sheriff shall
89 include but three dollars of the costs provided in this sec-
90 tion in making such redemption. Costs collected by the
91 sheriff hereunder which are not expended for publication
92 and mailing shall be paid into 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 the right to notice provid-
3 ed by section two of this article unless he shall have filed a
4 statement declaring such interest with the sheriff. Such
5 statement shall be filed upon creation of the lien and upon
6 release of said lien and upon any change of the lienhold-
7 er's postal address since the original filing of such state-
8 ment.

9 Such statement shall be sufficient if it is filed at the

10 time the document creating the lien is filed and when said
11 lien is released on a form and in a manner to be pre-
12 scribed from time to time by the tax commissioner, which
13 form shall include the name of the person charged with
14 taxes for the real property; the tax map and parcel number
15 of the property; the assessor's account number of the
16 property; a description of the interest claimed; and the
17 address to which notice is to be sent: *Provided*, That it
18 shall be sufficient for purposes of this section if the infor-
19 mation required by this section is provided on a sales
20 listing form prescribed in section six, article twenty-two,
21 chapter eleven of this code and filed with the clerk of the
22 county commission at the time of the filing of the docu-
23 ment. The statement may be amended at any time by the
24 person claiming the lien, upon such amended form and in
25 such manner as may be prescribed by the tax commission-
26 er: *Provided, however*, That in counties with a population
27 greater than two hundred thousand any person claiming
28 liens against more than fifty parcels of real estate may file
29 such statement electronically in a similar format as before
30 described designed by the tax commissioner.

31 (b) At least once a year prior to the first day of July,
32 the sheriff shall publish a notice that any person claiming
33 a lien against taxable real property must file the statement
34 required by this section or such person will be deemed to
35 have waived any right to notice provided by the preceding
36 section. The notice shall be published as a Class I legal
37 advertisement in compliance with the provisions of article
38 three, chapter fifty-nine of this code, and the publication
39 area for such publication shall be the county in which
40 such land is located.

§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 there-
3 in shall be sold by the sheriff, in the same order as set
4 forth in the list and notice prescribed in section two of this
5 article, at public auction to the highest bidder, between the
6 hours of ten in the morning and four in the afternoon on
7 any business working day after the fourteenth day of
8 October and before the twenty-third day of November:

9 *Provided*, That no tax lien for such unredeemed tract or
10 lot or undivided interest therein shall be sold upon any bid
11 or for any sum less than the total amount of taxes, interest
12 and charges then due: *Provided, however*, That at any
13 such sale, the tax lien for each unredeemed tract or lot, or
14 undivided interest therein, shall be offered for sale and
15 sold for the entirety of such tract or lot or undivided inter-
16 est therein as the same is described and constituted as a
17 unit or entity in the list and notice prescribed in section
18 two of this article. If the sale shall not be completed on
19 the day designated in the notice for the holding of such
20 sale, it shall be continued from day to day between the
21 same hours until disposition shall have been made of all
22 the land. The payment for any tax lien purchased at a sale
23 shall be made by check or money order payable to the
24 sheriff of the county and delivered before the close of
25 business on the day of the sale.

26 (b) Each sheriff is immune from liability if a loss or
27 claim results from the sale of a tax lien conducted pursu-
28 ant to the provisions of this article or from any subsequent
29 conveyance of the property to which the lien attaches:
30 *Provided*, That where a sheriff fails or refuses to sell said
31 tax lien pursuant to the provisions of this article for rea-
32 sons other than those provided by section seven of this
33 article, the sheriff may be compelled by mandamus to sell
34 the same upon the petition of the auditor or any taxpayer
35 of the county in a court of competent jurisdiction.

§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 is in
5 excess of the amount of taxes, interest and charges due
6 thereon, the surplus shall be deposited in a special county
7 fund to be known and designated as the "sale of tax lien
8 surplus fund". Where there is a redemption after the sale,
9 the sheriff shall also deposit into said fund the amount of
10 taxes, interest and charges due on the date of the sale, plus

11 the interest at the rate of one percent per month from the
12 date of sale to the date of redemption, described in subdivi-
13 sion (2), subsection (b), section twenty-four of this arti-
14 cle. Such surpluses shall be disposed of as follows:

15 (1) In any case where the property was redeemed, such
16 surplus shall be distributed to the person or persons who
17 purchased the tax lien thereon, or the heirs, devisees, lega-
18 tees, executors, administrators, successors or assigns there-
19 of.

20 (2) If the purchaser, his heirs, devisees, legatees, execu-
21 tors, administrators, successors or assigns cannot be found
22 within two years from and after the date of redemption, all
23 claims to such surplus shall be barred and such surplus
24 shall be distributed by the sheriff in the manner provided
25 by law for the distribution of property taxes collected by
26 him.

27 (b) All real estate included in the first delinquent list
28 sent to the auditor, and not accounted for in the list of
29 sales, suspensions, redemptions and certifications, shall be
30 deemed to have been redeemed before sale and the taxes,
31 interest and charges due thereon shall be accounted for by
32 the sheriff as if they had been received by him before the
33 sale.

§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 and
3 certifications made by him, in form or effect as follows,
4 which list shall be published as a Class II-0 legal advertise-
5 ment in compliance with the provisions of article three,
6 chapter fifty-nine of this code, and the publication area
7 for such publication shall be the county.

8 List of tax liens on real estate sold in the county of
9 _____, in the
10 month (or months) of _____,
11 19____, for nonpayment of taxes thereon for the year (or
12 years) 19____, and purchased by individuals or certified
13 to the auditor of the state of West Virginia:

14	Name of	Local	Quantity	Quantity	Name of	Whole
15	person	descrip	ty of	of land	purchas-	amount
16	charged	-tion	land	for which	er	paid by
17	with	of	charged	tax lien		purch-
18	taxes	lands		is sold		chaser

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

Sheriff

26 To cover the costs of preparing and publishing such
27 list, a charge of seven dollars and fifty cents shall be added
28 to the taxes, interest and charges already due on each item
29 listed.

§11A-3-16. Subsequent tax payments by purchaser.

1 Any person who has paid any subsequent taxes on
2 lands for which he holds the certificate of sale described in
3 section fourteen or fifteen of this article shall produce
4 such certificate and copies of paid tax receipts to the clerk
5 of the county commission, who shall endorse the amount
6 of such subsequent taxes and the date of payment thereof
7 in his records upon the payment to the clerk of a fee
8 therefor in the amount of two dollars.

§11A-3-18. Limitations on tax certificates.

1 (a) No lien upon real property evidenced by a tax
2 certificate of sale issued by a sheriff on account of any
3 delinquent property taxes shall remain a lien thereon for a
4 period longer than eighteen months after the original
5 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 sec-
9 tion and application for such tax deed is not pending at
10 the time of the expiration of the limitation period provid-
11 ed for in this section.

12 (c) Whenever a lien evidenced by a tax certificate of
13 sale has expired by reason of the provisions of this section,
14 the county clerk shall immediately issue and record a
15 certificate of cancellation describing the real estate includ-
16 ed in the certificate of purchase or tax certificate and giv-
17 ing the date of cancellation and he shall also make proper
18 entries in his records. He shall also present a copy of
19 every such certificate of cancellation to the sheriff who
20 shall enter the same in his records and such certificate and
21 the record thereof shall be prima facie evidence of the
22 cancellation of the certificate of sale and of the release of
23 the lien of such certificate on the lands therein described.
24 Failure to record such certificate of cancellation shall not
25 extend the lien evidenced by the certificate of sale. The
26 sheriff and county clerk shall not be entitled to any fees
27 for the issuing of such certificate of cancellation nor for
28 the entries in their books made under the provisions of
29 this subsection.

§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 purchaser
7 (or _____, the assignee, heir or devisee of
8 _____, the purchaser) of the tax lien(s) on the
9 following real estate, _____, (here describe
10 the real estate for which the tax lien(s) thereon were sold)
11 located in _____, (here name the city, town or
12 village in which the real estate is situated or, if not within a
13 city, town or village, give the district and a general descrip-
14 tion) which was returned delinquent in the name of

15 _____, and for which the tax lien(s) thereon
 16 was sold by the sheriff of _____ County at
 17 the sale for delinquent taxes made on the _____
 18 day of _____, 19____, has requested that you
 19 be notified that a deed for such real estate will be made to
 20 him on or after the first day of April, 19____, as provided by
 21 law, unless before that day you redeem such real estate.
 22 The amount you will have to pay to redeem on the last
 23 day, March thirty-first, will be as follows:

24 Amount equal to the taxes, interest, and charges due
 25 on the date of sale, with interest to March 31, 19____
 26\$_____

27 Amount of taxes paid on the property, since the sale,
 28 with interest to March 31, 19____
 29 \$_____

30 Amount paid for title examination and preparation of
 31 list of those to be served, and for preparation and service
 32 of the notice with interest to March 31, 19____
 33 \$_____

34 Amount paid for other statutory costs (describe)
 35 _____
 36 \$_____

37 Total \$_____

38 You may redeem at any time before March thirty-first,
 39 nineteen hundred _____, by paying the
 40 above total less any unearned interest.

41 Given under my hand this _____ day of
 42 _____, 19____.

43 _____
 44 Clerk of the County Commission
 45 of _____ County,
 46 State of West Virginia

47 The clerk for his service in preparing the notice shall
 48 receive a fee of five dollars for the original and one dollar

49 for each copy required. Any costs which must be expend-
50 ed in addition thereto for publication, or service of such
51 notice in the manner provided for serving process com-
52 mencing a civil action, or for service of process by certi-
53 fied mail, shall be charged by the clerk. All costs provid-
54 ed by this section shall be included as redemption costs
55 and included in the notice described 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 it to
3 be served upon all persons named on the list generated by
4 the purchaser pursuant to the provisions of section nine-
5 ten of this article.

6 The notice shall be served upon all such persons resid-
7 ing or found in the state in the manner provided for serv-
8 ing process commencing a civil action or by certified mail,
9 return receipt requested. The notice shall be served on or
10 before the thirtieth day following the request for such
11 notice.

12 If any person entitled to notice is a nonresident of this
13 state, whose address is known to the purchaser, he shall be
14 served at such address by certified mail, return receipt
15 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-0 legal advertisement in compli-
21 ance with the provisions of article three, chapter fifty-nine
22 of this code, and the publication area for such publication
23 shall be the county in which such real estate is located. If
24 service by publication is necessary, publication shall be
25 commenced when personal service is required as set forth
26 above, and a copy of the notice shall at the same time be
27 sent by certified mail, return receipt requested, to the last
28 known address of the person to be served. The return of
29 service of such notice and the affidavit of publication, if
30 any, shall be in the manner provided for process generally
31 and shall be filed and preserved by the clerk in his office,

32 together with any return receipts for notices sent by certi-
33 fied mail.

**§11A-3-23. Redemption from purchase; receipt; list of re-
demptions; 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 any
3 other person who was entitled to pay the taxes on, any real
4 estate for which a tax lien thereon was purchased by an
5 individual may redeem at any time before a tax deed is
6 issued therefor. In order to redeem, he must pay to the
7 clerk of the county commission the following amounts:
8 (1) An amount equal to the taxes, interest and charges due
9 on the date of the sale, with interest thereon at the rate of
10 one percent per month from the date of sale; (2) all other
11 taxes thereon, which have since been paid by the purchas-
12 er, his heirs or assigns, with interest at the rate of one per-
13 cent per month from the date of payment; (3) such addi-
14 tional expenses as may have been incurred in preparing
15 the list of those to be served with notice to redeem and any
16 title examination incident thereto, with interest at the rate
17 of one percent per month from the date of payment, but
18 the amount he shall be required to pay, excluding said
19 interest, for such expenses incurred for the preparation of
20 the list of those to be served with notice to redeem re-
21 quired by section nineteen of this article and any title
22 examination incident thereto, shall not exceed two hun-
23 dred dollars; and (4) all additional statutory costs paid by
24 the purchaser. Where the clerk has not received from the
25 purchaser satisfactory proof of the expenses incurred in
26 preparing the notice to redeem, and any examination of
27 title incident thereto, in the form of receipts or other evi-
28 dence thereof, the person redeeming shall pay the clerk
29 the sum of two hundred dollars plus interest thereon at the
30 rate of one percent per month from the date of the sale for
31 disposition by the sheriff pursuant to the provisions of
32 sections ten, twenty-four, twenty-five and thirty-two of this
33 article.

34 The person redeeming shall be given a receipt for the
35 payment.

36 (b) Any person who, by reason of the fact that no
37 provision is made for partial redemption of the tax lien on
38 real estate purchased by an individual, is compelled in
39 order to protect himself to redeem the tax lien on all of
40 such real estate when it belongs, in whole or in part, to
41 some other person, shall have a lien on the interest of such
42 other person for the amount paid to redeem such interest.
43 He shall lose his right to the lien, however, unless within
44 thirty days after payment he shall file with the clerk of the
45 county commission his claim in writing against the owner
46 of such interest, together with the receipt provided for in
47 this section. The clerk shall docket the claim on the judg-
48 ment lien docket in his office and properly index the
49 same. Such lien may be enforced as other judgment liens
50 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 deliver to the sheriff the redemption money
3 paid and the name and address of the purchaser, his heirs
4 and assigns. The clerk shall also note the fact of redemp-
5 tion on his record of delinquent lands.

6 (b) Of the redemption money received by the sheriff
7 pursuant to this section, the sheriff shall deposit into the
8 sale of tax lien surplus fund provided by section ten of
9 this article the amount thereof equal to the amount of
10 taxes, interest and charges due on the date of the sale, plus
11 the interest at the rate of one percent per month thereon
12 from the date of sale 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 sheriff
5 shall, upon delivery of the sum necessary to redeem,
6 promptly notify the purchaser, his heirs or assigns, by
7 mail, of the fact of the redemption and pay to the purchas-
8 er, his heirs or assigns the following amounts: (1) From
9 the sale of tax lien surplus fund provided by section ten of

10 this article: (A) The surplus of money paid in excess of
11 the amount of the taxes, interest and charges due and paid
12 to the sheriff at the sale; and (B) the amount of taxes,
13 interest and charges due on the date of the sale, plus the
14 interest at the rate of one percent per month from the date
15 of sale to the date of redemption; (2) all other taxes there-
16 on, which have since been paid by the purchaser, his heirs
17 or assigns, with interest at the rate of one percent per
18 month from the date of payment; (3) such additional
19 expenses as may have been incurred in preparing the list
20 of those to be served with notice to redeem and any title
21 examination incident thereto, with interest at the rate of
22 one percent per month from the date of payment, but the
23 amount which shall be paid, excluding said interest, for
24 such expenses incurred for the preparation of the list of
25 those to be served with notice to redeem required by sec-
26 tion nineteen of this article, and any title examination
27 incident thereto, shall not exceed two hundred dollars; and
28 (4) all additional statutory costs paid by the purchaser.

29 (b) (1) The notice shall include:

30 (A) A copy of the redemption certificate issued by the
31 county clerk;

32 (B) An itemized statement of the redemption money
33 to which the purchaser is entitled pursuant to the provi-
34 sions of this section; and

35 (C) Where, at the time of the redemption, the clerk has
36 not received from the purchaser satisfactory proof of the
37 expenses incurred in preparing the list of those to be
38 served with notice to redeem and any title examination
39 incident thereto, the clerk shall also include instructions to
40 the purchaser as to how these expenses may be claimed.

41 (2) Subject to the limitations of this section, the pur-
42 chaser is entitled to recover any expenses incurred in pre-
43 paring the list of those to be served with notice to redeem
44 and any title examination incident thereto from the date of
45 the sale to the date of the redemption.

46 (c) Where, pursuant to section twenty-three of this
47 article, the clerk has not received from the purchaser satis-

48 factory proof of the expenses incurred in preparing the
49 list of those to be served with notice to redeem, and any
50 title examination incident thereto, in the form of receipts
51 or other evidence thereof, and therefore received from the
52 purchaser as required by said section and delivered to the
53 sheriff the sum of two hundred dollars plus interest there-
54 on at the rate of one percent per month from the date of
55 the sale to the date of redemption, and the sheriff has not
56 received from the purchaser such satisfactory proof of
57 such expenses within thirty days from the date of notifica-
58 tion, the sheriff shall refund such amount to the person
59 redeeming and the purchaser is barred from any claim
60 thereto. Where, pursuant to said section, the clerk has
61 received from the purchaser and therefore delivered to the
62 sheriff said sum of two hundred dollars plus interest there-
63 on at the rate of one percent per month from the date of
64 the sale to the date of redemption, and the purchaser pro-
65 vides the sheriff within thirty days from the date of notifi-
66 cation such satisfactory proof of such expenses, and the
67 amount of such expenses is less than the amount paid by
68 the person redeeming, the sheriff shall refund the differ-
69 ence to the person redeeming.

§11A-3-27. Deed to purchaser; record.

1 If the real estate described in the notice is not re-
2 deemed within the time specified therein, but in no event
3 prior to the first day of April of the second year following
4 the sheriff's sale, the person entitled thereto shall make and
5 deliver to the clerk of the county commission at any time
6 thereafter, subject to the provisions of section eighteen of
7 this article, a quitclaim deed for such real estate in form or
8 effect as follows:

9 This deed made this _____ day of _____,
10 19____, by and between _____, clerk of the
11 county commission of _____ County,
12 West Virginia, (or by and between _____, a
13 commissioner appointed by the Circuit Court of
14 _____ County, West Virginia) grantor, and
15 _____, purchaser, (or _____,
16 heir, devisee or assignee of _____,
17 purchaser), grantee, witnesseth, that:

18 Whereas, In pursuance of the statutes in such case
 19 made and provided, _____, Sheriff of
 20 _____ County, (or _____, deputy for
 21 _____, Sheriff of _____ County), (or
 22 _____, collector of _____ County), did,
 23 in the month of _____, in the year 19____, sell
 24 the tax lien(s) on real estate, hereinafter mentioned and
 25 described, for the taxes delinquent thereon for the year (or
 26 years) 19____, and _____, (here insert name
 27 of purchaser) for the sum of \$_____, that being
 28 the amount of purchase money paid to the sheriff, did
 29 become the purchaser of the tax lien(s) on such real estate
 30 (or on _____ acres, part of the tract or land, or on an
 31 undivided _____ interest in such real estate)
 32 which was returned delinquent in the name of
 33 _____; and

34 Whereas, The clerk of the county commission has
 35 caused the notice to redeem to be served on all persons
 36 required by law to be served therewith; and

37 Whereas, The tax lien(s) on the real estate so pur-
 38 chased has not been redeemed in the manner provided by
 39 law and the time for redemption set in such notice has
 40 expired;

41 Now, therefore, the grantor, for and in consideration
 42 of the premises and in pursuance of the statutes, doth
 43 grant unto _____, grantee, his heirs
 44 and assigns forever, the real estate on which the tax lien(s)
 45 so purchased existed, situate in the county of
 46 _____, bounded and described as
 47 follows: _____

48 Witness the following signature: _____

49 Clerk of the County Commission of _____
 50 County.

51 Except when ordered to do so, as provided in section
 52 twenty-eight of this article, no clerk of the county com-
 53 mission shall execute and deliver such a deed more than
 54 thirty days after the person entitled to the deed delivers the
 55 same and requests the execution thereof. Upon the clerk's

56 determination that the deed presented substantially com-
57 plies with the requirements of this section, the clerk shall
58 execute the deed and acknowledge the same, record the
59 deed in the clerk's office and deliver the original thereof
60 to the purchaser.

61 For the execution of the deed and for all the recording
62 required by this section, a fee of seven dollars and fifty
63 cents and the recording expenses shall be charged, to be
64 paid by the grantee upon delivery of the deed. The deed,
65 when duly acknowledged or proven, shall be recorded by
66 the clerk of the county commission in the deed book in
67 his office, together with assignment from the purchaser, if
68 one was made, the notice to redeem, the return of service
69 of such notice, the affidavit of publication, if the notice
70 was served by publication, and any return receipts for
71 notices sent by certified 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 in
3 sections twenty-one and twenty-two of this article, the
4 person requesting the notice may, at any time within two
5 weeks after discovery of such failure or refusal, but in no
6 event 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 clerk to prepare and serve the notice or
10 appointing a commissioner to do so. If the person re-
11 questing the notice fails to make such application within
12 the time allowed, he shall lose his right to the notice, but
13 his rights against the clerk under the provisions of section
14 sixty-seven of this article shall not be affected. Notice
15 given pursuant to an order of the court or judge shall be
16 as valid for all purposes as if given within the time re-
17 quired by section twenty-two of this article.

18 If the clerk fails or refuses to execute the deed as re-
19 quired in section twenty-seven of this article, the person
20 requesting the deed may, at any time after such failure or
21 refusal, but not more than six months after his right to the
22 deed accrued, apply by petition to the circuit court of the
23 county for an order compelling the clerk to execute the

24 deed or appointing a commissioner to do so. If the per-
25 son requesting the deed fails to make such application
26 within the time allowed, he shall lose his right to the deed,
27 but his rights against the clerk under the provisions of
28 section sixty-seven of this article shall not be affected.
29 Any deed executed pursuant to an order of the court or
30 judge shall have the same force and effect as if executed
31 and delivered by the clerk within the time specified in the
32 preceding section.

33 Ten days' written notice of every such application
34 must be given to the clerk. If, upon the hearing of such
35 application, the court or judge is of the opinion that the
36 applicant is not entitled to the notice or deed requested,
37 the petition shall be dismissed at his costs; but if the court
38 or judge is of the opinion that he is entitled to such notice
39 or deed, then, upon his deposit with the clerk of the circuit
40 court of a sum sufficient to cover the costs of preparing
41 and serving the notice, unless such a deposit has already
42 been made with the clerk of the county commission, an
43 order shall be made by the court or judge directing the
44 clerk to prepare and serve the notice or execute the deed,
45 or appointing a commissioner for the purpose, as the court
46 or judge shall determine. If it appears to the court or
47 judge that the failure or refusal of the clerk was without
48 reasonable cause, judgment shall be given against him for
49 the costs of the proceedings; otherwise the costs shall be
50 paid by the applicant.

51 Any commissioner appointed under the provisions of
52 this section shall be subject to the same liabilities as are
53 provided for the clerk. For the preparation of the notice
54 to redeem, he shall be entitled to the same fee as is provid-
55 ed for the clerk. For the execution of the deed, he shall
56 also be entitled to a fee of seven dollars and fifty cents and
57 the recording expenses, to be paid by the grantee upon
58 delivery of the deed.

**§11A-3-29. One deed for adjoining pieces of real estate within
the same tax district.**

1 Whenever one purchaser at the tax sale has purchased
2 tax liens on two or more adjoining pieces of real estate
3 within the same tax district, or undivided interests therein,

4 charged with taxes for the same year, or years, he, his heirs
5 or assigns may request the clerk of the county commission
6 to execute a separate deed for each adjoining piece of real
7 estate within the same tax district, or undivided interest
8 therein, or separate deeds for some and one deed for the
9 remainder, or one deed for all, as he or they may prefer.
10 Every deed for two or more pieces of adjoining real estate
11 within the same tax district, or undivided interests therein,
12 shall describe each piece of real estate and each undivided
13 interest separately.

§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 court-
4 house of the county to the highest bidder between the
5 hours of ten in the morning and four in the afternoon on
6 any business working day within one hundred twenty days
7 after the auditor has certified the lands to the deputy com-
8 missioner as required by the preceding section. The pay-
9 ment for any tract or lot purchased at a sale shall be made
10 by check or money order payable to the sheriff of the
11 county and delivered before the close of business on the
12 day of sale. No part or interest in any tract or lot subject
13 to such sale, or any part thereof of interest therein, that is
14 less than the entirety of such unredeemed tract, lot or
15 interest, as the same is described and constituted as a unit
16 or entity in said list, shall be offered for sale or sold at
17 such sale. If the sale shall not be completed on the first
18 day of the sale, it shall be continued from day to day be-
19 tween the same hours until all the land shall have been
20 offered for sale.

21 (b) A private, nonprofit, charitable corporation, incor-
22 porated in this state, which has been certified as a nonprof-
23 it corporation pursuant to the provisions of Section 501
24 (c)(3) of the federal Internal Revenue Code, as amended,
25 which has as its principal purpose the construction of
26 housing or other public facilities and which notifies the
27 deputy commissioner of an intention to bid and subse-
28 quently submits a bid that is not more than five percent
29 lower than the highest bid submitted by any person or

30 organization which is not a private, nonprofit, charitable
31 corporation as defined in this subsection, shall be sold the
32 property offered for sale by the deputy commissioner
33 pursuant to the provisions of this section at the public
34 auction as opposed to the highest bidder.

35 The nonprofit corporation referred to in this subsec-
36 tion does not include a business organized for profit, a
37 labor union, a partisan political organization or an organi-
38 zation engaged in religious activities and it does not in-
39 clude any other group which does not have as its principal
40 purpose the construction of housing or public 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 com-
3 missioner shall publish notice of the auction as a Class
4 III-0 legal advertisement in compliance with the provisions
5 of article three, chapter fifty-nine of this code, and the
6 publication area for such publication shall be the county.

7 The notice shall be in form or effect as follows:

8 Notice is hereby given that the following described
9 tracts or lots of land in the County of _____, have
10 been certified by the Auditor of the State of West Virginia
11 to _____, Deputy Commissioner of Delin-
12 quent and Nonentered Lands of said County, for sale at
13 public auction. The lands will be offered for sale by the
14 undersigned deputy commissioner at public auction in
15 (specify location) the courthouse of _____ County be-
16 tween the hours of ten in the morning and four in the
17 afternoon, on the _____ day of _____,
18 19____.

19 Each tract or lot as described below will be sold to the
20 highest bidder. The payment for any tract or lot pur-
21 chased at a sale shall be made by check or money order
22 payable to the sheriff of the county and delivered before
23 the close of business on the day of the sale. If any of said
24 tracts or lots remain unsold following the auction, they will
25 be subject to sale by the deputy commissioner without
26 additional advertising or public auction. All sales are

27 subject to the approval of the auditor of the state of West
28 Virginia.

29 (here insert description of lands to be sold)

30 Any of the aforesaid tracts or lots may be redeemed
31 by any person entitled to pay the taxes thereon at any time
32 prior to the sale by payment to the deputy commissioner
33 of the total amount of taxes, interest and charges due
34 thereon up to the date of redemption. Lands listed above
35 as escheated or waste and unappropriated lands may not
36 be redeemed.

37 Given under my hand this _____ day of
38 _____, 19_____.

39 _____ Deputy Commissioner of
40 Delinquent and Nonentered Lands of _____
41 County.

42 The description of lands required in the notice shall be
43 in the same form as the list certifying said lands to the
44 deputy commissioner for sale. If the deputy commission-
45 er is required to auction lands certified to him in any pre-
46 vious years, pursuant to section forty-eight of this article,
47 he shall include such lands in the notice, with reference to
48 the year of certification and the item number of the tract
49 or interest.

50 To cover the cost of preparing and publishing the
51 notice, a charge of twenty-five dollars shall be added to
52 the taxes, interest and charges due on the delinquent and
53 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 the
3 auction, by the owner of such land or any other person
4 entitled to pay the taxes thereon, by payment of the taxes,
5 interest and charges due. The deputy commissioner shall
6 prepare an original and five copies of the receipt, give to
7 the person redeeming the original receipt, retain one copy
8 for his files and forward one copy each to the sheriff,
9 auditor, assessor and the clerk of the county commission,
10 each of whom shall note the fact of such redemption on
11 their respective records of delinquent lands. Any person

12 redeeming the interest of another shall be subrogated to
13 the lien of the state on such interest as provided in section
14 nine, article one of this chapter.

§11A-3-50. Receipt to purchaser for purchase price.

1 The deputy commissioner shall prepare an original
2 and two copies of the receipt for the purchase money. He
3 shall give the original receipt to the purchaser and shall
4 file one copy thereof with the clerk of the county commis-
5 sion and one copy thereof with the sheriff, each of whom
6 shall note the fact of such sale on their respective records
7 of delinquent lands. The heading of the receipt shall be:

8 Memorandum of real estate sold in the county of
9 _____ on this _____ day of _____,
10 19____, by _____, the deputy commissioner
11 of delinquent and nonentered lands of said county.

12 Except for the heading, the auditor shall prescribe the
13 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 to
5 the auditor. The report must include the year that the land
6 was certified by the auditor for sale, the item number of
7 the land on the list certifying the land for sale, the amount
8 of taxes, interest and charges due on such land at the time
9 of the sale, the quantity of the land, the name and address
10 of the purchaser and the purchase price. The report shall
11 be filed with the auditor. The auditor may prescribe the
12 form of the report.

13 As soon as possible after receiving the report, the audi-
14 tor shall determine whether the sale is in the best interest
15 of the state and shall either approve or disapprove the sale.
16 The auditor shall then note such approval or disapproval
17 and, if disapproved, the reasons therefor, on the report,
18 and return a copy to the deputy commissioner. The origi-
19 nal shall be retained by the auditor. The deputy commis-

20 sioner shall provide a copy of the report approved or
21 disapproved by the auditor to the sheriff and to the county
22 clerk.

23 If the auditor shall disapprove any such sale, the depu-
24 ty commissioner shall forthwith refund the purchase price
25 to the purchaser. The land shall then be again subject to
26 sale pursuant to sections forty-five and forty-eight of this
27 article. If the auditor approves the sale, the purchaser shall
28 immediately commence the steps to obtain a deed, as pro-
29 vided in section fifty-two of this article.

§11A-3-52. What purchaser must do before he can secure a deed.

1 (a) Within forty-five days following the approval of
2 the sale by the auditor pursuant to section fifty-one of this
3 article, the purchaser, his heirs or assigns, in order to se-
4 cure a deed for the real estate purchased, shall: (1) Pre-
5 pare a list of those to be served with notice to redeem and
6 request the deputy commissioner to prepare and serve the
7 notice as provided in sections fifty-four and fifty-five of
8 this article; and (2) deposit, or offer to deposit, with the
9 deputy commissioner a sum sufficient to cover the costs of
10 preparing and serving the notice. For failure to meet these
11 requirements, the purchaser shall lose all the benefits of
12 his purchase. The deputy commissioner may then sell the
13 property in the same manner as he sells lands which have
14 been offered for sale at public auction but which remain
15 unsold after such auction, as provided in section
16 forty-eight of this article.

17 (b) If the person requesting preparation and service of
18 the notice is an assignee of the purchaser, he shall, at the
19 time of the request, file with the deputy commissioner a
20 written assignment to him of the purchaser's rights, execut-
21 ed, acknowledged and certified in the manner required to
22 make a valid deed.

§11A-3-54. Notice to redeem.

1 Whenever the provisions of section fifty-two of this
2 article have been complied with, the deputy commissioner
3 shall thereupon prepare a notice in form or effect as fol-

4 lows:

5 To _____

6 You will take notice that _____, the
 7 purchaser (or _____, the assignee, heir or devi-
 8 seee of _____, the purchaser) of the following real
 9 estate, _____, (here describe the real
 10 estate sold) located in _____, (here name
 11 the city, town or village in which the real estate is situated
 12 or, if not within a city, town or village, give the district and
 13 a general description) which was _____
 14 (here put whether the property was returned delinquent or
 15 nonentered) in the name of _____, and
 16 was sold by the deputy commissioner of delinquent and
 17 nonentered lands of _____ County at the
 18 sale for delinquent taxes (or nonentry) on the _____ day
 19 of _____, 19____, has requested that you be
 20 notified that a deed for such real estate will be made to
 21 him on or after the _____ day of _____, 19____,
 22 as provided by law, unless before that day you redeem
 23 such real estate. The amount you will have to pay to re-
 24 deem on the _____ day of _____, 19____
 25 will be as follows:

26 Amount equal to the taxes, interest and charges due on
 27 the date of sale, with interest to _____
 28\$ _____

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 Amount paid for other statutory costs (describe)
 35 _____
 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
44 and 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 original
49 and two dollars for each copy required. Any costs which
50 must be expended in addition thereto for publication, or
51 service of such notice in the manner provided for serving
52 process commencing a civil action, or for service of pro-
53 cess by certified mail, shall be charged by the deputy
54 commissioner. All costs provided by this section shall be
55 included as redemption costs and included in the notice
56 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, he
3 shall cause it to be served upon all persons named on the
4 list generated by the purchaser pursuant to the provisions
5 of section fifty-two of this article. Such notice shall be
6 mailed and, if necessary, published at least thirty days
7 prior to the first day a deed may be issued following the
8 deputy commissioner's sale.

9 The notice shall be served upon all such persons resid-
10 ing or found in the state in the manner provided for serv-
11 ing process commencing a civil action or by certified mail,
12 return receipt requested. The notice shall be served on or
13 before the thirtieth day following the request for such
14 notice.

15 If any person entitled to notice is a nonresident of this
16 state, whose address is known to the purchaser, he shall be
17 served at such address by certified mail, return receipt
18 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-0 legal advertisement in compli-
24 ance with the provisions of article three, chapter fifty-nine
25 of this code, and the publication area for such publication
26 shall be the county in which such real estate is located. If
27 service by publication is necessary, publication shall be
28 commenced when personal service is required as set forth
29 above, and a copy of the notice shall at the same time be
30 sent by certified mail, return receipt requested, to the last
31 known address of the person to be served. The return of
32 service of such notice, and the affidavit of publication, if
33 any, shall be in the manner provided for process generally
34 and shall be filed and preserved by the auditor in his of-
35 fice, together with any return receipts for notices sent by
36 certified mail.

**§11A-3-56. Redemption from purchase; receipt; list of re-
demptions; 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 article,
3 the owner of, or any other person who was entitled to pay
4 the taxes on, any real estate for which a tax lien thereon
5 was 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 deputy commissioner the following
8 amounts: (1) An amount equal to the taxes, interest and
9 charges due on the date of the sale, with interest thereon at
10 the rate of one percent per month from the date of sale;
11 (2) all other taxes thereon, which have since been paid by
12 the purchaser, his heirs or assigns, with interest at the rate
13 of one percent per month from the date of payment; (3)
14 such additional expenses as may have been incurred in
15 preparing the list of those to be served with notice to re-
16 deem, and any title examination incident thereto, with
17 interest at the rate of one percent per month from the date
18 of payment, but the amount he shall be required to pay,
19 excluding said interest, for such expenses incurred for the
20 preparation of the list of those to be served with notice to

21 redeem required by section fifty-two of this article, and
22 any title examination incident thereto, shall not exceed two
23 hundred dollars; (4) all additional statutory costs paid by
24 the purchaser; and (5) the deputy commissioner's fee and
25 commission as provided by section sixty-six of this article.
26 Where the deputy commissioner has not received from the
27 purchaser satisfactory proof of the expenses incurred in
28 preparing the notice to redeem, and any examination of
29 title incident thereto, in the form of receipts or other evi-
30 dence thereof, the person redeeming shall pay the deputy
31 commissioner the sum of two hundred dollars plus interest
32 thereon at the rate of one percent per month from the date
33 of the sale for disposition pursuant to the provisions of
34 sections fifty-seven, fifty-eight and sixty-four of this arti-
35 cle. Upon payment to the deputy commissioner of those
36 and any other unpaid statutory charges required by this
37 article, and of any unpaid expenses incurred by the sher-
38 iff, the auditor and the deputy commissioner in the exer-
39 cise of their duties pursuant to this article, the deputy com-
40 missioner shall prepare an original and five copies of the
41 receipt for the payment and shall note on said receipts that
42 the property has been redeemed. The original of such
43 receipt shall be given to the person redeeming. The depu-
44 ty commissioner shall retain a copy of the receipt and
45 forward one copy each to the sheriff, assessor, the auditor
46 and the clerk of the county commission. The clerk shall
47 endorse on the receipt the fact and time of such filing and
48 note the fact of redemption on his record of delinquent
49 lands.

50 (b) Any person who, by reason of the fact that no
51 provision is made for partial redemption of the tax lien on
52 real estate purchased by an individual, is compelled in
53 order to protect himself to redeem the tax lien on all of
54 such real estate when it belongs, in whole or in part, to
55 some other person, shall have a lien on the interest of such
56 other person for the amount paid to redeem such interest.
57 He shall lose his right to the lien, however, unless within
58 thirty days after payment he shall file with the clerk of the
59 county commission his claim in writing against the owner
60 of such interest, together with the receipt provided for in
61 this section. The clerk shall docket the claim on the judg-

62 ment lien docket in his office and properly index the
63 same. Such lien may be enforced as other judgment liens
64 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 deliver to the sheriff
3 the redemption money paid and the name and address of
4 the purchaser, his heirs or assigns.

5 (b) Of the redemption money received by the sheriff
6 pursuant to this section, the sheriff shall hold as surplus to
7 be disposed of pursuant to section sixty-four of this article
8 an amount thereof equal to the amount of taxes, interest
9 and charges due on the date of the sale, plus the interest at
10 the rate of one percent per month thereon from the date
11 of sale to the date of redemption.

§11A-3-58. Distribution 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 deputy
3 commissioner has delivered the redemption money to the
4 sheriff pursuant to section fifty-seven of this article, the
5 sheriff shall, upon delivery of the sum necessary to re-
6 deem, promptly notify the purchaser, his heirs or assigns,
7 by mail, of the redemption and pay to the purchaser, his
8 heirs or assigns, the following amounts: (1) The amount
9 paid to the deputy commissioner at the sale; (2) all other
10 taxes thereon, which have since been paid by the purchas-
11 er, his heirs or assigns, with interest at the rate of one per-
12 cent per month from the date of payment; (3) such addi-
13 tional expenses as may have been incurred in preparing
14 the list of those to be served with notice to redeem, and
15 any title examination incident thereto, with interest at the
16 rate of one percent per month from the date of payment,
17 but the amount which shall be paid, excluding said inter-
18 est, for such expenses incurred for the preparation of the
19 list of those to be served with notice to redeem required by
20 section fifty-two of this article, and any title examination
21 incident thereto, shall not exceed two hundred dollars; and
22 (4) all additional statutory costs paid by the purchaser.

23 (b) (1) The notice shall include:

24 (A) A copy of the redemption certificate issued by the
25 deputy commissioner;

26 (B) An itemized statement of the redemption money
27 to which the purchaser is entitled pursuant to the provi-
28 sions of this section; and

29 (C) Where, at the time of the redemption, the deputy
30 commissioner has not received from the purchaser satis-
31 factory proof of the expenses incurred in preparing the
32 list of those to be served with notice to redeem and any
33 title examination incident thereto, the deputy commission-
34 er shall also include instructions to the purchaser as to how
35 these expenses may be claimed.

36 (2) Subject to the limitations of this section, the pur-
37 chaser is entitled to recover any expenses incurred in pre-
38 paring the list of those to be served with notice to redeem
39 and any title examination incident thereto from the date of
40 the sale to the date of the redemption.

41 (c) Where, pursuant to section fifty-six of this article,
42 the deputy commissioner has not received from the pur-
43 chaser satisfactory proof of the expenses incurred in pre-
44 paring the notice to redeem, and any title examination
45 incident thereto, in the form of receipts or other evidence
46 thereof, and therefore received from the purchaser as
47 required by said section and delivered to the sheriff the
48 sum of two hundred dollars plus interest thereon at the
49 rate of one percent per month from the date of the sale to
50 the date of redemption, and the sheriff has not received
51 from the purchaser such satisfactory proof of such ex-
52 penses within thirty days from the date of notification, the
53 sheriff shall refund such amount to the person redeeming
54 and the purchaser is barred from any claim thereto.
55 Where, pursuant to section fifty-six of this article, the dep-
56 uty commissioner has received from the purchaser and
57 therefore delivered to the sheriff said sum of two hundred
58 dollars plus interest thereon at the rate of one percent per
59 month from the date of the sale to the date of redemption,
60 and the purchaser provides the sheriff within thirty days
61 from the date of notification such satisfactory proof of

62 such expenses, and the amount of such expenses is less
 63 than the amount paid by the person redeeming, the sheriff
 64 shall refund the difference to the person redeeming.

§11A-3-59. Deed to purchaser; record.

1 If the real estate described in the notice is not re-
 2 deemed within the time specified therein, but in no event
 3 prior to thirty days after notices to redeem have been
 4 personally served, or an attempt of personal service has
 5 been made, or such notices have been mailed or, if neces-
 6 sary, published in accordance with the provisions of sec-
 7 tion fifty-five of this article, following the deputy commis-
 8 sioner's sale, the deputy commissioner shall, upon the
 9 request of the purchaser, make and deliver to the person
 10 entitled thereto a quitclaim deed for such real estate in
 11 form or effect as follows:

12 This deed, made this _____ day of _____,
 13 19____, by and between _____, deputy commis-
 14 sioner of delinquent and nonentered lands of
 15 _____ County, West Virginia, grantor, and
 16 _____, purchaser (or _____
 17 heir, devisee, assignee of _____,
 18 purchaser) grantee, witnesseth, that

19 Whereas, in pursuance of the statutes in such case
 20 made and provided, _____, deputy
 21 commissioner of delinquent and nonentered lands of
 22 _____ County, did, on the _____
 23 day of _____, 19____, sell the real estate
 24 hereinafter mentioned and described for the taxes delin-
 25 quent thereon for the year(s) 19____, (or as nonentered
 26 land for failure of the owner thereof to have the land en-
 27 tered on the land books for the years _____, or as
 28 property escheated to the State of West Virginia, or as
 29 waste or unappropriated property) for the sum of
 30 \$_____, that being the amount of
 31 purchase money paid to the deputy commissioner, and
 32 _____ (here insert name of purchaser) did be-
 33 come the purchaser of such real estate, which was returned
 34 delinquent in the name of _____
 35 (or nonentered in the name of, or escheated from the
 36 estate of, or which was discovered as waste or unappropri-

37 ated property); and

38 Whereas, the deputy commissioner has caused the
39 notice to redeem to be served on all persons required by
40 law to be served therewith; and

41 Whereas, the real estate so purchased has not been
42 redeemed in the manner provided by law and the time for
43 redemption set forth in such notice has expired.

44 Now, therefore, the grantor for and in consideration of
45 the premises recited herein, and pursuant to the provisions
46 of Article 3, Chapter 11A of the West Virginia Code, doth
47 grant unto _____, grantee, his
48 heirs and assigns forever, the real estate so purchased,
49 situate in the County of _____, bounded and
50 described as follows: _____
51 (here insert description of property)

52 Witness the following signature:

53 _____

54 Deputy Commissioner of Delinquent and Nonentered
55 Lands of _____ County

56 Except when ordered to do so as provided in section
57 sixty of this article, the deputy commissioner shall not
58 execute and deliver a deed more than thirty days after the
59 purchaser's right to the deed accrued.

60 For the preparation and execution of the deed and for
61 all the recording required by this section, a fee of fifty
62 dollars and the recording expenses shall be charged, to be
63 paid by the grantee upon delivery of the deed. The deed,
64 when duly acknowledged or proven, shall be recorded by
65 the clerk of the county commission in the deed book in
66 his office, together with the assignment from the purchas-
67 er, if one was made, the notice to redeem, the return of
68 service of such notice, the affidavit of publication, if the
69 notice was served by publication, and any return receipts
70 for notices sent by 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 request-
4 ing the notice may, at any time within two weeks after
5 discovery of such failure or refusal, but in no event later
6 than sixty days following the date the person requested
7 that notice be prepared and served, apply by petition to
8 the circuit court of the county for an order compelling the
9 deputy commissioner to prepare and serve the notice or
10 appointing a commissioner to do so. If the person re-
11 questing the notice fails to make such application within
12 the time allowed, he shall lose his right to the notice, but
13 his rights against the deputy commissioner under the pro-
14 visions of section sixty-seven of this article shall not be
15 affected. Notice given pursuant to an order of the court
16 or judge shall be valid for all purposes as if given within
17 the time required by section fifty-five of this article.

18 If the deputy commissioner fails or refuses to prepare
19 and execute the deed as required in the preceding section,
20 the person requesting the deed may, at any time after such
21 failure or refusal, but not more than six months after his
22 right to the deed accrued, apply by petition to the circuit
23 court of the county for an order compelling the deputy
24 commissioner to prepare and execute the deed or appoint-
25 ing a commissioner to do so. If the person requesting the
26 deed fails to make such application within the time al-
27 lowed, he shall lose his right to the deed, but his rights
28 against deputy commissioner under the provisions of
29 section sixty-seven of this article shall remain unaffected.
30 Any deed executed pursuant to an order of the court shall
31 have the same force and effect as if executed and deliv-
32 ered by the deputy commissioner within the time specified
33 in the preceding section.

34 Ten days' written notice of every such application
35 must be given to the deputy commissioner. If, upon the
36 hearing of such application, the court is of the opinion
37 that the applicant is not entitled to the notice or deed re-
38 quested, the petition shall be dismissed at his costs; but, if
39 the court is of the opinion that he is entitled to such notice
40 or deed, then, upon his deposit with the clerk of the circuit
41 court of a sum sufficient to cover the costs of preparing
42 and serving the notice, unless such a deposit has already

43 been made with the deputy commissioner, an order shall
44 be made by the court directing the deputy commissioner
45 to prepare and serve the notice or execute the deed, or
46 appointing a commissioner for the purpose, as the court or
47 judge shall determine. The order shall be filed with the
48 clerk of the circuit court and entered in the civil order
49 book. If it appears to the court that the failure or refusal
50 of the deputy commissioner was without reasonable cause,
51 judgment shall be given against him for the costs of the
52 proceedings, otherwise the costs shall be paid by the appli-
53 cant.

54 Any commissioner appointed under the provisions of
55 this section shall be subject to the same liabilities as the
56 deputy commissioner. For the preparation of the notice to
57 redeem, he shall be entitled to the same fee as is provided
58 for the deputy commissioner. For the preparation and
59 execution of the deed, he shall also be entitled to a fee of
60 fifty dollars and recording expenses to be paid by the
61 grantee upon delivery of the deed.

§11A-3-61. One deed for adjoining pieces of real estate within the same tax district.

1 Whenever one purchaser at the tax sale has purchased
2 tax liens on two or more adjoining pieces of real estate
3 within the same tax district, or undivided interests therein,
4 charged with taxes for the same year, or years, he, his heirs
5 or assigns, may request the deputy commissioner to exe-
6 cute a separate deed for each adjoining piece of real estate
7 within the same tax district, or undivided interest therein,
8 or separate deeds for some and one deed for the remain-
9 der, or one deed for all, as he or they may prefer. Every
10 deed for two or more adjoining pieces of real estate within
11 the same tax district, or undivided interests therein, shall
12 describe each piece of real estate and each undivided in-
13 terest separately.

§11A-3-64. Sheriff to receive proceeds of deputy commissioners' 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

3 forty-five and forty-eight of this article, and all redemp-
4 tion money paid to the deputy commissioner pursuant to
5 this article. All funds to be paid to the deputy commis-
6 sioner pursuant to sections forty-five, forty-eight and
7 fifty-six of this article shall be paid by check or money
8 order payable to the sheriff of the county. The deputy
9 commissioner shall, immediately upon receipt of any such
10 payment, turn such moneys over to the sheriff.

11 (b) The sheriff shall keep in a separate fund, to be
12 known and designated the "Delinquent Nonentered Land
13 Fund", the proceeds of all redemptions and sales paid to
14 him under the provisions of sections forty-five, forty-eight
15 and fifty-six of this article. Out of the total proceeds of
16 each sale or redemption he shall, in the order of priority
17 stated below, credit the following amount for payment as
18 hereinafter provided: (1) To the deputy commissioner,
19 such part as represents compensation due him under the
20 provisions of section sixty-six of this article and the
21 charge for the cost of preparing and publishing the notice
22 required in section forty-six of this article; (2) to the audi-
23 tor, such part as represents any charges which were paid
24 by or which are payable to him; (3) to the general county
25 fund, such part as represents costs paid out of such fund
26 for publishing the sheriff's delinquent and sales list and all
27 other costs incurred by the sheriff pursuant to the provi-
28 sions of this article; and (4) to the auditor for credit to the
29 general school fund, such part as represents all taxes and
30 interest chargeable in respect to any nonentered lands and
31 all surplus proceeds of sale of any waste and unappropri-
32 ated lands. In addition thereto, surplus proceeds from the
33 deputy commissioner's sale of delinquent and nonentered
34 lands, as well as the proceeds from the sale of escheated
35 lands, shall be held by the sheriff for the periods provided
36 in section sixty-five of this article and section seven, article
37 four of this chapter, and if no claim is made therefore to
38 the sheriff within the time therein specified, such amounts
39 shall be paid to the auditor for credit to the general school
40 fund.

41 The balance, if any, of the proceeds of the lands sold
42 by the deputy commissioner shall be prorated among the
43 various taxing units on the basis of the total amount of

44 taxes due them in respect to the lands that were sold or
45 redeemed. The amounts so determined shall be credited
46 as follows, for payment as hereinafter provided: (1) To
47 the auditor, such part as represents state taxes and interest;
48 and (2) to the fund kept by the sheriff for each local tax-
49 ing unit, such part as represents taxes and interest payable
50 to such unit.

51 (c) All amounts which under the provisions of this
52 section were so credited by the sheriff to the deputy com-
53 missioner shall be paid to him quarterly; those credited to
54 the auditor shall be paid to him quarterly; and those cred-
55 ited to the various local taxing units shall be transferred
56 quarterly by the sheriff to the fund kept by him for each
57 such taxing unit.

58 (d) The tax commissioner, in cooperation with the
59 land department in the auditor's office, shall prescribe the
60 form of the records to be kept by the sheriff for the pur-
61 poses of this section, and the method to be used by him in
62 making the necessary pro rata distributions.

§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 item
3 certified to him by the auditor pursuant to section
4 forty-four of this article. In addition thereto he shall re-
5 ceive a commission of fifteen percent on each sale or
6 redemption, whichever is greater. A commission received
7 on a sale shall be based on the sale price and a commis-
8 sion received on a redemption shall be based on the total
9 taxes and interest due. Such compensation shall be paid
10 as provided in this article.

§11A-3-69. Effect of repeal.

1 The repeal of the provisions of sections thirty-nine,
2 thirty-nine-a, thirty-nine-b and forty-one, article four of
3 this chapter which was affected by the recodification of
4 this article and article four of this chapter as the result of
5 the enactment of chapter eighty-seven, acts of the Legisla-
6 ture, regular session, one thousand nine hundred
7 ninety-four, shall not be construed to affect any right

8 established or accrued pursuant to those provisions.

§11A-3-70. Release of title to, and taxes on, lands on which all taxes paid for ten years.

1 In view of the desirability of stable land titles and to
2 encourage landowners to cause their lands to be assessed
3 and pay the taxes thereon, it is the purpose and intent of
4 the Legislature to release all of the state's title and claim
5 and the authority and control of the auditor to any real
6 estate on which all taxes have been paid for ten consecu-
7 tive years and release all taxes prior to such ten-year peri-
8 od. If, heretofore or hereafter, all taxes due on any parcel
9 of land for ten consecutive years have been fully paid, all
10 title to any such land acquired by the state prior to said
11 ten-year period or all real property tax liens which subject
12 the lands to the authority and control of the auditor prior
13 to said ten-year period shall be and is hereby released to
14 the person who would be the owner thereof but for the
15 title of the state or the real property tax liens which subject
16 the lands to the authority and control of the auditor so
17 released and all unpaid taxes prior to said ten-year period
18 are declared to be fully paid.

19 Nothing contained in this section shall affect or be
20 held or construed to affect in any way the right or title of
21 a person claiming to any land by transfer as provided in
22 section three, article XIII of the constitution of the state of
23 West Virginia prior to the repeal of said constitutional
24 provision in the year one thousand nine hundred
25 ninety-two.

26 It is the intention of the Legislature that this section
27 shall be both retroactive and prospective..

§11A-3-71. Deeds of deputy commissioner conveying coal, oil, gas, timber and other natural resources.

1 In any deed by the deputy commissioner in which said
2 commissioner conveys or has heretofore conveyed coal,
3 oil, gas, timber or any natural resources, as certified to him
4 by the auditor of the state to be sold for the benefit of the
5 school fund or as otherwise provided in this article, it shall
6 not be necessary to recite the mining, drilling, cutting or

7 other rights and privileges appurtenant to the same, which
8 were a part of the deed of severance of said natural re-
9 sources from the surface or other estate; and in cases
10 where any such deeds may have heretofore been made
11 and the rights and privileges were not recited in such
12 deeds, the rights and privileges are hereby declared to
13 have attached and passed by such deeds and all such con-
14 veyances are hereby ratified and confirmed.

§11A-3-72. Release of taxes and interest.

1 In view of the great uncertainty and confusion existing
2 in the auditor's records of delinquent lands for the years
3 prior to one thousand nine hundred thirty-six, due to the
4 insufficient and inadequate reports by former school land
5 commissioners and the doubtful status of delinquent or
6 forfeited undivided interests, the Legislature finds that it
7 will be impossible to provide a speedy method for dispos-
8 ing of delinquent and forfeited lands and for conveying to
9 the purchasers of such lands a secure title, unless some
10 action is taken to prevent the certifications and sale of
11 lands which were formerly redeemed from or were sold by
12 such commissioners, but which appear on the auditor's
13 records, as unsold and unredeemed. Wherefore, it is the
14 purpose and intent of the Legislature to release all taxes,
15 interest and charges that may be due on any real estate in
16 this state for the assessment year one thousand nine hun-
17 dred thirty-five and for all years prior thereto, and all such
18 taxes, interest and charges are hereby declared to be fully
19 paid. If all the taxes due on any land for the assessment
20 year one thousand nine hundred thirty-six and for all
21 years subsequent thereto have been paid, all title to any
22 such land theretofore acquired by the state and any land
23 subject to the authority and control of the auditor shall be
24 and is hereby released.

25 The auditor, in computing the amount necessary for
26 redemption as provided in section thirty-eight of this arti-
27 cle, and in preparing the list of lands for certification to
28 the deputy commissioner as provided in section forty-four
29 of this article, shall use the assessment year one thousand
30 nine hundred thirty-six as the initial year for which taxes
31 are to be charged. He shall specify the year in which the

32 state acquired title, but if such year was prior to the year
33 one thousand nine hundred thirty-six, shall charge no
34 taxes for any year prior thereto, nor shall he charge any
35 interest, fees, penalties or costs for any years prior to the
36 year one thousand nine hundred thirty-six.

37 Nothing contained in this section shall be held or
38 construed to affect in any way the right of a person claim-
39 ing title to any land by transfer, as provided in section
40 three, article XIII of the constitution of West Virginia prior
41 to the repeal of said constitutional provision in the year
42 one thousand nine hundred ninety-two.

**§11A-3-73. Release of taxes, interest and charges on land
assessed by erroneous description, etc; misde-
scription, etc., not to result in forfeiture or
subject land to the authority and control of the
auditor.**

1 In view of the large number of lots, parcels and tracts
2 of land in this state which are entered on the land books
3 by descriptions, or statement of interest or estate, or name
4 of owner, or in a taxing district, which are erroneous or
5 deficient in various particulars and the large number of
6 lots, parcels and tracts of land in this state, and interests
7 and estates therein, which appear on the land books by
8 entries which have been or may be considered to be irreg-
9 ular, erroneous, invalid or void in various particulars be-
10 cause of the way in which the name of the owner, the area,
11 the lot or tract number or reference, the local description,
12 the statement of the interest or estate and other particulars
13 are stated, or because the entries are in the wrong taxing
14 district; and the uncertainty which exists as to whether the
15 payment of taxes thereon prevents the land intended to be
16 assessed from having been forfeited for nonentry or be
17 subject to the authority and control of the auditor pursu-
18 ant to section thirty-seven of this article; and in view of the
19 necessity for permitting the owners of such land to pay
20 taxes thereon in safety and to relieve from and avoid dou-
21 ble payment of taxes on the same land in such cases, it is
22 the purpose and intent of the Legislature to, and it hereby
23 does, release all taxes and charges that may be or become
24 due or unpaid, or considered to be or become due or

25 unpaid, on any such lot, parcel or tract of land in this state
26 for each year that the taxes charged thereon under such
27 entry have been or shall be paid, even though the entry be
28 entirely different in description or otherwise from the land
29 intended or be completely deficient, provided the identity
30 of the land intended by such entry can be ascertained. All
31 title which has been acquired by the state of West Virginia
32 by forfeiture of land or lands which are subject to the
33 authority and control of the auditor because of any such
34 entry for any such year is hereby released and granted to
35 the owner of such land in all cases where the identity of
36 the land intended by such entry can be ascertained. No
37 such entry heretofore or hereafter made for any such year
38 shall constitute, or be considered to constitute, a failure of
39 the owner of such land to have the same entered on the
40 land books and to have himself charged with taxes there-
41 on, or an omission of the same from the land books, or
42 shall result in, or be considered to have resulted in a for-
43 feiture for nonentry of the land or be considered to sub-
44 ject the land to the authority and control of the auditor
45 intended by such entry if the identity of the land intended
46 by such entry can be ascertained. Such identity may be
47 ascertained by any available evidence, parole or written, of
48 record or not of record, including, but not limited to, trac-
49 ing back prior years land book entries and valuations to a
50 transfer to the present or a former owner, notations on the
51 land books and other records in the office of the assessor
52 for the current and prior years, conveyances to and from
53 the present and former owners, and all pertinent evidence
54 not within the foregoing classes. The provisions of this
55 section are remedial and shall be liberally construed for
56 the relief of landowners.

§11A-3-74. Severability.

1 If any section, subsection, subdivision, subparagraph,
2 sentence or clause of this article is adjudged to be uncon-
3 stitutional or otherwise invalid, such invalidation shall not
4 affect the validity of the remaining portions of this article
5 and, to this end, the provisions of this article are hereby
6 declared to be severable.

CHAPTER 248

(S. B. 173—By Senators Whitlow, Helmick, Walker, Plymale,
Blatnik, Sharpe, Boley, Dugan, Kimble and Minear)

[Passed February 6, 1995; 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-three; 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 laws
3 of the United States relating to federal income taxes, un-
4 less a different meaning is clearly required by the context
5 or by definition in this article. Any reference in this arti-
6 cle to the laws of the United States shall mean the provi-
7 sions of the Internal Revenue Code of 1986, as amended,
8 and such other provisions of the laws of the United States
9 as relate to the determination of income for federal in-
10 come tax purposes. All amendments made to the laws of
11 the United States prior to the first day of January, one
12 thousand nine hundred ninety-five, shall be given effect in
13 determining the taxes imposed by this article for any tax-
14 able year beginning the first day of January, one thousand
15 nine hundred ninety-four, or thereafter, but no amend-
16 ment to the laws of the United States made on or after the
17 first day of January, one thousand nine hundred
18 ninety-five, shall be given any effect.

19 (b) The term "Internal Revenue Code of 1986" means
20 the Internal Revenue Code of the United States enacted by
21 the "Federal Tax Reform Act of 1986" and includes the
22 provisions of law formerly known as the Internal Revenue
23 Code of 1954, as amended, and in effect when the "Feder-
24 al Tax Reform Act of 1986" was enacted, that were not
25 amended or repealed by the "Federal Tax Reform Act of
26 1986". Except when inappropriate, any references in any
27 law, executive order or other document:

28 (1) To the Internal Revenue Code of 1954 shall in-
29 clude reference to the Internal Revenue Code of 1986;
30 and

31 (2) To the Internal Revenue Code of 1986 shall in-
32 clude a reference to the provisions of law formerly known
33 as the Internal Revenue Code of 1954.

34 (c) *Effective date.* — The amendments to this section
35 enacted in the year one thousand nine hundred ninety-five
36 shall be retroactive and shall apply to taxable years begin-
37 ning on or after the first day of January, one thousand
38 nine hundred ninety-four, to the extent allowable under
39 federal income tax law. With respect to taxable years that
40 begin prior to the first day of January, one thousand nine
41 hundred ninety-four, the law in effect for each of those
42 years shall be fully preserved as to such year.

CHAPTER 249

(S. B. 441—By Senator Grubb)

[Passed March 11, 1995; in effect ninety days from passage.
Became law without the Governor's signature.]

AN ACT to amend and reenact sections one hundred five and two hundred six, article one, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one hundred four,

article four of said chapter; to amend and reenact section one hundred fourteen, article five of said chapter; to amend and reenact article eight of said chapter; to amend and reenact sections one hundred three, one hundred five, one hundred six, two hundred three, three hundred one, three hundred two, three hundred four, three hundred five, three hundred six, three hundred nine and three hundred twelve, article nine of said chapter; and to further amend said article by adding thereto two new sections, designated sections one hundred fifteen and one hundred sixteen, all relating to the uniform commercial code (UCC); investment securities; territorial application of the UCC; parties' power to choose applicable law; statute of frauds for kinds of personal property not otherwise covered; bank deposits and collections; definitions; letters of credit; issuer's duty and privilege to honor; right to reimbursement; investment securities; short title; definitions; rules for determining whether certain obligations and interests are securities or financial assets; acquisition of security or financial asset or interest therein; notice of adverse claim; control; whether indorsement, instruction or entitlement order is effective; warranties in direct holding; warranties in indirect holding; applicability; choice of law; clearing corporation rules; creditor's legal process; statute of frauds inapplicable; evidentiary rules concerning certificated securities; securities intermediary and others not liable to adverse claimant; securities intermediary as purchaser for value; issuer; issuer's responsibility and defenses; notice of defect or defense; staleness as notice of defect or defense; effect of issuer's restriction on transfer; effect of unauthorized signature on security certificate; completion or alteration of security certificate; rights and duties of issuer with respect to registered owners; effect of signature of authenticating trustee, registrar or transfer agent; issuer's lien; overissue; transfer of certificated and uncertificated securities; delivery; rights of purchaser; protected purchaser; indorsement; instruction; effect of guaranteeing signature, indorsement or instruction; purchaser's right to requisites for registration of transfer; registration; duty of issuer to register transfer; assurance that indorsement or instruction is effective; demand that issuer not register transfer; wrongful registration; replacement of

lost, destroyed or wrongfully taken security certificate; obligation to notify issuer of lost, destroyed or wrongfully taken security certificate; authenticating trustee, transfer agent and registrar; security entitlements; securities account; acquisition of security entitlement from securities intermediary; assertion of adverse claim against entitlement holder; property interest of entitlement holder in financial asset held by securities intermediary; duty of securities intermediary to maintain financial asset; duty of securities intermediary with respect to payments and distributions; duty of securities intermediary to exercise rights as directed by entitlement holder; duty of securities intermediary to comply with entitlement order; duty of securities intermediary to change entitlement holder's position to other form of security holding; specification of duties of securities intermediary by other statute or regulation; manner of performance of duties by securities intermediary and exercise of rights of entitlement holder; rights of purchaser of security entitlement from entitlement holder; priority among security interests and entitlement holders; savings clause; secured transactions and sales of accounts and chattel paper; perfection of security interests in multiple state transactions; definitions; account and general intangibles defined; investment property; security interest arising in purchase or delivery of financial asset; attachment and enforceability of security interest; proceeds; formal requisites; persons who take priority over unperfected security interests; rights of lien creditor; when filing is required to perfect security interest; security interests to which filing provisions of this article do not apply; perfection of security interest in instruments, documents and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession; when possession by secured party perfects security interest without filing; proceeds; secured party's rights on disposition of collateral; protection of purchasers of instruments, documents and securities; and priorities among conflicting security interests in the same collateral.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **General Provisions.**
4. **Bank Deposits and Collections.**
5. **Letters of Credit.**
8. **Investment Securities.**
9. **Secured Transactions; Sales of Accounts and Chattel Paper.**

ARTICLE 1. GENERAL PROVISIONS.

- §46-1-105. Territorial application of this chapter; parties' power to choose applicable law.
- §46-1-206. Statute of frauds for kinds of personal property not otherwise covered.

§46-1-105. Territorial application of this chapter; parties' power to choose applicable law.

1 (1) Except as provided hereafter in this section, when a
 2 transaction bears a reasonable relation to this state and also
 3 to another state or nation the parties may agree that the
 4 law either of this state or of such other state or nation shall
 5 govern their rights and duties. Failing such agreement this
 6 chapter applies to transactions bearing an appropriate
 7 relation to this state.

8 (2) Where one of the following provisions of this
 9 chapter specifies the applicable law, that provision governs
 10 and a contrary agreement is effective only to the extent
 11 permitted by the law (including the conflict of laws rules)

12 so specified:

13 Rights of creditors against sold goods. Section 2-402.

14 Applicability of the article on bank deposits and col-
15 lections. Section 4-102.

16 Applicability of the article on investment securities.
17 Section 8-110.

18 Perfection provisions of the article on secured transac-
19 tions. Section 9-103.

§46-1-206. Statute of frauds for kinds of personal property not otherwise covered.

1 (1) Except in the cases described in subsection (2) of
2 this section a contract for the sale of personal property is
3 not enforceable by way of action or defense beyond five
4 thousand dollars in amount or value of remedy unless
5 there is some writing which indicates that a contract for
6 sale has been made between the parties at a defined or
7 stated price, reasonably identifies the subject matter, and is
8 signed by the party against whom enforcement is sought
9 or by his authorized agent.

10 (2) Subsection (1) of this section does not apply to
11 contracts for the sale of goods (section 2-201) nor of
12 securities (section 8-113) nor to security agreements
13 (section 9-203).

ARTICLE 4. BANK DEPOSITS AND COLLECTIONS.

§46-4-104. Definitions and index of definitions.

1 (a) In this article unless the context otherwise requires:

2 (1) "Account" means any deposit or credit account
3 with a bank, including demand, time, savings, passbook,
4 share draft, or like account, other than an account evi-
5 denced by a certificate of deposit;

6 (2) "Afternoon" means the period of a day between
7 noon and midnight;

8 (3) "Banking day" means the part of a day on which a
9 bank is open to the public for carrying on substantially all
10 of its banking functions;

11 (4) "Clearing house" means an association of banks or
12 other payors regularly clearing items;

13 (5) "Customer" means a person having an account with
14 a bank or for whom a bank has agreed to collect items,
15 including a bank that maintains an account at another
16 bank;

17 (6) "Documentary draft" means a draft to be presented
18 for acceptance or payment if specified documents, certifi-
19 cated securities (section 8-102) or instructions for
20 uncertificated securities (section 8-102), or other certifi-
21 cates, statements or the like are to be received by the draw-
22 ee or other payor before acceptance or payment of the
23 draft;

24 (7) "Draft" means a draft as defined in section 3-104
25 or an item, other than an instrument, that is an order;

26 (8) "Drawee" means a person ordered in a draft to
27 make payment;

28 (9) "Item" means an instrument or a promise or order
29 to pay money handled by a bank for collection or pay-
30 ment. The term does not include a payment order gov-
31 erned by article four-a or a credit or debit card slip;

32 (10) "Midnight deadline" with respect to a bank is
33 midnight on its next banking day following the banking
34 day on which it receives the relevant item or notice or
35 from which the time for taking action commences to run,
36 whichever is later;

37 (11) "Settle" means to pay in cash, by clearing-house
38 settlement, in a charge or credit or by remittance, or other-
39 wise as agreed. A settlement may be either provisional or
40 final;

41 (12) "Suspends payments" with respect to a bank

42 means that it has been closed by order of the supervisory
43 authorities, that a public officer has been appointed to take
44 it over or that it ceases or refuses to make payments in the
45 ordinary course of business.

46 (b) Other definitions applying to this article and the
47 sections in which they appear are:

48	"Agreement for electronic	
49	presentment"	Section 4-110.
50	"Bank"	Section 4-105.
51	"Collecting bank"	Section 4-105.
52	"Depository bank"	Section 4-105.
53	"Intermediary bank"	Section 4-105.
54	"Payor bank"	Section 4-105.
55	"Presenting bank"	Section 4-105.
56	"Presentment notice"	Section 4-110.

57 (c) The following definitions in other articles of this
58 chapter apply to this article:

59	"Acceptance"	Section 3-409.
60	"Alteration"	Section 3-407.
61	"Cashier's check"	Section 3-104.
62	"Certificate of deposit"	Section 3-104.
63	"Certified check"	Section 3-409.
64	"Check"	Section 3-104.
65	"Draft"	Section 3-104.
66	"Good faith"	Section 3-103.
67	"Holder in due course"	Section 3-302.
68	"Instrument"	Section 3-104.

69	"Notice of dishonor"	Section 3-503.
70	"Order"	Section 3-103.
71	"Ordinary care"	Section 3-103.
72	"Person entitled to enforce"	Section 3-301.
73	"Presentment"	Section 3-501.
74	"Promise"	Section 3-103.
75	"Prove"	Section 3-103.
76	"Teller's check"	Section 3-104.
77	"Unauthorized signature"	Section 3-403.
78	(d) In addition, article one contains general defini-	
79	tions and principles of construction and interpretation	
80	applicable throughout this article.	

ARTICLE 5. LETTERS OF CREDIT.

§46-5-114. Issuer's duty and privilege to honor; right to reimbursement.

1 (1) An issuer must honor a draft or demand for pay-
2 ment which complies with the terms of the relevant credit
3 regardless of whether the goods or documents conform to
4 the underlying contract for sale or other contract between
5 the customer and the beneficiary. The issuer is not ex-
6 cused from honor of such a draft or demand by reason of
7 an additional general term that all documents must be
8 satisfactory to the issuer, but an issuer may require that
9 specified documents must be satisfactory to it.

10 (2) Unless otherwise agreed when documents appear
11 on their face to comply with the terms of a credit but a
12 required document does not in fact conform to the war-
13 ranties made on negotiation or transfer of a document of
14 title (section 7-507) or of a certificated security (section
15 8-108) or is forged or fraudulent or there is fraud in the
16 transaction:

17 (a) The issuer must honor the draft or demand for
18 payment if honor is demanded by a negotiating bank or
19 other holder of the draft or demand which has taken the
20 draft or demand under the credit and under circumstances
21 which would make it a holder in due course (section
22 3-302) and in an appropriate case would make it a person
23 to whom a document of title has been duly negotiated
24 (section 7-502) or a bona fide purchaser of a certificated
25 security (section 8-302); and

26 (b) In all other cases as against its customer, an issuer
27 acting in good faith may honor the draft or demand for
28 payment despite notification from the customer of fraud,
29 forgery or other defect not apparent on the face of the
30 documents but a court of appropriate jurisdiction may
31 enjoin such honor.

32 (3) Unless otherwise agreed an issuer which has duly
33 honored a draft or demand for payment is entitled to
34 immediate reimbursement of any payment made under
35 the credit and to be put in effectively available funds not
36 later than the day before maturity of any acceptance made
37 under the credit.

38 (4) When a credit provides for payment by the issuer
39 on receipt of notice that the required documents are in the
40 possession of a correspondent or other agent of the issuer:

41 (a) Any payment made on receipt of such notice is
42 conditional; and

43 (b) The issuer may reject documents which do not
44 comply with the credit if it does so within three banking
45 days following its receipt of the documents; and

46 (c) In the event of such rejection, the issuer is entitled
47 by charge-back or otherwise to return of the payment
48 made.

49 (5) In the case covered by subsection (4) of this sec-
50 tion failure to reject documents within the time specified
51 in subdivision (b) of said subsection constitutes acceptance
52 of the documents and makes the payment final in favor of
53 the beneficiary.

ARTICLE 8. INVESTMENT SECURITIES.**PART 1. SHORT TITLE AND GENERAL MATTERS.**

- §46-8-101. Short title.
- §46-8-102. Definitions.
- §46-8-103. Rules for determining whether certain obligations and interests are securities or financial assets.
- §46-8-104. Acquisition of security or financial asset or interest therein.
- §46-8-105. Notice of adverse claim.
- §46-8-106. Control.
- §46-8-107. Whether indorsement, instruction or entitlement order is effective.
- §46-8-108. Warranties in direct holding.
- §46-8-109. Warranties in indirect holding.
- §46-8-110. Applicability; choice of law.
- §46-8-111. Clearing corporation rules.
- §46-8-112. Creditor's legal process.
- §46-8-113. Statute of frauds inapplicable.
- §46-8-114. Evidentiary rules concerning certificated securities.
- §46-8-115. Securities intermediary and others not liable to adverse claimant.
- §46-8-116. Securities intermediary as purchaser for value.
- §46-8-201. Issuer.
- §46-8-202. Issuer's responsibility and defenses; notice of defect or defense.
- §46-8-203. Staleness as notice of defect or defense.
- §46-8-204. Effect of issuer's restriction on transfer.
- §46-8-205. Effect of unauthorized signature on security certificate.
- §46-8-206. Completion or alteration of security certificate.
- §46-8-207. Rights and duties of issuer with respect to registered owners.
- §46-8-208. Effect of signature of authenticating trustee, registrar, or transfer agent.
- §46-8-209. Issuer's lien.
- §46-8-210. Overissue.
- §46-8-301. Delivery.
- §46-8-302. Rights of purchaser.
- §46-8-303. Protected purchaser.
- §46-8-304. Indorsement.
- §46-8-305. Instruction.
- §46-8-306. Effect of guaranteeing signature, indorsement, or instruction.
- §46-8-307. Purchaser's right to requisites for registration of transfer.
- §46-8-401. Duty of issuer to register transfer.
- §46-8-402. Assurance that indorsement or instruction is effective.
- §46-8-403. Demand that issuer not register transfer.
- §46-8-404. Wrongful registration.

- §46-8-405. Replacement of lost, destroyed, or wrongfully taken security certificate.
- §46-8-406. Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate.
- §46-8-407. Authenticating trustee, transfer agent, and registrar.
- §46-8-501. Securities account; acquisition of security entitlement from securities intermediary.
- §46-8-502. Assertion of adverse claim against entitlement holder.
- §46-8-503. Property interest of entitlement holder in financial asset held by securities intermediary.
- §46-8-504. Duty of securities intermediary to maintain financial asset.
- §46-8-505. Duty of securities intermediary with respect to payments and distributions.
- §46-8-506. Duty of securities intermediary to exercise rights as directed by entitlement holder.
- §46-8-507. Duty of securities intermediary to comply with entitlement order.
- §46-8-508. Duty of securities intermediary to change entitlement holder's position to other form of security holding.
- §46-8-509. Specification of duties of securities intermediary by other statute or regulation; manner of performance of duties of securities intermediary and exercise of rights of entitlement holder.
- §46-8-510. Rights of purchaser of security entitlement from entitlement holder.
- §46-8-511. Priority among security interests and entitlement holders.
- §46-8-610. Saving clause.

§46-8-101. Short title.

- 1 This article may be cited as uniform commercial
2 code—investment securities.

§46-8-102. Definitions.

- 1 (a) In this article:

2 (1) "Adverse claim" means a claim that a claimant has
3 a property interest in a financial asset and that it is a viola-
4 tion of the rights of the claimant for another person to
5 hold, transfer, or deal with the financial asset.

6 (2) "Bearer form", as applied to a certificated security,
7 means a form in which the security is payable to the bear-
8 er of the security certificate according to its terms but not
9 by reason of an indorsement.

10 (3) "Broker" means a person defined as a broker or
11 dealer under the federal securities laws, but without ex-
12 cluding a bank acting in that capacity.

13 (4) "Certificated security" means a security that is
14 represented by a certificate.

15 (5) "Clearing corporation" means:

16 (i) A person that is registered as a "clearing agency"
17 under the federal securities laws;

18 (ii) A federal reserve bank; or

19 (iii) Any other person that provides clearance or set-
20 tlement services with respect to financial assets that would
21 require it to register as a clearing agency under the federal
22 securities laws but for an exclusion or exemption from the
23 registration requirement, if its activities as a clearing cor-
24 poration, including promulgation of rules, are subject to
25 regulation by a federal or state governmental authority.

26 (6) "Communicate" means to:

27 (i) Send a signed writing; or

28 (ii) Transmit information by any mechanism agreed
29 upon by the persons transmitting and receiving the infor-
30 mation.

31 (7) "Entitlement holder" means a person identified in
32 the records of a securities intermediary as the person hav-
33 ing a security entitlement against the securities intermedi-
34 ary. If a person acquires a security entitlement by virtue
35 of section 8-501(b)(2) or (3), that person is the entitle-
36 ment holder.

37 (8) "Entitlement order" means a notification commu-
38 nicated to a securities intermediary directing transfer or
39 redemption of a financial asset to which the entitlement
40 holder has a security entitlement.

41 (9) "Financial asset", except as otherwise provided in
42 section 8-103, means:

- 43 (i) A security;
- 44 (ii) An obligation of a person or a share, participation,
45 or other interest in a person or in property or an enterprise
46 of a person, which is, or is of a type, dealt in or traded on
47 financial markets or which is recognized in any area in
48 which it is issued or dealt in as a medium for investment;
49 or
- 50 (iii) Any property that is held by a securities interme-
51 diary for another person in a securities account if the
52 securities intermediary has expressly agreed with the other
53 person that the property is to be treated as a financial asset
54 under this article. As context requires, the term means
55 either the interest itself or the means by which a person's
56 claim to it is evidenced, including a certificated or
57 uncertificated security, a security certificate or a security
58 entitlement.
- 59 (10) "Good faith", for purposes of the obligation of
60 good faith in the performance or enforcement of contracts
61 or duties within this article, means honesty in fact and the
62 observance of reasonable commercial standards of fair
63 dealing.
- 64 (11) "Indorsement" means a signature that alone or
65 accompanied by other words is made on a security certifi-
66 cate in registered form or on a separate document for the
67 purpose of assigning, transferring or redeeming the secu-
68 rity or granting a power to assign, transfer or redeem it.
- 69 (12) "Instruction" means a notification communicated
70 to the issuer of an uncertificated security which directs that
71 the transfer of the security be registered or that the securi-
72 ty be redeemed.
- 73 (13) "Registered form", as applied to a certificated
74 security, means a form in which:
- 75 (i) The security certificate specifies a person entitled
76 to the security; and
- 77 (ii) A transfer of the security may be registered upon

78 books maintained for that purpose by or on behalf of the
79 issuer, or the security certificate so states.

80 (14) "Securities intermediary" means:

81 (i) A clearing corporation; or

82 (ii) A person, including a bank or broker, that in the
83 ordinary course of its business maintains securities ac-
84 counts for others and is acting in that capacity.

85 (15) "Security", except as otherwise provided in sec-
86 tion 8-103, means an obligation of an issuer or a share,
87 participation or other interest in an issuer or in property or
88 an enterprise of an issuer:

89 (i) Which is represented by a security certificate in
90 bearer or registered form, or the transfer of which may be
91 registered upon books maintained for that purpose by or
92 on behalf of the issuer;

93 (ii) Which is one of a class or series or by its terms is
94 divisible into a class or series of shares, participations,
95 interests or obligations; and

96 (iii) Which:

97 (A) Is, or is of a type, dealt in or traded on securities
98 exchanges or securities markets; or

99 (B) Is a medium for investment and by its terms ex-
100 pressly provides that it is a security governed by this arti-
101 cle.

102 (16) "Security certificate" means a certificate repre-
103 senting a security.

104 (17) "Security entitlement" means the rights and prop-
105 erty interest of an entitlement holder with respect to a
106 financial asset specified in Part 5.

107 (18) "Uncertificated security" means a security that is
108 not represented by a certificate.

109 (b) Other definitions applying to this article and the
110 sections in which they appear are:

111	"Appropriate person"	Section 8-107
112	"Control"	Section 8-106
113	"Delivery"	Section 8-301
114	"Investment company security"	Section 8-103
115	"Issuer"	Section 8-201
116	"Overissue"	Section 8-210
117	"Protected purchaser"	Section 8-303
118	"Securities account"	Section 8-501

119 (c) In addition, article one contains general defini-
120 tions and principles of construction and interpretation
121 applicable throughout this article.

122 (d) The characterization of a person, business or
123 transaction for purposes of this article does not determine
124 the characterization of the person, business or transaction
125 for purposes of any other law, regulation or rule.

**§46-8-103. Rules for determining whether certain obligations
and interests are securities or financial assets.**

1 (a) A share or similar equity interest issued by a cor-
2 poration, business trust, joint stock company or similar
3 entity is a security.

4 (b) An "investment company security" is a security.
5 "Investment company security" means a share or similar
6 equity interest issued by an entity that is registered as an
7 investment company under the federal investment compa-
8 ny laws, an interest in a unit investment trust that is so
9 registered or a face-amount certificate issued by a
10 face-amount certificate company that is so registered.
11 Investment company security does not include an insur-
12 ance policy or endowment policy or annuity contract
13 issued by an insurance company.

14 (c) An interest in a partnership or limited liability
15 company is not a security unless it is dealt in or traded on
16 securities exchanges or in securities markets, its terms
17 expressly provide that it is a security governed by this
18 article or it is an investment company security. However,
19 an interest in a partnership or limited liability company is
20 a financial asset if it is held in a securities account.

21 (d) A writing that is a security certificate is governed
22 by this article and not by article three, even though it also
23 meets the requirements of that article. However, a negotia-
24 ble instrument governed by article three is a financial asset
25 if it is held in a securities account.

26 (e) An option or similar obligation issued by a clear-
27 ing corporation to its participants is not a security, but is a
28 financial asset.

29 (f) A commodity contract, as defined in section 9-115,
30 is not a security or a financial asset.

**§46-8-104. Acquisition of security or financial asset or interest
therein.**

1 (a) A person acquires a security or an interest therein,
2 under this article, if:

3 (1) The person is a purchaser to whom a security is
4 delivered pursuant to section 8-301; or

5 (2) The person acquires a security entitlement to the
6 security pursuant to section 8-501.

7 (b) A person acquires a financial asset, other than a
8 security, or an interest therein, under this article, if the
9 person acquires a security entitlement to the financial
10 asset.

11 (c) A person who acquires a security entitlement to a
12 security or other financial asset has the rights specified in
13 Part 5, but is a purchaser of any security, security entitle-
14 ment, or other financial asset held by the securities inter-
15 mediary only to the extent provided in section 8-503.

16 (d) Unless the context shows that a different meaning
17 is intended, a person who is required by other law, regula-
18 tion, rule or agreement to transfer, deliver, present, surren-
19 der, exchange or otherwise put in the possession of another
20 person a security or financial asset satisfies that require-
21 ment by causing the other person to acquire an interest in
22 the security or financial asset pursuant to subsection (a) or
23 (b) of this section.

§46-8-105. Notice of adverse claim.

1 (a) A person has notice of an adverse claim if:

2 (1) The person knows of the adverse claim;

3 (2) The person is aware of facts sufficient to indicate
4 that there is a significant probability that the adverse claim
5 exists and deliberately avoids information that would es-
6 tablish the existence of the adverse claim; or

7 (3) The person has a duty, imposed by statute or regu-
8 lation, to investigate whether an adverse claim exists, and
9 the investigation so required would establish the existence
10 of the adverse claim.

11 (b) Having knowledge that a financial asset or interest
12 therein is or has been transferred by a representative im-
13 poses no duty of inquiry into the rightfulness of a transac-
14 tion and is not notice of an adverse claim. However, a
15 person who knows that a representative has transferred a
16 financial asset or interest therein in a transaction that is, or
17 whose proceeds are being used, for the individual benefit
18 of the representative or otherwise in breach of duty has
19 notice of an adverse claim.

20 (c) An act or event that creates a right to immediate
21 performance of the principal obligation represented by a
22 security certificate or sets a date on or after which the
23 certificate is to be presented or surrendered for redemp-
24 tion or exchange does not itself constitute notice of an
25 adverse claim except in the case of a transfer more than:

26 (1) One year after a date set for presentment or sur-
27 render for redemption or exchange; or

28 (2) Six months after a date set for payment of money
29 against presentation or surrender of the certificate, if mon-
30 ey was available for payment on that date.

31 (d) A purchaser of a certificated security has notice of
32 an adverse claim if the security certificate:

33 (1) Whether in bearer or registered form, has been
34 indorsed "for collection" or "for surrender" or for some
35 other purpose not involving transfer; or

36 (2) Is in bearer form and has on it an unambiguous
37 statement that it is the property of a person other than the
38 transferor, but the mere writing of a name on the certifi-
39 cate is not such a statement.

40 (e) Filing of a financing statement under article nine is
41 not notice of an adverse claim to a financial asset.

§46-8-106. Control.

1 (a) A purchaser has "control" of a certificated security
2 in bearer form if the certificated security is delivered to
3 the purchaser.

4 (b) A purchaser has "control" of a certificated security
5 in registered form if the certificated security is delivered to
6 the purchaser and:

7 (1) The certificate is indorsed to the purchaser or in
8 blank by an effective indorsement; or

9 (2) The certificate is registered in the name of the
10 purchaser, upon original issue or registration of transfer
11 by the issuer.

12 (c) A purchaser has "control" of an uncertificated
13 security if:

14 (1) The uncertificated security is delivered to the
15 purchaser; or

16 (2) The issuer has agreed that it will comply with
17 instructions originated by the purchaser without further
18 consent by the registered owner.

19 (d) A purchaser has "control" of a security entitlement
20 if:

21 (1) The purchaser becomes the entitlement holder; or

22 (2) The securities intermediary has agreed that it will
23 comply with entitlement orders originated by the purchas-
24 er without further consent by the entitlement holder.

25 (e) If an interest in a security entitlement is granted
26 by the entitlement holder to the entitlement holder's own
27 securities intermediary, the securities intermediary has
28 control.

29 (f) A purchaser who has satisfied the requirements of
30 subdivision (2), subsection (c) of this section or subdivi-
31 sion (2), subsection (d) of this section has control even if
32 the registered owner in the case of subdivision (2), subsec-
33 tion (c) of this section), subsection (c) of this section or
34 the entitlement holder in the case of subdivision (2), sub-
35 section (d) of this section retains the right to make substi-
36 tutions for the uncertificated security or security entitle-
37 ment, to originate instructions or entitlement orders to the
38 issuer or securities intermediary, or otherwise to deal with
39 the uncertificated security or security entitlement.

40 (g) An issuer or a securities intermediary may not
41 enter into an agreement of the kind described in subdivi-
42 sion (2), subsection (c) of this section or subdivision (2),
43 subsection (d) of this section without the consent of the
44 registered owner or entitlement holder, but an issuer or a
45 securities intermediary is not required to enter into such
46 an agreement even though the registered owner or entitle-
47 ment holder so directs. An issuer or securities intermedi-
48 ary that has entered into such an agreement is not required
49 to confirm the existence of the agreement to another party
50 unless requested to do so by the registered owner or enti-
51 tlement holder.

§46-8-107. Whether indorsement, instruction or entitlement order is effective.

1 (a) "Appropriate person" means:

2 (1) With respect to an indorsement, the person speci-
3 fied by a security certificate or by an effective special
4 indorsement to be entitled to the security;

5 (2) With respect to an instruction, the registered owner
6 of an uncertificated security;

7 (3) With respect to an entitlement order, the entitle-
8 ment holder;

9 (4) If the person designated in subdivision (1), (2) or
10 (3) of this subsection is deceased, the designated person's
11 successor taking under other law or the designated per-
12 son's personal representative acting for the estate of the
13 decedent; or

14 (5) If the person designated in subdivision (1), (2) or
15 (3) of this subsection lacks capacity, the designated per-
16 son's guardian, conservator or other similar representative
17 who has power under other law to transfer the security or
18 financial asset.

19 (b) An indorsement, instruction or entitlement order
20 is effective if:

21 (1) It is made by the appropriate person;

22 (2) It is made by a person who has power under the
23 law of agency to transfer the security or financial asset on
24 behalf of the appropriate person, including, in the case of
25 an instruction or entitlement order, a person who has con-
26 trol under section 8-106(c)(2) or (d)(2); or

27 (3) The appropriate person has ratified it or is other-
28 wise precluded from asserting its ineffectiveness.

29 (c) An indorsement, instruction or entitlement order
30 made by a representative is effective even if:

31 (1) The representative has failed to comply with a
32 controlling instrument or with the law of the state having
33 jurisdiction of the representative relationship, including
34 any law requiring the representative to obtain court ap-
35 proval of the transaction; or

36 (2) The representative's action in making the indorse-
37 ment, instruction or entitlement order or using the pro-
38 ceeds of the transaction is otherwise a breach of duty.

39 (d) If a security is registered in the name of or spe-
40 cially indorsed to a person described as a representative, or
41 if a securities account is maintained in the name of a per-
42 son described as a representative, an indorsement, instruc-
43 tion or entitlement order made by the person is effective
44 even though the person is no longer serving in the de-
45 scribed capacity.

46 (e) Effectiveness of an indorsement, instruction or
47 entitlement order is determined as of the date the indorse-
48 ment, instruction or entitlement order is made, and an
49 indorsement, instruction or entitlement order does not
50 become ineffective by reason of any later change of cir-
51 cumstances.

§46-8-108. Warranties in direct holding.

1 (a) A person who transfers a certificated security to a
2 purchaser for value warrants to the purchaser, and an in-
3 dorser, if the transfer is by indorsement, warrants to any
4 subsequent purchaser, that:

5 (1) The certificate is genuine and has not been materi-
6 ally altered;

7 (2) The transferor or indorser does not know of any
8 fact that might impair the validity of the security;

9 (3) There is no adverse claim to the security;

10 (4) The transfer does not violate any restriction on
11 transfer;

12 (5) If the transfer is by indorsement, the indorsement
13 is made by an appropriate person or if the indorsement is
14 by an agent, the agent has actual authority to act on behalf
15 of the appropriate person; and

16 (6) The transfer is otherwise effective and rightful.

17 (b) A person who originates an instruction for regis-
18 tration of transfer of an uncertificated security to a pur-
19 chaser for value warrants to the purchaser that:

20 (1) The instruction is made by an appropriate person,
21 or if the instruction is by an agent, the agent has actual
22 authority to act on behalf of the appropriate person;

23 (2) The security is valid;

24 (3) There is no adverse claim to the security; and

25 (4) At the time the instruction is presented to the issu-
26 er:

27 (i) The purchaser will be entitled to the registration of
28 transfer;

29 (ii) The transfer will be registered by the issuer free
30 from all liens, security interests, restrictions and claims
31 other than those specified in the instruction;

32 (iii) The transfer will not violate any restriction on
33 transfer; and

34 (iv) The requested transfer will otherwise be effective
35 and rightful.

36 (c) A person who transfers an uncertificated security
37 to a purchaser for value and does not originate an instruc-
38 tion in connection with the transfer warrants that:

39 (1) The uncertificated security is valid;

40 (2) There is no adverse claim to the security;

41 (3) The transfer does not violate any restriction on
42 transfer; and

43 (4) The transfer is otherwise effective and rightful.

44 (d) A person who indorses a security certificate war-
45 rants to the issuer that:

46 (1) There is no adverse claim to the security; and

47 (2) The indorsement is effective.

48 (e) A person who originates an instruction for regis-
49 tration of transfer of an uncertificated security warrants to
50 the issuer that:

51 (1) The instruction is effective; and

52 (2) At the time the instruction is presented to the issu-
53 er the purchaser will be entitled to the registration of trans-
54 fer.

55 (f) A person who presents a certificated security for
56 registration of transfer or for payment or exchange war-
57 rants to the issuer that the person is entitled to the registra-
58 tion, payment or exchange, but a purchaser for value and
59 without notice of adverse claims to whom transfer is regis-
60 tered warrants only that the person has no knowledge of
61 any unauthorized signature in a necessary indorsement.

62 (g) If a person acts as agent of another in delivering a
63 certificated security to a purchaser, the identity of the
64 principal was known to the person to whom the certificate
65 was delivered, and the certificate delivered by the agent
66 was received by the agent from the principal or received
67 by the agent from another person at the direction of the
68 principal, the person delivering the security certificate
69 warrants only that the delivering person has authority to
70 act for the principal and does not know of any adverse
71 claim to the certificated security.

72 (h) A secured party who redelivers a security certifi-
73 cate received, or after payment and on order of the debtor
74 delivers the security certificate to another person, makes
75 only the warranties of an agent under subsection (g) of
76 this section.

77 (i) Except as otherwise provided in subsection (g) of
78 this section, a broker acting for a customer makes to the
79 issuer and a purchaser the warranties provided in subsec-
80 tions (a) through (f) of this section. A broker that delivers
81 a security certificate to its customer, or causes its customer
82 to be registered as the owner of an uncertificated security,

83 makes to the customer the warranties provided in subsec-
84 tion (a) or (b) of this section, and has the rights and privi-
85 leges of a purchaser under this section. The warranties of
86 and in favor of the broker acting as an agent are in addi-
87 tion to applicable warranties given by and in favor of the
88 customer.

§46-8-109. Warranties in indirect holding.

1 (a) A person who originates an entitlement order to a
2 securities intermediary warrants to the securities intermedi-
3 ary that:

4 (1) The entitlement order is made by an appropriate
5 person, or if the entitlement order is by an agent, the agent
6 has actual authority to act on behalf of the appropriate
7 person; and

8 (2) There is no adverse claim to the security entitle-
9 ment.

10 (b) A person who delivers a security certificate to a
11 securities intermediary for credit to a securities account or
12 originates an instruction with respect to an uncertificated
13 security directing that the uncertificated security be credit-
14 ed to a securities account makes to the securities interme-
15 diary the warranties specified in section 8-108(a) or (b).

16 (c) If a securities intermediary delivers a security
17 certificate to its entitlement holder or causes its entitlement
18 holder to be registered as the owner of an uncertificated
19 security, the securities intermediary makes to the entitle-
20 ment holder the warranties specified in section 8-108(a) or
21 (b).

§46-8-110. Applicability; choice of law.

1 (a) The local law of the issuer's jurisdiction, as speci-
2 fied in subsection (d) of this section governs:

3 (1) The validity of a security;

4 (2) The rights and duties of the issuer with respect to
5 registration of transfer;

6 (3) The effectiveness of registration of transfer by the
7 issuer;

8 (4) Whether the issuer owes any duties to an adverse
9 claimant to a security; and

10 (5) Whether an adverse claim can be asserted against a
11 person to whom transfer of a certificated or uncertificated
12 security is registered or a person who obtains control of an
13 uncertificated security.

14 (b) The local law of the securities intermediary's juris-
15 diction, as specified in subsection (e) of this section, gov-
16 erns:

17 (1) Acquisition of a security entitlement from the
18 securities intermediary;

19 (2) The rights and duties of the securities intermedi-
20 ary and entitlement holder arising out of a security entitle-
21 ment;

22 (3) Whether the securities intermediary owes any
23 duties to an adverse claimant to a security entitlement; and

24 (4) Whether an adverse claim can be asserted against a
25 person who acquires a security entitlement from the secu-
26 rities intermediary or a person who purchases a security
27 entitlement or interest therein from an entitlement holder.

28 (c) The local law of the jurisdiction in which a securi-
29 ty certificate is located at the time of delivery governs
30 whether an adverse claim can be asserted against a person
31 to whom the security certificate is delivered.

32 (d) "Issuer's jurisdiction" means the jurisdiction under
33 which the issuer of the security is organized or, if permit-
34 ted by the law of that jurisdiction, the law of another juris-
35 diction specified by the issuer. An issuer organized under
36 the law of this state may specify the law of another juris-
37 diction as the law governing the matters specified in subdi-
38 visions (2) through (5), subsection (a) of this section.

39 (e) The following rules determine a "securities inter-

40 intermediary's jurisdiction" for purposes of this section:

41 (1) If an agreement between the securities intermedi-
42 ary and its entitlement holder specifies that it is governed
43 by the law of a particular jurisdiction, that jurisdiction is
44 the securities intermediary's jurisdiction.

45 (2) If an agreement between the securities intermedi-
46 ary and its entitlement holder does not specify the govern-
47 ing law as provided in subdivision (1) of this subsection,
48 but expressly specifies that the securities account is main-
49 tained at an office in a particular jurisdiction, that jurisdic-
50 tion is the securities intermediary's jurisdiction.

51 (3) If an agreement between the securities intermedi-
52 ary and its entitlement holder does not specify a jurisdic-
53 tion as provided in subdivision (1) or (2) of this subsec-
54 tion, the securities intermediary's jurisdiction is the juris-
55 diction in which is located the office identified in an ac-
56 count statement as the office serving the entitlement hold-
57 er's account.

58 (4) If an agreement between the securities intermedi-
59 ary and its entitlement holder does not specify a jurisdic-
60 tion as provided in subdivision (1) or (2) of this subsec-
61 tion and an account statement does not identify an office
62 serving the entitlement holder's account as provided in
63 subdivision (3) of this subsection, the securities intermedi-
64 ary's jurisdiction is the jurisdiction in which is located the
65 chief executive office of the securities intermediary.

66 (f) A securities intermediary's jurisdiction is not deter-
67 mined by the physical location of certificates representing
68 financial assets, or by the jurisdiction in which is orga-
69 nized the issuer of the financial asset with respect to which
70 an entitlement holder has a security entitlement or by the
71 location of facilities for data processing or other record
72 keeping concerning the account.

§46-8-111. Clearing corporation rules.

1 A rule adopted by a clearing corporation governing
2 rights and obligations among the clearing corporation and

- 3 its participants in the clearing corporation is effective even
4 if the rule conflicts with this and affects another party who
5 does not consent to the rule.

§46-8-112. Creditor's legal process.

1 (a) The interest of a debtor in a certificated security
2 may be reached by a creditor only by actual seizure of the
3 security certificate by the officer making the attachment
4 or levy, except as otherwise provided in subsection (d) of
5 this section. However, a certificated security for which the
6 certificate has been surrendered to the issuer may be
7 reached by a creditor by legal process upon the issuer.

8 (b) The interest of a debtor in an uncertificated secu-
9 rity may be reached by a creditor only by legal process
10 upon the issuer at its chief executive office in the United
11 States, except as otherwise provided in subsection (d) of
12 this section.

13 (c) The interest of a debtor in a security entitlement
14 may be reached by a creditor only by legal process upon
15 the securities intermediary with whom the debtor's securi-
16 ties account is maintained, except as otherwise provided in
17 subsection (d) of this section.

18 (d) The interest of a debtor in a certificated security
19 for which the certificate is in the possession of a secured
20 party, or in an uncertificated security registered in the
21 name of a secured party, or a security entitlement main-
22 tained in the name of a secured party, may be reached by
23 a creditor by legal process upon the secured party.

24 (e) A creditor whose debtor is the owner of a certifi-
25 cated security, uncertificated security or security entitle-
26 ment is entitled to aid from a court of competent jurisdic-
27 tion, by injunction or otherwise, in reaching the certificat-
28 ed security, uncertificated security or security entitlement
29 or in satisfying the claim by means allowed at law or in
30 equity in regard to property that cannot readily be
31 reached by other legal process.

§46-8-113. Statute of frauds inapplicable.

1 A contract or modification of a contract for the sale
2 or purchase of a security is enforceable whether or not
3 there is a writing signed or record authenticated by a party
4 against whom enforcement is sought, even if the contract
5 or modification is not capable of performance within one
6 year of its making.

§46-8-114. Evidentiary rules concerning certificated securities.

1 The following rules apply in an action on a certificat-
2 ed security against the issuer:

3 (1) Unless specifically denied in the pleadings, each
4 signature on a security certificate or in a necessary in-
5 dorsement is admitted.

6 (2) If the effectiveness of a signature is put in issue,
7 the burden of establishing effectiveness is on the party
8 claiming under the signature, but the signature is pre-
9 sumed to be genuine or authorized.

10 (3) If signatures on a security certificate are admitted
11 or established, production of the certificate entitles a hold-
12 er to recover on it unless the defendant establishes a de-
13 fense or a defect going to the validity of the security.

14 (4) If it is shown that a defense or defect exists, the
15 plaintiff has the burden of establishing that the plaintiff or
16 some person under whom the plaintiff claims is a person
17 against whom the defense or defect cannot be asserted.

**§46-8-115. Securities intermediary and others not liable to
adverse claimant.**

1 A securities intermediary that has transferred a finan-
2 cial asset pursuant to an effective entitlement order, or a
3 broker or other agent or bailee that has dealt with a finan-
4 cial asset at the direction of its customer or principal, is not
5 liable to a person having an adverse claim to the financial
6 asset, unless the securities intermediary or broker or other
7 agent or bailee:

8 (1) Took the action after it had been served with an

9 injunction, restraining order or other legal process enjoin-
10 ing it from doing so, issued by a court of competent juris-
11 diction, and had a reasonable opportunity to act on the
12 injunction, restraining order or other legal process; or

13 (2) Acted in collusion with the wrongdoer in violating
14 the rights of the adverse claimant; or

15 (3) In the case of a security certificate that has been
16 stolen, acted with notice of the adverse claim.

§46-8-116. Securities intermediary as purchaser for value.

1 A securities intermediary that receives a financial asset
2 and establishes a security entitlement to the financial asset
3 in favor of an entitlement holder is a purchaser for value
4 of the financial asset. A securities intermediary that ac-
5 quires a security entitlement to a financial asset from an-
6 other securities intermediary acquires the security entitle-
7 ment for value if the securities intermediary acquiring the
8 security entitlement establishes a security entitlement to
9 the financial asset in favor of an entitlement holder.

PART 2. ISSUE AND ISSUER.

§46-8-201. Issuer.

1 (a) With respect to an obligation on or a defense to a
2 security, an "issuer" includes a person that:

3 (1) Places or authorizes the placing of its name on a
4 security certificate, other than as authenticating trustee,
5 registrar, transfer agent or the like, to evidence a share,
6 participation or other interest in its property or in an en-
7 terprise or to evidence its duty to perform an obligation
8 represented by the certificate;

9 (2) Creates a share, participation, or other interest in
10 its property or in an enterprise, or undertakes an obliga-
11 tion, that is an uncertificated security;

12 (3) Directly or indirectly creates a fractional interest
13 in its rights or property, if the fractional interest is repre-
14 sented by a security certificate; or

15 (4) Becomes responsible for, or in place of, another
16 person described as an issuer in this section.

17 (b) With respect to an obligation on or defense to a
18 security, a guarantor is an issuer to the extent of its guar-
19 anty, whether or not its obligation is noted on a security
20 certificate.

21 (c) With respect to a registration of a transfer, issuer
22 means a person on whose behalf transfer books are main-
23 tained.

**§46-8-202. Issuer's responsibility and defenses; notice of defect
or defense.**

1 (a) Even against a purchaser for value and without
2 notice, the terms of a certificated security include terms
3 stated on the certificate and terms made part of the securi-
4 ty by reference on the certificate to another instrument,
5 indenture, or document or to a constitution, statute, ordi-
6 nance, rule, regulation, order or the like, to the extent the
7 terms referred to do not conflict with terms stated on the
8 certificate. A reference under this subsection does not of
9 itself charge a purchaser for value with notice of a defect
10 going to the validity of the security, even if the certificate
11 expressly states that a person accepting it admits notice.
12 The terms of an uncertificated security include those stat-
13 ed in any instrument, indenture, or document or in a con-
14 stitution, statute, ordinance, rule, regulation, order or the
15 like, pursuant to which the security is issued.

16 (b) The following rules apply if an issuer asserts that a
17 security is not valid:

18 (1) A security other than one issued by a government
19 or governmental subdivision, agency or instrumentality,
20 even though issued with a defect going to its validity, is
21 valid in the hands of a purchaser for value and without
22 notice of the particular defect unless the defect involves a
23 violation of a constitutional provision. In that case, the
24 security is valid in the hands of a purchaser for value and
25 without notice of the defect, other than one who takes by

26 original issue.

27 (2) Subdivision (1) of this subsection applies to an
28 issuer that is a government or governmental subdivision,
29 agency, or instrumentality only if there has been substan-
30 tial compliance with the legal requirements governing the
31 issue or the issuer has received a substantial consideration
32 for the issue as a whole or for the particular security and a
33 stated purpose of the issue is one for which the issuer has
34 power to borrow money or issue the security.

35 (c) Except as otherwise provided in section 8-205,
36 lack of genuineness of a certificated security is a complete
37 defense, even against a purchaser for value and without
38 notice.

39 (d) All other defenses of the issuer of a security, in-
40 cluding nondelivery and conditional delivery of a certifi-
41 cated security, are ineffective against a purchaser for value
42 who has taken the certificated security without notice of
43 the particular defense.

44 (e) This section does not affect the right of a party to
45 cancel a contract for a security "when, as and if issued" or
46 "when distributed" in the event of a material change in the
47 character of the security that is the subject of the contract
48 or in the plan or arrangement pursuant to which the secu-
49 rity is to be issued or distributed.

50 (f) If a security is held by a securities intermediary
51 against whom an entitlement holder has a security entitle-
52 ment with respect to the security, the issuer may not assert
53 any defense that the issuer could not assert if the entitle-
54 ment holder held the security directly.

§46-8-203. Staleness as notice of defect or defense.

1 After an act or event, other than a call that has been
2 revoked, creating a right to immediate performance of the
3 principal obligation represented by a certificated security
4 or setting a date on or after which the security is to be
5 presented or surrendered for redemption or exchange, a
6 purchaser is charged with notice of any defect in its issue

7 or defense of the issuer, if the act or event:

8 (1) Requires the payment of money, the delivery of a
9 certificated security, the registration of transfer of an
10 uncertificated security, or any of them on presentation or
11 surrender of the security certificate, the money or security
12 is available on the date set for payment or exchange, and
13 the purchaser takes the security more than one year after
14 that date; or

15 (2) Is not covered by subdivision (1) of this section
16 and the purchaser takes the security more than two years
17 after the date set for surrender or presentation or the date
18 on which performance became due.

§46-8-204. Effect of issuer's restriction on transfer.

1 A restriction on transfer of a security imposed by the
2 issuer, even if otherwise lawful, is ineffective against a
3 person without knowledge of the restriction unless:

4 (1) The security is certificated and the restriction is
5 noted conspicuously on the security certificate; or

6 (2) The security is uncertificated and the registered
7 owner has been notified of the restriction.

§46-8-205. Effect of unauthorized signature on security certificate.

1 An unauthorized signature placed on a security certifi-
2 cate before or in the course of issue is ineffective, but the
3 signature is effective in favor of a purchaser for value of
4 the certificated security if the purchaser is without notice
5 of the lack of authority and the signing has been done by:

6 (1) An authenticating trustee, registrar, transfer agent
7 or other person entrusted by the issuer with the signing of
8 the security certificate or of similar security certificates, or
9 the immediate preparation for signing of any of them; or

10 (2) An employee of the issuer, or of any of the per-
11 sons listed in subdivision (1) of this section, entrusted with
12 responsible handling of the security certificate.

§46-8-206. Completion or alteration of security certificate.

1 (a) If a security certificate contains the signatures
2 necessary to its issue or transfer but is incomplete in any
3 other respect:

4 (1) Any person may complete it by filling in the
5 blanks as authorized; and

6 (2) Even if the blanks are incorrectly filled in, the
7 security certificate as completed is enforceable by a pur-
8 chaser who took it for value and without notice of the
9 incorrectness.

10 (b) A complete security certificate that has been im-
11 properly altered, even if fraudulently, remains enforceable,
12 but only according to its original terms.

§46-8-207. Rights and duties of issuer with respect to registered owners.

1 (a) Before due presentment for registration of transfer
2 of a certificated security in registered form or of an in-
3 struction requesting registration of transfer of an
4 uncertificated security, the issuer or indenture trustee may
5 treat the registered owner as the person exclusively entitled
6 to vote, receive notifications, and otherwise exercise all the
7 rights and powers of an owner.

8 (b) This article does not affect the liability of the
9 registered owner of a security for a call, assessment or the
10 like.

§46-8-208. Effect of signature of authenticating trustee, registrar, or transfer agent.

1 (a) A person signing a security certificate as authenti-
2 cating trustee, registrar, transfer agent or the like, warrants
3 to a purchaser for value of the certificated security, if the
4 purchaser is without notice of a particular defect, that:

5 (1) The certificate is genuine;

6 (2) The person's own participation in the issue of the

7 security is within the person's capacity and within the
8 scope of the authority received by the person from the
9 issuer; and

10 (3) The person has reasonable grounds to believe that
11 the certificated security is in the form and within the
12 amount the issuer is authorized to issue.

13 (b) Unless otherwise agreed, a person signing under
14 subsection (a) of this section does not assume responsibili-
15 ty for the validity of the security in other respects.

§46-8-209. Issuer's lien.

1 A lien in favor of an issuer upon a certificated securi-
2 ty is valid against a purchaser only if the right of the issuer
3 to the lien is noted conspicuously on the security certifi-
4 cate.

§46-8-210. Overissue.

1 (a) In this section, "overissue" means the issue of secu-
2 rities in excess of the amount the issuer has corporate
3 power to issue, but an overissue does not occur if appro-
4 priate action has cured the overissue.

5 (b) Except as otherwise provided in subsections (c)
6 and (d) of this section, the provisions of this article which
7 validate a security or compel its issue or reissue do not
8 apply to the extent that validation, issue or reissue would
9 result in overissue.

10 (c) If an identical security not constituting an overis-
11 sue is reasonably available for purchase, a person entitled
12 to issue or validation may compel the issuer to purchase
13 the security and deliver it if certificated or register its
14 transfer if uncertificated, against surrender of any security
15 certificate the person holds.

16 (d) If a security is not reasonably available for pur-
17 chase, a person entitled to issue or validation may recover
18 from the issuer the price the person or the last purchaser
19 for value paid for it with interest from the date of the per-
20 son's demand.

PART 3. TRANSFER OF CERTIFICATED
AND UNCERTIFICATED SECURITIES.

§46-8-301. Delivery.

1 (a) Delivery of a certificated security to a purchaser
2 occurs when:

3 (1) The purchaser acquires possession of the security
4 certificate;

5 (2) Another person, other than a securities intermedi-
6 ary, either acquires possession of the security certificate on
7 behalf of the purchaser or, having previously acquired
8 possession of the certificate, acknowledges that it holds for
9 the purchaser; or

10 (3) A securities intermediary acting on behalf of the
11 purchaser acquires possession of the security certificate,
12 only if the certificate is in registered form and has been
13 specially indorsed to the purchaser by an effective in-
14 dorsement.

15 (b) Delivery of an uncertificated security to a pur-
16 chaser occurs when:

17 (1) The issuer registers the purchaser as the registered
18 owner, upon original issue or registration of transfer; or

19 (2) Another person, other than a securities intermedi-
20 ary, either becomes the registered owner of the
21 uncertificated security on behalf of the purchaser or, hav-
22 ing previously become the registered owner, acknowledges
23 that it holds for the purchaser.

§46-8-302. Rights of purchaser.

1 (a) Except as otherwise provided in subsections (b)
2 and (c) of this section, upon delivery of a certificated or
3 uncertificated security to a purchaser, the purchaser ac-
4 quires all rights in the security that the transferor had or
5 had power to transfer.

6 (b) A purchaser of a limited interest acquires rights

7 only to the extent of the interest purchased.

8 (c) A purchaser of a certificated security who as a
9 previous holder had notice of an adverse claim does not
10 improve its position by taking from a protected purchaser.

§46-8-303. Protected purchaser.

1 (a) "Protected purchaser" means a purchaser of a
2 certificated or uncertificated security, or of an interest
3 therein, who:

4 (1) Gives value;

5 (2) Does not have notice of any adverse claim to the
6 security; and

7 (3) Obtains control of the certificated or
8 uncertificated security.

9 (b) In addition to acquiring the rights of a purchaser,
10 a protected purchaser also acquires its interest in the secu-
11 rity free of any adverse claim.

§46-8-304. Indorsement.

1 (a) An indorsement may be in blank or special. An
2 indorsement in blank includes an indorsement to bearer.
3 A special indorsement specifies to whom a security is to be
4 transferred or who has power to transfer it. A holder may
5 convert a blank indorsement to a special indorsement.

6 (b) An indorsement purporting to be only of part of a
7 security certificate representing units intended by the
8 issuer to be separately transferable is effective to the extent
9 of the indorsement.

10 (c) An indorsement, whether special or in blank, does
11 not constitute a transfer until delivery of the certificate on
12 which it appears or, if the indorsement is on a separate
13 document, until delivery of both the document and the
14 certificate.

15 (d) If a security certificate in registered form has been
16 delivered to a purchaser without a necessary indorsement,

17 the purchaser may become a protected purchaser only
18 when the indorsement is supplied. However, against a
19 transferor, a transfer is complete upon delivery and the
20 purchaser has a specifically enforceable right to have any
21 necessary indorsement supplied.

22 (e) An indorsement of a security certificate in bearer
23 form may give notice of an adverse claim to the certificate,
24 but it does not otherwise affect a right to registration that
25 the holder possesses.

26 (f) Unless otherwise agreed, a person making an in-
27 dorsement assumes only the obligations provided in sec-
28 tion 8-108 and not an obligation that the security will be
29 honored by the issuer.

§46-8-305. Instruction.

1 (a) If an instruction has been originated by an appro-
2 priate person but is incomplete in any other respect, any
3 person may complete it as authorized and the issuer may
4 rely on it as completed, even though it has been completed
5 incorrectly.

6 (b) Unless otherwise agreed, a person initiating an
7 instruction assumes only the obligations imposed by sec-
8 tion 8-108 and not an obligation that the security will be
9 honored by the issuer.

§46-8-306. Effect of guaranteeing signature, indorsement, or instruction.

1 (a) A person who guarantees a signature of an indors-
2 er of a security certificate warrants that at the time of sign-
3 ing:

4 (1) The signature was genuine;

5 (2) The signer was an appropriate person to indorse,
6 or if the signature is by an agent, the agent had actual
7 authority to act on behalf of the appropriate person; and

8 (3) The signer had legal capacity to sign.

9 (b) A person who guarantees a signature of the origi-
10 nator of an instruction warrants that at the time of signing:

11 (1) The signature was genuine;

12 (2) The signer was an appropriate person to originate
13 the instruction, or if the signature is by an agent, the agent
14 had actual authority to act on behalf of the appropriate
15 person, if the person specified in the instruction as the
16 registered owner was, in fact, the registered owner, as to
17 which fact the signature guarantor does not make a war-
18 ranty; and

19 (3) The signer had legal capacity to sign.

20 (c) A person who specially guarantees the signature
21 of an originator of an instruction makes the warranties of
22 a signature guarantor under subsection (b) of this section
23 and also warrants that at the time the instruction is present-
24 ed to the issuer:

25 (1) The person specified in the instruction as the reg-
26 istered owner of the uncertificated security will be the
27 registered owner; and

28 (2) The transfer of the uncertificated security request-
29 ed in the instruction will be registered by the issuer free
30 from all liens, security interests, restrictions, and claims
31 other than those specified in the instruction.

32 (d) A guarantor under subsections (a) and (b) of this
33 section or a special guarantor under subsection (c) of this
34 section does not otherwise warrant the rightfulness of the
35 transfer.

36 (e) A person who guarantees an indorsement of a
37 security certificate makes the warranties of a signature
38 guarantor under subsection (a) of this section and also
39 warrants the rightfulness of the transfer in all respects.

40 (f) A person who guarantees an instruction requesting
41 the transfer of an uncertificated security makes the war-
42 ranties of a special signature guarantor under subsection

43 (c) of this section and also warrants the rightfulness of the
44 transfer in all respects.

45 (g) An issuer may not require a special guaranty of
46 signature, a guaranty of indorsement, or a guaranty of
47 instruction as a condition to registration of transfer.

48 (h) The warranties under this section are made to a
49 person taking or dealing with the security in reliance on
50 the guaranty, and the guarantor is liable to the person for
51 loss resulting from their breach. An indorser or originator
52 of an instruction whose signature, indorsement, or instruc-
53 tion has been guaranteed is liable to a guarantor for any
54 loss suffered by the guarantor as a result of breach of the
55 warranties of the guarantor.

§46-8-307. Purchaser's right to requisites for registration of transfer.

1 Unless otherwise agreed, the transferor of a security
2 on due demand shall supply the purchaser with proof of
3 authority to transfer or with any other requisite necessary
4 to obtain registration of the transfer of the security, but if
5 the transfer is not for value, a transferor need not comply
6 unless the purchaser pays the necessary expenses. If the
7 transferor fails within a reasonable time to comply with the
8 demand, the purchaser may reject or rescind the transfer.

PART 4. REGISTRATION.

§46-8-401. Duty of issuer to register transfer.

1 (a) If a certificated security in registered form is pre-
2 sented to an issuer with a request to register transfer or an
3 instruction is presented to an issuer with a request to regis-
4 ter transfer of an uncertificated security, the issuer shall
5 register the transfer as requested if:

6 (1) Under the terms of the security the person seeking
7 registration of transfer is eligible to have the security reg-
8 istered in its name;

9 (2) The indorsement or instruction is made by the

10 appropriate person or by an agent who has actual authori-
11 ty to act on behalf of the appropriate person;

12 (3) Reasonable assurance is given that the indorse-
13 ment or instruction is genuine and authorized (section
14 8-402);

15 (4) Any applicable law relating to the collection of
16 taxes has been complied with;

17 (5) The transfer does not violate any restriction on
18 transfer imposed by the issuer in accordance with section
19 8-204;

20 (6) A demand that the issuer not register transfer has
21 not become effective under section 8-403, or the issuer
22 has complied with section 8-403(b) but no legal process
23 or indemnity bond is obtained as provided in section
24 8-403(d); and

25 (7) The transfer is in fact rightful or is to a protected
26 purchaser.

27 (b) If an issuer is under a duty to register a transfer of
28 a security, the issuer is liable to a person presenting a cer-
29 tificated security or an instruction for registration or to the
30 person's principal for loss resulting from unreasonable
31 delay in registration or failure or refusal to register the
32 transfer.

§46-8-402. Assurance that indorsement or instruction is effective.

1 (a) An issuer may require the following assurance that
2 each necessary indorsement or each instruction is genuine
3 and authorized:

4 (1) In all cases, a guaranty of the signature of the
5 person making an indorsement or originating an instruc-
6 tion including, in the case of an instruction, reasonable
7 assurance of identity;

8 (2) If the indorsement is made or the instruction is
9 originated by an agent, appropriate assurance of actual

10 authority to sign;

11 (3) If the indorsement is made or the instruction is
12 originated by a fiduciary pursuant to section 8-107(a)(4)
13 or (a)(5), appropriate evidence of appointment or incum-
14 bency;

15 (4) If there is more than one fiduciary, reasonable
16 assurance that all who are required to sign have done so;
17 and

18 (5) If the indorsement is made or the instruction is
19 originated by a person not covered by another provision
20 of this subsection, assurance appropriate to the case corre-
21 sponding as nearly as may be to the provisions of this
22 subsection.

23 (b) An issuer may elect to require reasonable assur-
24 ance beyond that specified in this section.

25 (c) In this section:

26 (1) "Guaranty of the signature" means a guaranty
27 signed by or on behalf of a person reasonably believed by
28 the issuer to be responsible. An issuer may adopt stan-
29 dards with respect to responsibility if they are not mani-
30 festly unreasonable.

31 (2) "Appropriate evidence of appointment or incum-
32 bency" means:

33 (i) In the case of a fiduciary appointed or qualified
34 by a court, a certificate issued by or under the direction or
35 supervision of the court or an officer thereof and dated
36 within sixty days before the date of presentation for trans-
37 fer; or

38 (ii) In any other case, a copy of a document showing
39 the appointment or a certificate issued by or on behalf of
40 a person reasonably believed by an issuer to be responsi-
41 ble or, in the absence of that document or certificate, other
42 evidence the issuer reasonably considered appropriate.

§46-8-403. Demand that issuer not register transfer.

1 (a) A person who is an appropriate person to make an
2 indorsement or originate an instruction may demand that
3 the issuer not register transfer of a security by communi-
4 cating to the issuer a notification that identifies the regis-
5 tered owner and the issue of which the security is a part
6 and provides an address for communications directed to
7 the person making the demand. The demand is effective
8 only if it is received by the issuer at a time and in a man-
9 ner affording the issuer reasonable opportunity to act on
10 it.

11 (b) If a certificated security in registered form is pre-
12 sented to an issuer with a request to register transfer or an
13 instruction is presented to an issuer with a request to regis-
14 ter transfer of an uncertificated security after a demand
15 that the issuer not register transfer has become effective,
16 the issuer shall promptly communicate to: (i) The person
17 who initiated the demand at the address provided in the
18 demand; and (ii) the person who presented the security for
19 registration of transfer or initiated the instruction request-
20 ing registration of transfer a notification stating that:

21 (1) The certificated security has been presented for
22 registration of transfer or instruction for registration of
23 transfer of uncertificated security has been received;

24 (2) A demand that the issuer not register transfer had
25 previously been received; and

26 (3) The issuer will withhold registration of transfer for
27 a period of time stated in the notification in order to pro-
28 vide the person who initiated the demand an opportunity
29 to obtain legal process or an indemnity bond.

30 (c) The period described in subdivision (3), subsec-
31 tion (b) of this section may not exceed thirty days after
32 the date of communication of the notification. A shorter
33 period may be specified by the issuer if it is not manifestly
34 unreasonable.

35 (d) An issuer is not liable to a person who initiated a
36 demand that the issuer not register transfer for any loss the

37 person suffers as a result of registration of a transfer pur-
38 suant to an effective indorsement or instruction if the
39 person who initiated the demand does not, within the time
40 stated in the issuer's communication, either:

41 (1) Obtain an appropriate restraining order, injunc-
42 tion or other process from a court of competent jurisdic-
43 tion enjoining the issuer from registering the transfer; or

44 (2) File with the issuer an indemnity bond, sufficient
45 in the issuer's judgment to protect the issuer and any trans-
46 fer agent, registrar or other agent of the issuer involved
47 from any loss it or they may suffer by refusing to register
48 the transfer.

49 (e) This section does not relieve an issuer from liabili-
50 ty for registering transfer pursuant to an indorsement or
51 instruction that was not effective.

§46-8-404. Wrongful registration.

1 (a) Except as otherwise provided in section 8-406, an
2 issuer is liable for wrongful registration of transfer if the
3 issuer has registered a transfer of a security to a person not
4 entitled to it, and the transfer was registered:

5 (1) Pursuant to an ineffective indorsement or instruc-
6 tion;

7 (2) After a demand that the issuer not register transfer
8 became effective under section 8-403(a) and the issuer did
9 not comply with section 8-403(b);

10 (3) After the issuer had been served with an injunc-
11 tion, restraining order, or other legal process enjoining it
12 from registering the transfer, issued by a court of compe-
13 tent jurisdiction, and the issuer had a reasonable opportu-
14 nity to act on the injunction, restraining order, or other
15 legal process; or

16 (4) By an issuer acting in collusion with the wrongdo-
17 er.

18 (b) An issuer that is liable for wrongful registration of

19 transfer under subsection (a) of this section on demand
20 shall provide the person entitled to the security with a like
21 certificated or uncertificated security, and any payments
22 or distributions that the person did not receive as a result
23 of the wrongful registration. If an overissue would result,
24 the issuer's liability to provide the person with a like secu-
25 rity is governed by section 8-210.

26 (c) Except as otherwise provided in subsection (a) of
27 this section or in a law relating to the collection of taxes,
28 an issuer is not liable to an owner or other person suffer-
29 ing loss as a result of the registration of a transfer of a
30 security if registration was made pursuant to an effective
31 indorsement or instruction.

**§46-8-405. Replacement of lost, destroyed, or wrongfully
taken security certificate.**

1 (a) If an owner of a certificated security, whether in
2 registered or bearer form, claims that the certificate has
3 been lost, destroyed, or wrongfully taken, the issuer shall
4 issue a new certificate if the owner:

5 (1) So requests before the issuer has notice that the
6 certificate has been acquired by a protected purchaser;

7 (2) Files with the issuer a sufficient indemnity bond;
8 and

9 (3) Satisfies other reasonable requirements imposed
10 by the issuer.

11 (b) If, after the issue of a new security certificate, a
12 protected purchaser of the original certificate presents it
13 for registration of transfer, the issuer shall register the
14 transfer unless an overissue would result. In that case, the
15 issuer's liability is governed by section 8-210. In addition
16 to any rights on the indemnity bond, an issuer may recov-
17 er the new certificate from a person to whom it was issued
18 or any person taking under that person, except a protected
19 purchaser.

§46-8-406. Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate.

1 If a security certificate has been lost, apparently de-
2 stroyed, or wrongfully taken, and the owner fails to notify
3 the issuer of that fact within a reasonable time after the
4 owner has notice of it and the issuer registers a transfer of
5 the security before receiving notification, the owner may
6 not assert against the issuer a claim for registering the
7 transfer under section 8-404 or a claim to a new security
8 certificate under section 8-405.

§46-8-407. Authenticating trustee, transfer agent and registrar.

1 A person acting as authenticating trustee, transfer
2 agent, registrar, or other agent for an issuer in the registra-
3 tion of a transfer of its securities, in the issue of new secu-
4 rity certificates or uncertificated securities or in the cancel-
5 lation of surrendered security certificates has the same
6 obligation to the holder or owner of a certificated or
7 uncertificated security with regard to the particular func-
8 tions performed as the issuer has in regard to those func-
9 tions.

PART 5. SECURITY ENTITLEMENTS.

§46-8-501. Securities account; acquisition of security entitlement from securities intermediary.

1 (a) "Securities account" means an account to which a
2 financial asset is or may be credited in accordance with an
3 agreement under which the person maintaining the ac-
4 count undertakes to treat the person for whom the account
5 is maintained as entitled to exercise the rights that com-
6 prise the financial asset.

7 (b) Except as otherwise provided in subsections (d)
8 and (e) of this section, a person acquires a security entitle-
9 ment if a securities intermediary:

10 (1) Indicates by book entry that a financial asset has
11 been credited to the person's securities account;

12 (2) Receives a financial asset from the person or ac-
13 quires a financial asset for the person and, in either case,
14 accepts it for credit to the person's securities account; or

15 (3) Becomes obligated under other law, regulation, or
16 rule to credit a financial asset to the person's securities
17 account.

18 (c) If a condition of subsection (b) of this section has
19 been met, a person has a security entitlement even though
20 the securities intermediary does not itself hold the finan-
21 cial asset.

22 (d) If a securities intermediary holds a financial asset
23 for another person, and the financial asset is registered in
24 the name of, payable to the order of, or specially indorsed
25 to the other person, and has not been indorsed to the secu-
26 rities intermediary or in blank, the other person is treated
27 as holding the financial asset directly rather than as having
28 a security entitlement with respect to the financial asset.

29 (e) Issuance of a security is not establishment of a
30 security entitlement.

§46-8-502. Assertion of adverse claim against entitlement holder.

1 An action based on an adverse claim to a financial
2 asset, whether framed in conversion, replevin, constructive
3 trust, equitable lien or other theory, may not be asserted
4 against a person who acquires a security entitlement under
5 section 8-501 for value and without notice of the adverse
6 claim.

§46-8-503. Property interest of entitlement holder in financial asset held by securities intermediary.

1 (a) To the extent necessary for a securities intermedi-
2 ary to satisfy all security entitlements with respect to a
3 particular financial asset, all interests in that financial asset
4 held by the securities intermediary are held by the securi-
5 ties intermediary for the entitlement holders, are not prop-
6 erty of the securities intermediary, and are not subject to

7 claims of creditors of the securities intermediary, except as
8 otherwise provided in section 8-511.

9 (b) An entitlement holder's property interest with
10 respect to a particular financial asset under subsection (a)
11 of this section is a pro rata property interest in all interests
12 in that financial asset held by the securities intermediary,
13 without regard to the time the entitlement holder acquired
14 the security entitlement or the time the securities interme-
15 diary acquired the interest in that financial asset.

16 (c) An entitlement holder's property interest with
17 respect to a particular financial asset under subsection (a)
18 of this section may be enforced against the securities inter-
19 mediary only by exercise of the entitlement holder's rights
20 under sections 8-505 through 8-508.

21 (d) An entitlement holder's property interest with
22 respect to a particular financial asset under subsection (a)
23 of this section may be enforced against a purchaser of the
24 financial asset or interest therein only if:

25 (1) Insolvency proceedings have been initiated by or
26 against the securities intermediary;

27 (2) The securities intermediary does not have suffi-
28 cient interests in the financial asset to satisfy the security
29 entitlements of all of its entitlement holders to that finan-
30 cial asset;

31 (3) The securities intermediary violated its obligations
32 under section 8-504 by transferring the financial asset or
33 interest therein to the purchaser; and

34 (4) The purchaser is not protected under subsection
35 (e) of this section. The trustee or other liquidator, acting
36 on behalf of all entitlement holders having security
37 entitlements with respect to a particular financial asset,
38 may recover the financial asset, or interest therein, from
39 the purchaser. If the trustee or other liquidator elects not
40 to pursue that right, an entitlement holder whose security
41 entitlement remains unsatisfied has the right to recover its
42 interest in the financial asset from the purchaser.

43 (e) An action based on the entitlement holder's prop-
44 erty interest with respect to a particular financial asset
45 under subsection (a) of this section, whether framed in
46 conversion, replevin, constructive trust, equitable lien or
47 other theory, may not be asserted against any purchaser of
48 a financial asset or interest therein who gives value, obtains
49 control and does not act in collusion with the securities
50 intermediary in violating the securities intermediary's
51 obligations under section 8-504.

§46-8-504. Duty of securities intermediary to maintain financial asset.

1 (a) A securities intermediary shall promptly obtain
2 and thereafter maintain a financial asset in a quantity cor-
3 responding to the aggregate of all security entitlements it
4 has established in favor of its entitlement holders with
5 respect to that financial asset. The securities intermediary
6 may maintain those financial assets directly or through
7 one or more other securities intermediaries.

8 (b) Except to the extent otherwise agreed by its enti-
9 tlement holder, a securities intermediary may not grant
10 any security interests in a financial asset it is obligated to
11 maintain pursuant to subsection (a) of this section.

12 (c) A securities intermediary satisfies the duty in sub-
13 section (a) of this section if:

14 (1) The securities intermediary acts with respect to the
15 duty as agreed upon by the entitlement holder and the
16 securities intermediary; or

17 (2) In the absence of agreement, the securities inter-
18 mediary exercises due care in accordance with reasonable
19 commercial standards to obtain and maintain the financial
20 asset.

21 (d) This section does not apply to a clearing corpora-
22 tion that is itself the obligor of an option or similar obliga-
23 tion to which its entitlement holders have security
24 entitlements.

§46-8-505. Duty of securities intermediary with respect to payments and distributions.

1 (a) A securities intermediary shall take action to ob-
2 tain a payment or distribution made by the issuer of a
3 financial asset. A securities intermediary satisfies the duty
4 if:

5 (1) The securities intermediary acts with respect to the
6 duty as agreed upon by the entitlement holder and the
7 securities intermediary; or

8 (2) In the absence of agreement, the securities inter-
9 mediary exercises due care in accordance with reasonable
10 commercial standards to attempt to obtain the payment or
11 distribution.

12 (b) A securities intermediary is obligated to its entitle-
13 ment holder for a payment or distribution made by the
14 issuer of a financial asset if the payment or distribution is
15 received by the securities intermediary.

§46-8-506. Duty of securities intermediary to exercise rights as directed by entitlement holder.

1 A securities intermediary shall exercise rights with
2 respect to a financial asset if directed to do so by an enti-
3 tlement holder. A securities intermediary satisfies the duty
4 if:

5 (1) The securities intermediary acts with respect to the
6 duty as agreed upon by the entitlement holder and the
7 securities intermediary; or

8 (2) In the absence of agreement, the securities inter-
9 mediary either places the entitlement holder in a position
10 to exercise the rights directly or exercises due care in
11 accordance with reasonable commercial standards to fol-
12 low the direction of the entitlement holder.

§46-8-507. Duty of securities intermediary to comply with entitlement order.

1 (a) A securities intermediary shall comply with an

2 entitlement order if the entitlement order is originated by
3 the appropriate person, the securities intermediary has had
4 reasonable opportunity to assure itself that the entitlement
5 order is genuine and authorized, and the securities inter-
6 mediary has had reasonable opportunity to comply with
7 the entitlement order. A securities intermediary satisfies
8 the duty if:

9 (1) The securities intermediary acts with respect to the
10 duty as agreed upon by the entitlement holder and the
11 securities intermediary; or

12 (2) In the absence of agreement, the securities inter-
13 mediary exercises due care in accordance with reasonable
14 commercial standards to comply with the entitlement or-
15 der.

16 (b) If a securities intermediary transfers a financial
17 asset pursuant to an ineffective entitlement order, the secu-
18 rities intermediary shall reestablish a security entitlement
19 in favor of the person entitled to it, and pay or credit any
20 payments or distributions that the person did not receive
21 as a result of the wrongful transfer. If the securities inter-
22 mediary does not reestablish a security entitlement, the
23 securities intermediary is liable to the entitlement holder
24 for damages.

**§46-8-508. Duty of securities intermediary to change entitle-
ment holder's position to other form of security
holding.**

1 A securities intermediary shall act at the direction of
2 an entitlement holder to change a security entitlement into
3 another available form of holding for which the entitle-
4 ment holder is eligible, or to cause the financial asset to be
5 transferred to a securities account of the entitlement hold-
6 er with another securities intermediary. A securities inter-
7 mediary satisfies the duty if:

8 (1) The securities intermediary acts as agreed upon
9 by the entitlement holder and the securities intermediary;
10 or

11 (2) In the absence of agreement, the securities inter-
12 mediary exercises due care in accordance with reasonable
13 commercial standards to follow the direction of the entitle-
14 ment holder.

§46-8-509. Specification of duties of securities intermediary by other statute or regulation; manner of performance of duties of securities intermediary and exercise of rights of entitlement holder.

1 (a) If the substance of a duty imposed upon a securi-
2 ties intermediary by sections 8-504 through 8-508 is the
3 subject of other statute, regulation or rule, compliance with
4 that statute, regulation or rule satisfies the duty.

5 (b) To the extent that specific standards for the per-
6 formance of the duties of a securities intermediary or the
7 exercise of the rights of an entitlement holder are not
8 specified by other statute, regulation or rule or by agree-
9 ment between the securities intermediary and entitlement
10 holder, the securities intermediary shall perform its duties
11 and the entitlement holder shall exercise its rights in a
12 commercially reasonable manner.

13 (c) The obligation of a securities intermediary to
14 perform the duties imposed by sections 8-504 through
15 8-508 is subject to:

16 (1) Rights of the securities intermediary arising out of
17 a security interest under a security agreement with the
18 entitlement holder or otherwise; and

19 (2) Rights of the securities intermediary under other
20 law, regulation, rule, or agreement to withhold perfor-
21 mance of its duties as a result of unfulfilled obligations of
22 the entitlement holder to the securities intermediary.

23 (d) Sections 8-504 through 8-508 do not require a
24 securities intermediary to take any action that is prohibited
25 by other statute, regulation or rule.

§46-8-510. Rights of purchaser of security entitlement from entitlement holder.

1 (a) An action based on an adverse claim to a financial
2 asset or security entitlement, whether framed in conver-
3 sion, replevin, constructive trust, equitable lien or other
4 theory, may not be asserted against a person who purchas-
5 es a security entitlement, or an interest therein, from an
6 entitlement holder if the purchaser gives value, does not
7 have notice of the adverse claim, and obtains control.

8 (b) If an adverse claim could not have been asserted
9 against an entitlement holder under section 8-502, the
10 adverse claim cannot be asserted against a person who
11 purchases a security entitlement, or an interest therein,
12 from the entitlement holder.

13 (c) In a case not covered by the priority rules in arti-
14 cle nine, a purchaser for value of a security entitlement, or
15 an interest therein, who obtains control has priority over a
16 purchaser of a security entitlement, or an interest therein,
17 who does not obtain control. Purchasers who have control
18 rank equally, except that a securities intermediary as pur-
19 chaser has priority over a conflicting purchaser who has
20 control unless otherwise agreed by the securities interme-
21 diary.

§46-8-511. Priority among security interests and entitlement holders.

1 (a) Except as otherwise provided in subsections (b)
2 and (c) of this section, if a securities intermediary does not
3 have sufficient interests in a particular financial asset to
4 satisfy both its obligations to entitlement holders who have
5 security entitlements to that financial asset and its obliga-
6 tion to a creditor of the securities intermediary who has a
7 security interest in that financial asset, the claims of entitle-
8 ment holders, other than the creditor, have priority over
9 the claim of the creditor.

10 (b) A claim of a creditor of a securities intermediary
11 who has a security interest in a financial asset held by a
12 securities intermediary has priority over claims of the
13 securities intermediary's entitlement holders who have
14 security entitlements with respect to that financial asset if

15 the creditor has control over the financial asset.

16 (c) If a clearing corporation does not have sufficient
17 financial assets to satisfy both its obligations to entitlement
18 holders who have security entitlements with respect to a
19 financial asset and its obligation to a creditor of the clear-
20 ing corporation who has a security interest in that financial
21 asset, the claim of the creditor has priority over the claims
22 of entitlement holders.

PART 6. TRANSITION PROVISIONS FOR REVISED
ARTICLE 8 AND CONFORMING AMENDMENTS TO
ARTICLES 1, 5, 9 AND 10.

§46-8-601. Savings clause.

1 (a) This article does not affect an action or proceed-
2 ing commenced before this article takes effect.

3 (b) If a security interest in a security is perfected at
4 the date this article takes effect and the action by which
5 the security interest was perfected would suffice to perfect
6 a security interest under this article, no further action is
7 required to continue perfection. If a security interest in a
8 security is perfected at the date this article takes effect but
9 the action by which the security interest was perfected
10 would not suffice to perfect a security interest under this
11 article, the security interest remains perfected for a period
12 of four months after the effective date and continues per-
13 fected thereafter if appropriate action to perfect under this
14 article is taken within that period. If a security interest is
15 perfected at the date this article takes effect and the securi-
16 ty interest can be perfected by filing under this article, a
17 financing statement signed by the secured party instead of
18 the debtor may be filed within that period to continue
19 perfection or thereafter to perfect.

**ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS
AND CHATTEL PAPER.**

PART 1. SHORT TITLE, APPLICABILITY AND DEFINITIONS.

- §46-9-103. Perfection of security interests in multiple state transactions.
- §46-9-105. Definitions and index of definitions.
- §46-9-106. Definitions: "Account"; "general intangibles".
- §46-9-115. Investment property.
- §46-9-116. Security interest arising in purchase or delivery of financial asset.
- §46-9-203. Attachment and enforceability of security interest; proceeds; formal requisites.
- §46-9-301. Persons who take priority over unperfected security interests; right of "lien creditor".
- §46-9-302. When filing is required to perfect security interest; security interests to which filing provisions of this article do not apply.
- §46-9-304. Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.
- §46-9-305. When possession by secured party perfects security interest without filing.
- §46-9-306. "Proceeds"; secured party's rights on disposition of collateral.
- §46-9-309. Protection of purchasers of instruments, documents and securities.
- §46-9-312. Priorities among conflicting security interests in the same collateral.

§46-9-103. Perfection of security interests in multiple state transactions.

1 (1) *Documents, instruments and ordinary goods.* —

2 (a) This subsection applies to documents and instru-
3 ments and to goods other than those covered by a certifi-
4 cate of title described in subsection (2) of this section,
5 mobile goods described in subsection (3), and minerals
6 described in subsection (5) of this section.

7 (b) Except as otherwise provided in this subsection,
8 perfection and the effect of perfection or nonperfection of
9 a security interest in collateral are governed by the law of
10 the jurisdiction where the collateral is when the last event
11 occurs on which is based the assertion that the security
12 interest is perfected or unperfected.

13 (c) If the parties to a transaction creating a purchase

14 money security interest in goods in one jurisdiction un-
15 derstand at the time that the security interest attaches that
16 the goods will be kept in another jurisdiction, then the law
17 of the other jurisdiction governs the perfection and the
18 effect of perfection or nonperfection of the security inter-
19 est from the time it attaches until thirty days after the debt-
20 or receives possession of the goods and thereafter if the
21 goods are taken to the other jurisdiction before the end of
22 the thirty-day period.

23 (d) When collateral is brought into and kept in this
24 state while subject to a security interest perfected under the
25 law of the jurisdiction from which the collateral was re-
26 moved, the security interest remains perfected, but if ac-
27 tion is required by Part 3 of this article to perfect the secu-
28 rity interest:

29 (i) If the action is not taken before the expiration of
30 the period of perfection in the other jurisdiction or the
31 end of four months after the collateral is brought into this
32 state, whichever period first expires, the security interest
33 becomes unperfected at the end of that period and is
34 thereafter deemed to have been unperfected as against a
35 person who became a purchaser after removal;

36 (ii) If the action is taken before the expiration of the
37 period specified in paragraph (i) of this subdivision, the
38 security interest continues perfected thereafter;

39 (iii) For the purpose of priority over a buyer of con-
40 sumer goods (subsection (2) of section 9-307), the period
41 of the effectiveness of a filing in the jurisdiction from
42 which the collateral is removed is governed by the rules
43 with respect to perfection in paragraphs (i) and (ii) of this
44 subdivision.

45 (2) *Certificate of title.* —

46 (a) This subsection applies to goods covered by a
47 certificate of title issued under a statute of this state or of
48 another jurisdiction under the law of which indication of a
49 security interest on the certificate is required as a condi-

50 tion of perfection.

51 (b) Except as otherwise provided in this subsection,
52 perfection and the effect of perfection or nonperfection of
53 the security interest are governed by the law (including the
54 conflict of laws rules) of the jurisdiction issuing the certi-
55 ficate until four months after the goods are removed from
56 that jurisdiction and thereafter until the goods are regis-
57 tered in another jurisdiction, but in any event not beyond
58 surrender of the certificate. After the expiration of that
59 period, the goods are not covered by the certificate of title
60 within the meaning of this section.

61 (c) Except with respect to the rights of a buyer de-
62 scribed in the next paragraph, a security interest, perfected
63 in another jurisdiction otherwise than by notation on a
64 certificate of title, in goods brought into this state and
65 thereafter covered by a certificate of title issued by this
66 state is subject to the rules stated in subdivision (d) subsec-
67 tion (1) of this section.

68 (d) If goods are brought into this state while a securi-
69 ty interest therein is perfected in any manner under the
70 law of the jurisdiction from which the goods are removed
71 and a certificate of title is issued by this state and the cer-
72 tificate does not show that the goods are subject to the
73 security interest or that they may be subject to security
74 interests not shown on the certificate, the security interest
75 is subordinate to the rights of a buyer of the goods who is
76 not in the business of selling goods of that kind to the
77 extent that he gives value and receives delivery of the
78 goods after issuance of the certificate and without knowl-
79 edge of the security interest.

80 (3) *Accounts, general intangibles and mobile goods.*
81 —

82 (a) This subsection applies to accounts (other than an
83 account described in subsection (5) of this section on
84 minerals) and general intangibles (other than
85 uncertificated securities) and to goods which are mobile
86 and which are of a type normally used in more than one

87 jurisdiction, such as motor vehicles, trailers, rolling stock,
88 airplanes, shipping containers, road building and construc-
89 tion machinery and commercial harvesting machinery and
90 the like, if the goods are equipment or are inventory
91 leased or held for lease by the debtor to others, and are
92 not covered by a certificate of title described in subsection
93 (2) of this section.

94 (b) The law (including the conflict of laws rules) of
95 the jurisdiction in which the debtor is located governs the
96 perfection and the effect of perfection or nonperfection of
97 the security interest.

98 (c) If, however, the debtor is located in a jurisdiction
99 which is not a part of the United States, and which does
100 not provide for perfection of the security interest by filing
101 or recording in that jurisdiction, the law of the jurisdiction
102 in the United States in which the debtor has its major exec-
103 utive office in the United States governs the perfection and
104 the effect of perfection or nonperfection of the security
105 interest through filing. In the alternative, if the debtor is
106 located in a jurisdiction which is not a part of the United
107 States or Canada and the collateral is accounts or general
108 intangibles for money due or to become due, the security
109 interest may be perfected by notification to the account
110 debtor. As used in this paragraph, "United States" includes
111 its territories and possessions and the Commonwealth of
112 Puerto Rico.

113 (d) A debtor shall be deemed located at his place of
114 business if he has one, at his chief executive office if he
115 has more than one place of business, otherwise at his resi-
116 dence. If, however, the debtor is a foreign air carrier un-
117 der the federal Aviation Act of 1958, as amended, it shall
118 be deemed located at the designated office of the agent
119 upon whom service of process may be made on behalf of
120 the foreign air carrier.

121 (e) A security interest perfected under the law of the
122 jurisdiction of the location of the debtor is perfected until
123 the expiration of four months after a change of the debt-

124 or's location to another jurisdiction, or until perfection
125 would have ceased by the law of the first jurisdiction,
126 whichever period first expires. Unless perfected in the
127 new jurisdiction before the end of that period, it becomes
128 unperfected thereafter and is deemed to have been unper-
129 fected as against a person who became a purchaser after
130 the change.

131 (4) *Chattel paper.* —

132 The rules stated for goods in subsection (1) of this
133 section apply to a possessory security interest in chattel
134 paper. The rules stated for accounts in subsection (3) of
135 this section apply to a nonpossessory security interest in
136 chattel paper, but the security interest may not be perfect-
137 ed by notification to the account debtor.

138 (5) *Minerals.* —

139 Perfection and the effect of perfection or
140 nonperfection of a security interest which is created by a
141 debtor who has an interest in minerals or the like (includ-
142 ing oil and gas) before extraction and which attaches
143 thereto as extracted, or which attaches to an account result-
144 ing from the sale thereof at the wellhead or minehead are
145 governed by the law (including the conflict of laws rules)
146 of the jurisdiction wherein the wellhead or minehead is
147 located.

148 (6) *Investment property.* —

149 (a) This subsection applies to investment property.

150 (b) Except as otherwise provided in subdivision (f) of
151 this section, during the time that a security certificate is
152 located in a jurisdiction, perfection of a security interest,
153 the effect of perfection or nonperfection, and the priority
154 of a security interest in the certificated security represent-
155 ed thereby are governed by the local law of that jurisdic-
156 tion.

157 (c) Except as otherwise provided in subdivision (f) of
158 this section, perfection of a security interest, the effect of

159 perfection or nonperfection, and the priority of a security
160 interest in an uncertificated security are governed by the
161 local law of the issuer's jurisdiction as specified in section
162 8-110(d).

163 (d) Except as otherwise provided in subdivision (f) of
164 this section, perfection of a security interest, the effect of
165 perfection or nonperfection, and the priority of a security
166 interest in a security entitlement or securities account are
167 governed by the local law of the securities intermediary's
168 jurisdiction as specified in section 8-110(e).

169 (e) Except as otherwise provided in paragraph (f),
170 perfection of a security interest, the effect of perfection or
171 nonperfection, and the priority of a security interest in a
172 commodity contract or commodity account are governed
173 by the local law of the commodity intermediary's jurisdic-
174 tion. The following rules determine a "commodity inter-
175 mediary's jurisdiction" for purposes of this paragraph:

176 (i) If an agreement between the commodity interme-
177 diary and commodity customer specifies that it is gov-
178 erned by the law of a particular jurisdiction, that jurisdic-
179 tion is the commodity intermediary's jurisdiction.

180 (ii) If an agreement between the commodity interme-
181 diary and commodity customer does not specify the gov-
182 erning law as provided in paragraph (i) of this subdivision,
183 but expressly specifies that the commodity account is
184 maintained at an office in a particular jurisdiction, that
185 jurisdiction is the commodity intermediary's jurisdiction.

186 (iii) If an agreement between the commodity interme-
187 diary and commodity customer does not specify a juris-
188 diction as provided in paragraphs (i) or (ii) of this subdivi-
189 sion, the commodity intermediary's jurisdiction is the
190 jurisdiction in which is located the office identified in an
191 account statement as the office serving the commodity
192 customer's account.

193 (iv) If an agreement between the commodity interme-
194 diary and commodity customer does not specify a juris-

195 diction as provided in subparagraph (i) or (ii) of this sub-
196 division and an account statement does not identify an
197 office serving the commodity customer's account as pro-
198 vided in paragraph (iii) of this subdivision, the commodity
199 intermediary's jurisdiction is the jurisdiction in which is
200 located the chief executive office of the commodity inter-
201 mediary.

202 (f) Perfection of a security interest by filing, automat-
203 ic perfection of a security interest in investment property
204 granted by a broker or securities intermediary, and auto-
205 matic perfection of a security interest in a commodity
206 contract or commodity account granted by a commodity
207 intermediary are governed by the local law of the jurisdic-
208 tion in which the debtor is located.

§46-9-105. Definitions and index of definitions.

1 (1) In this article unless the context otherwise requires:

2 (a) "Account debtor" means the person who is obligat-
3 ed on an account, chattel paper or general intangible;

4 (b) "Chattel paper" means a writing or writings which
5 evidence both a monetary obligation and a security inter-
6 est in or a lease of specific goods, but a charter or other
7 contract involving the use or hire of a vessel is not chattel
8 paper. When a transaction is evidenced both by such a
9 security agreement or a lease and by an instrument or a
10 series of instruments, the group of writings taken together
11 constitutes chattel paper;

12 (c) "Collateral" means the property subject to a securi-
13 ty interest, and includes accounts, and chattel paper which
14 have been sold;

15 (d) "Debtor" means the person who owes payment or
16 other performance of the obligation secured, whether or
17 not he owns or has rights in the collateral, and includes the
18 seller of accounts, or chattel paper. Where the debtor and
19 the owner of the collateral are not the same person, the
20 term "debtor" means the owner of the collateral in any
21 provision of the article dealing with the collateral, the

22 obligor in any provision dealing with the obligation, and
23 may include both where the context so requires;

24 (e) "Deposit account" means a demand, time, savings,
25 passbook or like account maintained with a bank, savings
26 and loan association, credit union or like organization,
27 other than an account evidenced by a certificate of depos-
28 it;

29 (f) "Document" means document of title as defined in
30 the general definitions of article 1 (section 1-201), and a
31 receipt of the kind described in subsection (2) of section
32 7-201;

33 (g) "Encumbrance" includes real estate mortgages and
34 other liens on real estate and all other rights in real estate
35 that are not ownership interests;

36 (h) "Goods" includes all things which are moveable at
37 the time the security interest attaches or which are fixtures
38 (section 9-313), but does not include money, documents,
39 instruments, investment property, commodity contracts,
40 accounts, chattel paper, general intangibles, or minerals or
41 the like (including oil and gas) before extraction.
42 "Goods" also includes standing timber which is to be cut
43 and removed under a conveyance or contract for sale, the
44 unborn young of animals, and growing crops;

45 (i) "Instrument" means a negotiable instrument (de-
46 fined in section 3-104), or any other writing which evi-
47 dences a right to the payment of money and is not itself a
48 security agreement or lease and is of a type which is in
49 ordinary course of business transferred by delivery with
50 any necessary endorsement or assignment. The term does
51 not include investment property;

52 (j) "Mortgage" means a consensual interest created by
53 a real estate mortgage, a trust deed on real estate, or the
54 like;

55 (k) An advance is made "pursuant to commitment" if
56 the secured party has bound himself to make it, whether or
57 not a subsequent event of default or other event not within

58 his control has relieved or may relieve him from his obli-
59 gation;

60 (l) "Security agreement" means an agreement which
61 creates or provides for a security interest;

62 (m) "Secured party" means a lender, seller or other
63 person in whose favor there is a security interest, including
64 a person to whom accounts or chattel paper have been
65 sold. When the holders of obligations issued under an
66 indenture of trust, equipment trust agreement or the like
67 are represented by a trustee or other person, the represen-
68 tative is the secured party;

69 (n) "Transmitting utility" means any person primarily
70 engaged in the railroad, street railway or trolley bus busi-
71 ness, the electric or electronics communications transmis-
72 sion business, the transmission of goods by pipeline, or the
73 transmission or the production and transmission of elec-
74 tricity, steam, gas or water, or the provision of sewer ser-
75 vice.

76 (2) Other definitions applying to this article and the
77 sections in which they appear are:

78	"Account".	Section 9-106.
79	"Attach".	Section 9-203.
80	"Commodity contract".	Section 9-115.
81	"Commodity customer".	Section 9-115.
82	"Commodity intermediary".	Section 9-115.
83	"Construction mortgage".	Section 9-313(1).
84	"Consumer goods".	Section 9-109(1).
85	"Control".	Section 9-115.
86	"Equipment".	Section 9-109(2).
87	"Farm products".	Section 9-109(3).
88	"Fixture".	Section 9-313(1).

89	"Fixture filing".	Section 9-313(1).
90	"General intangibles".	Section 9-106.
91	"Inventory".	Section 9-109(4).
92	"Investment property".	Section 9-115.
93	"Lien creditor".	Section 9-301(3).
94	"Proceeds".	Section 9-306(1).
95	"Purchase money security	
96	interest".	Section 9-107.
97	"United States".	Section 9-103.
98	(3) The following definitions in other articles apply to	
99	this article:	
100	"Broker".	Section 8-102.
101	"Certificated security".	Section 8-102.
102	"Check".	Section 3-104.
103	"Clearing corporation".	Section 8-102.
104	"Contract for sale".	Section 2-106.
105	"Control".	Section 8-106.
106	"Delivery".	Section 8-301.
107	"Entitlement holder".	Section 8-102.
108	"Financial asset".	Section 8-102.
109	"Holder in due course".	Section 3-302.
110	"Note".	Section 3-104.
111	"Sale".	Section 2-106.
112	"Securities intermediary".	Section 8-102.
113	"Security".	Section 8-102.

114	"Security certificate".	Section 8-102.
115	"Security entitlement".	Section 8-102.
116	"Uncertificated security".	Section 8-102.
117	(4) In addition, article 1 contains general definitions	
118	and principles of construction and interpretation applica-	
119	ble throughout this article.	

§46-9-106. Definitions: "Account"; "general intangibles".

1 "Account" means any right to payment for goods sold
2 or leased or for services rendered which is not evidenced
3 by an instrument or chattel paper, whether or not it has
4 been earned by performance. "General intangibles"
5 means any personal property (including things in action)
6 other than goods, accounts, chattel paper, documents,
7 instruments, investment property and money. All rights to
8 payment earned or unearned under a charter or other
9 contract involving the use or hire of a vessel and all rights
10 incident to the charter or contract are accounts.

§46-9-115. Investment property.

1 (1) In this article:

2 (a) "Commodity account" means an account main-
3 tained by a commodity intermediary in which a commodi-
4 ty contract is carried for a commodity customer.

5 (b) "Commodity contract" means a commodity fu-
6 tures contract, an option on a commodity futures contract,
7 a commodity option, or other contract that, in each case,
8 is:

9 (i) Traded on or subject to the rules of a board of
10 trade that has been designated as a contract market for
11 such a contract pursuant to the federal commodities laws;
12 or

13 (ii) Traded on a foreign commodity board of trade,
14 exchange or market, and is carried on the books of a com-
15modity intermediary for a commodity customer.

16 (c) "Commodity customer" means a person for whom
17 a commodity intermediary carries a commodity contract
18 on its books.

19 (d) "Commodity intermediary" means:

20 (i) A person who is registered as a futures commission
21 merchant under the federal commodities laws; or

22 (ii) A person who in the ordinary course of its busi-
23 ness provides clearance or settlement services for a board
24 of trade that has been designated as a contract market
25 pursuant to the federal commodities laws.

26 (e) "Control" with respect to a certificated security,
27 uncertificated security, or security entitlement has the
28 meaning specified in section 8-106. A secured party has
29 control over a commodity contract if by agreement
30 among the commodity customer, the commodity interme-
31 diary, and the secured party, the commodity intermediary
32 has agreed that it will apply any value distributed on ac-
33 count of the commodity contract as directed by the se-
34 cured party without further consent by the commodity
35 customer. If a commodity customer grants a security
36 interest in a commodity contract to its own commodity
37 intermediary, the commodity intermediary as secured
38 party has control. A secured party has control over a
39 securities account or commodity account if the secured
40 party has control over all security entitlements or com-
41 modity contracts carried in the securities account or com-
42 modity account.

43 (f) "Investment property" means:

44 (i) A security, whether certificated or uncertificated;

45 (ii) A security entitlement;

46 (iii) A securities account;

47 (iv) A commodity contract; or

48 (v) A commodity account.

49 (2) Attachment or perfection of a security interest in a
50 securities account is also attachment or perfection of a
51 security interest in all security entitlements carried in the
52 securities account. Attachment or perfection of a security
53 interest in a commodity account is also attachment or
54 perfection of a security interest in all commodity contracts
55 carried in the commodity account.

56 (3) A description of collateral in a security agreement
57 or financing statement is sufficient to create or perfect a
58 security interest in a certificated security, uncertificated
59 security, security entitlement, securities account, commodi-
60 ty contract or commodity account whether it describes the
61 collateral by those terms, or as investment property, or by
62 description of the underlying security, financial asset or
63 commodity contract. A description of investment proper-
64 ty collateral in a security agreement or financing statement
65 is sufficient if it identifies the collateral by specific listing,
66 by category, by quantity, by a computational or
67 allocational formula or procedure or by any other meth-
68 od, if the identity of the collateral is objectively determina-
69 ble.

70 (4) Perfection of a security interest in investment
71 property is governed by the following rules:

72 (a) A security interest in investment property may be
73 perfected by control.

74 (b) Except as otherwise provided in subdivisions (c)
75 and (d) of this subsection, a security interest in investment
76 property may be perfected by filing.

77 (c) If the debtor is a broker or securities intermediary
78 a security interest in investment property is perfected when
79 it attaches. The filing of a financing statement with re-
80 spect to a security interest in investment property granted
81 by a broker or securities intermediary has no effect for
82 purposes of perfection or priority with respect to that
83 security interest.

84 (d) If a debtor is a commodity intermediary, a securi-

85 ty interest in a commodity contract or a commodity ac-
86 count is perfected when it attaches. The filing of a financ-
87 ing statement with respect to a security interest in a com-
88modity contract or a commodity account granted by a
89 commodity intermediary has no effect for purposes of
90 perfection or priority with respect to that security interest.

91 (5) Priority between conflicting security interests in
92 the same investment property is governed by the following
93 rules:

94 (a) A security interest of a secured party who has
95 control over investment property has priority over a secu-
96 rity interest of a secured party who does not have control
97 over the investment property.

98 (b) Except as otherwise provided in subdivisions (c)
99 and (d) of this subsection, conflicting security interests of
100 secured parties each of whom has control rank equally.

101 (c) Except as otherwise agreed by the securities inter-
102 mediary, a security interest in a security entitlement or a
103 securities account granted to the debtor's own securities
104 intermediary has priority over any security interest grant-
105 ed by the debtor to another secured party.

106 (d) Except as otherwise agreed by the commodity
107 intermediary, a security interest in a commodity contract
108 or a commodity account granted to the debtor's own com-
109modity intermediary has priority over any security interest
110 granted by the debtor to another secured party.

111 (e) Conflicting security interests granted by a broker,
112 a securities intermediary, or a commodity intermediary
113 which are perfected without control rank equally.

114 (f) In all other cases, priority between conflicting
115 security interests in investment property is governed by
116 section 9-312(5), (6) and (7). Section 9-312(4) does not
117 apply to investment property.

118 (6) If a security certificate in registered form is deliv-
119 ered to a secured party pursuant to agreement, a written

120 security agreement is not required for attachment or en-
121 forceability of the security interest, delivery suffices for
122 perfection of the security interest, and the security interest
123 has priority over a conflicting security interest perfected
124 by means other than control, even if a necessary indorse-
125 ment is lacking.

§46-9-116. Security interest arising in purchase or delivery of financial asset.

1 (1) If a person buys a financial asset through a securi-
2 ties intermediary in a transaction in which the buyer is
3 obligated to pay the purchase price to the securities inter-
4 mediary at the time of the purchase and the securities
5 intermediary credits the financial asset to the buyer's secu-
6 rities account before the buyer pays the securities interme-
7 diary, the securities intermediary has a security interest in
8 the buyer's security entitlement securing the buyer's obli-
9 gation to pay. A security agreement is not required for
10 attachment or enforceability of the security interest and
11 the security interest is automatically perfected.

12 (2) If a certificated security, or other financial asset
13 represented by a writing which in the ordinary course of
14 business is transferred by delivery with any necessary
15 indorsement or assignment is delivered pursuant to an
16 agreement between persons in the business of dealing with
17 such securities or financial assets and the agreement calls
18 for delivery versus payment, the person delivering the
19 certificate or other financial asset has a security interest in
20 the certificated security or other financial asset securing
21 the seller's right to receive payment. A security agreement
22 is not required for attachment or enforceability of the
23 security interest, and the security interest is automatically
24 perfected.

**PART 2. VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES
THERETO.**

**§46-9-203. Attachment and enforceability of security interest;
proceeds; formal requisites.**

1 (1) Subject to the provisions of section 4-208 on the
2 security interest of a collecting bank, sections 9-115 and
3 9-116 on security interests in investment property, and
4 section 9-113 on a security interest arising under the arti-
5 cle on sales, a security interest is not enforceable against
6 the debtor or third parties with respect to the collateral and
7 does not attach unless:

8 (a) The collateral is in the possession of the secured
9 party pursuant to agreement, the collateral is investment
10 property and the secured party has control pursuant to
11 agreement, or the debtor has signed a security agreement
12 which contains a description of the collateral and in addi-
13 tion, when the security interest covers crops growing or to
14 be grown or timber to be cut, a description of the land
15 concerned;

16 (b) Value has been given; and

17 (c) The debtor has rights in the collateral.

18 (2) A security interest attaches when it becomes en-
19 forceable against the debtor with respect to the collateral.
20 Attachment occurs as soon as all of the events specified in
21 subsection (1) of this section have taken place unless ex-
22 plicit agreement postpones the time of attaching.

23 (3) Unless otherwise agreed a security agreement
24 gives the secured party the rights to proceeds provided by
25 section 9-306.

26 (4) A transaction may be subject to this article and
27 also to article seven-a, chapter forty-seven of this code,
28 relating to small loans and in case of conflict between the
29 provisions of this article and article seven-a, chapter
30 forty-seven of this code or any other such statute, the
31 provisions of said article seven-a or such other statute
32 control. Failure to comply with any applicable statute has
33 only the effect which is specified therein.

**PART 3. RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED
SECURITY INTEREST; RULES OF PRIORITY.**

§46-9-301. Persons who take priority over unperfected security interests; right of "lien creditor".

1 (1) Except as otherwise provided in subsection (2) of
2 this section), an unperfected security interest is subordinate to the rights of:
3

4 (a) Persons entitled to priority under section 9-312;

5 (b) A person who becomes a lien creditor before the
6 security interest is perfected;

7 (c) In the case of goods, instruments, documents, and
8 chattel paper, a person who is not a secured party and who
9 is a transferee in bulk or other buyer not in ordinary
10 course of business; or is a buyer of farm products in ordinary
11 course of business, to the extent that he gives value
12 and receives delivery of the collateral without knowledge
13 of the security interest and before it is perfected; and

14 (d) In the case of accounts, general intangibles and
15 investment property, a person who is not a secured party
16 and who is a transferee to the extent that he gives value
17 without knowledge of the security interest and before it is
18 perfected.

19 (2) If the secured party files with respect to a purchase money security interest before or within twenty days
20 after the debtor receives possession of the collateral, he
21 takes priority over the rights of a transferee in bulk or of a
22 lien creditor which arise between the time the security
23 interest attaches and the time of filing.
24

25 (3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy
26 or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy
27 from the date of the filing of the petition or a receiver in equity from the time of appointment.
28
29
30

31 (4) A person who becomes a lien creditor while a
32 security interest is perfected takes subject to the security
33 interest only to the extent that it secures advances made
34 before he becomes a lien creditor or within forty-five days

35 thereafter or made without knowledge of the lien or pur-
36 suant to a commitment entered into without knowledge of
37 the lien.

**§46-9-302. When filing is required to perfect security interest;
security interests to which filing provisions of
this article do not apply.**

1 (1) A financing statement must be filed to perfect all
2 security interests except the following:

3 (a) A security interest in collateral in possession of the
4 secured party under section 9-305;

5 (b) A security interest temporarily perfected in instru-
6 ments, certificated securities or documents without deliv-
7 ery under section 9-304 or in proceeds for a ten-day peri-
8 od under section 9-306;

9 (c) A security interest created by an assignment of a
10 beneficial interest in a trust or a decedent's estate;

11 (d) A purchase money security interest in consumer
12 goods; but filing is required for a motor vehicle required
13 to be registered; and fixture filing is required for priority
14 over conflicting interests in fixtures to the extent provided
15 in section 9-313;

16 (e) An assignment of accounts which does not alone
17 or in conjunction with other assignments to the same as-
18 signee transfer a significant part of the outstanding ac-
19 counts of the assignor;

20 (f) A security interest of a collecting bank (section
21 4-208) or arising under the article on sales (see section
22 9-113) or covered in subsection (3) of this section;

23 (g) An assignment for the benefit of all the creditors
24 of the transferor, and subsequent transfers by the assignee
25 thereunder;

26 (h) A security interest in investment property which is
27 perfected without filing under section 9-115 or section
28 9-116.

29 (2) If a secured party assigns a perfected security
30 interest, no filing under this article is required in order to
31 continue the perfected status of the security interest
32 against creditors of and transferees from the original debt-
33 or.

34 (3) The filing of a financing statement otherwise re-
35 quired by this article is not necessary or effective to per-
36 fect a security interest in property subject to:

37 (a) A statute or treaty of the United States which pro-
38 vides for a national or international registration or a na-
39 tional or international certificate of title or which specifies
40 a place of filing different from that specified in this article
41 for filing of the security interest; or

42 (b) The following statute of this state: Chapter
43 seventeen-a of this code; but during any period in which
44 collateral is inventory held for sale by a person who is in
45 the business of selling goods of that kind, the filing provi-
46 sions of this article (Part 4) apply to a security interest in
47 that collateral created by him as debtor; or

48 (c) A certificate of title statute of another jurisdiction
49 under the law of which indication of a security interest on
50 the certificate is required as a condition of perfection
51 (subsection (2) of section 9-103).

52 (4) Compliance with a statute or treaty described in
53 subsection (3) of this section is equivalent to the filing of a
54 financing statement under this article, and a security inter-
55 est in property subject to the statute or treaty can be per-
56 fected only by compliance therewith except as provided in
57 section 9-103 on multiple state transactions. Duration and
58 renewal of perfection of a security interest perfected by
59 compliance with the statute or treaty are governed by the
60 provisions of the statute or treaty; in other respects the
61 security interest is subject to this article.

**§46-9-304. Perfection of security interest in instruments, docu-
ments, and goods covered by documents; per-
fection by permissive filing; temporary perfec-
tion without filing or transfer of possession.**

1 (1) A security interest in chattel paper or negotiable
2 documents may be perfected by filing. A security interest
3 in money or instruments (other than instruments which
4 constitute part of chattel paper) can be perfected only by
5 the secured party's taking possession, except as provided
6 in subsections (4) and (5) of this section and subsections
7 (2) and (3) of section 9-306 on proceeds.

8 (2) During the period that goods are in the possession
9 of the issuer of a negotiable document therefor, a security
10 interest in the goods is perfected by perfecting a security
11 interest in the document, and any security interest in the
12 goods otherwise perfected during such period is subject
13 thereto.

14 (3) A security interest in goods in the possession of a
15 bailee other than one who has issued a negotiable docu-
16 ment therefor is perfected by issuance of a document in
17 the name of the secured party or by the bailee's receipt of
18 notification of the secured party's interest or by filing as to
19 the goods.

20 (4) A security interest in instruments, certificated
21 securities or negotiable documents is perfected without
22 filing or the taking of possession for a period of
23 twenty-one days from the time it attaches to the extent that
24 it arises for new value given under a written security agree-
25 ment.

26 (5) A security interest remains perfected for a period
27 of twenty-one days without filing where a secured party
28 having a perfected security interest in an instrument, a
29 certificated security, a negotiable document or goods in
30 possession of a bailee other than one who has issued a
31 negotiable document therefor:

32 (a) Makes available to the debtor the goods or docu-
33 ments representing the goods for the purpose of ultimate
34 sale or exchange or for the purpose of loading, unloading,
35 storing, shipping, transshipping, manufacturing, process-
36 ing or otherwise dealing with them in a manner prelimi-

37 nary to their sale or exchange, but priority between con-
38 flicting security interests in the goods is subject to subsec-
39 tion (3) of section 9-312; or

40 (b) Delivers the instrument or certificated security to
41 the debtor for the purpose of ultimate sale or exchange or
42 of presentation, collection, renewal or registration of trans-
43 fer.

44 (6) After the twenty-one-day period in subsections
45 (4) and (5) of this section perfection depends upon com-
46 pliance with applicable provisions of this article.

§46-9-305. When possession by secured party perfects security interest without filing.

1 A security interest in letters of credit and advices of
2 credit (subsection (2) (a) of section 5-116), goods, instru-
3 ments, money, negotiable documents or chattel paper may
4 be perfected by the secured party's taking possession of
5 the collateral. If such collateral other than goods covered
6 by a negotiable document is held by a bailee, the secured
7 party is deemed to have possession from the time the bail-
8 ee receives notification of the secured party's interest. A
9 security interest is perfected by possession from the time
10 possession is taken without relation back and continues
11 only so long as possession is retained, unless otherwise
12 specified in this article. The security interest may be oth-
13 erwise perfected as provided in this article before or after
14 the period of possession by the secured party.

§46-9-306. "Proceeds"; secured party's rights on disposition of collateral.

1 (1) "Proceeds" includes whatever is received upon the
2 sale, exchange, collection or other disposition of collateral
3 or proceeds. Insurance payable by reason of loss or dam-
4 age to the collateral is proceeds, except to the extent that it
5 is payable to a person other than a party to the security
6 agreement. Any payments or distributions made with
7 respect to investment property collateral are proceeds.

8 Money, checks, deposit accounts and the like are "cash
9 proceeds". All other proceeds are "noncash proceeds".

10 (2) Except where this article otherwise provides, a
11 security interest continues in collateral notwithstanding
12 sale, exchange or other disposition thereof unless the dis-
13 position was authorized by the secured party in the securi-
14 ty agreement or otherwise, and also continues in any iden-
15 tifiable proceeds including collections received by the
16 debtor.

17 (3) The security interest in proceeds is a continuously
18 perfected security interest if the interest in the original
19 collateral was perfected but it ceases to be a perfected
20 security interest and becomes unperfected ten days after
21 receipt of the proceeds by the debtor unless:

22 (a) A filed financing statement covers the original
23 collateral and the proceeds are collateral in which a securi-
24 ty interest may be perfected by filing in the office or of-
25 fices where the financing statement has been filed and, if
26 the proceeds are acquired with cash proceeds, the descrip-
27 tion of collateral in the financing statement indicates the
28 types of property constituting the proceeds; or

29 (b) A filed financing statement covers the original
30 collateral and the proceeds are identifiable cash proceeds;
31 or

32 (c) The original collateral was investment property
33 and the proceeds are identifiable cash proceeds; or

34 (d) The security interest in the proceeds is perfected
35 before the expiration of the ten-day period. Except as
36 provided in this section, a security interest in proceeds can
37 be perfected only by the methods or under the circum-
38 stances permitted in this article for original collateral of
39 the same type.

40 (4) In the event of insolvency proceedings instituted
41 by or against a debtor, a secured party with a perfected
42 security interest in proceeds has a perfected security inter-

43 est only in the following proceeds:

44 (a) In identifiable noncash proceeds and in separate
45 deposit accounts containing only proceeds;

46 (b) In identifiable cash proceeds in the form of mon-
47 ey which is neither commingled with other money nor
48 deposited in a deposit account prior to the insolvency
49 proceedings;

50 (c) In identifiable cash proceeds in the form of
51 checks and the like which are not deposited in a deposit
52 account prior to the insolvency proceedings; and

53 (d) In all cash and deposit accounts of the debtor in
54 which proceeds have been commingled with other funds,
55 but the perfected security interest under this subdivision is:

56 (i) Subject to any right of setoff; and

57 (ii) Limited to an amount not greater than the amount
58 of any cash proceeds received by the debtor within ten
59 days before the institution of the insolvency proceedings
60 less the sum of: (I) The payments to the secured party on
61 account of cash proceeds received by the debtor during
62 such period; and (II) the cash proceeds received by the
63 debtor during such period to which the secured party is
64 entitled under subdivisions (a) through (c) of this subsec-
65 tion.

66 (5) If a sale of goods results in an account or chattel
67 paper which is transferred by the seller to a secured party,
68 and if the goods are returned to or are repossessed by the
69 seller or the secured party, the following rules determine
70 priorities:

71 (a) If the goods were collateral at the time of sale for
72 an indebtedness of the seller which is still unpaid, the orig-
73 inal security interest attaches again to the goods and con-
74 tinues as the perfected security interest if it was perfected
75 at the time when the goods were sold. If the security inter-
76 est was originally perfected by a filing which is still effec-

77 tive, nothing further is required to continue the perfected
78 status; in any other case, the secured party must take pos-
79 session of the returned or repossessed goods or must file.

80 (b) An unpaid transferee of the chattel paper has a
81 security interest in the goods against the transferor. Such
82 security interest is prior to a security interest asserted un-
83 der paragraph (a) to the extent that the transferee of the
84 chattel paper was entitled to priority under section 9-308.

85 (c) An unpaid transferee of the account has a security
86 interest in the goods against the transferor. Such security
87 interest is subordinate to a security interest asserted under
88 subdivision (a) of this subsection.

89 (d) A security interest of an unpaid transferee asserted
90 under subdivision (b) or (c) of this subsection must be
91 perfected for protection against creditors of the transferor
92 and purchasers of the returned or repossessed goods.

**§46-9-309. Protection of purchasers of instruments, documents
and securities.**

1 Nothing in this article limits the rights of a holder in
2 due course of a negotiable instrument (section 3-302) or a
3 holder to whom a negotiable document of title has been
4 duly negotiated (section 7-501) or a protected purchaser
5 of a security (section 8-303) and such holders or purchas-
6 ers take priority over an earlier security interest even
7 though perfected. Filing under this article does not consti-
8 tute notice of the security interest to such holders or pur-
9 chasers.

**§46-9-312. Priorities among conflicting security interests in the
same collateral.**

1 (1) The rules of priority stated in other sections of
2 this part and in the following sections shall govern when
3 applicable: Section 4-210 with respect to the security
4 interests of collecting banks in items being collected, ac-
5 companying documents and proceeds; section 9-103 on
6 security interests related to other jurisdictions; section

7 9-114 on consignments; section 9-115 on security inter-
8 ests in investment property.

9 (2) A perfected security interest in crops for new
10 value given to enable the debtor to produce the crops
11 during the production season and given not more than
12 three months before the crops become growing crops by
13 planting or otherwise takes priority over an earlier perfect-
14 ed security interest to the extent that such earlier interest
15 secures obligations due more than six months before the
16 crops become growing crops by planting or otherwise,
17 even though the person giving new value had knowledge
18 of the earlier security interest.

19 (3) A perfected purchase money security interest in
20 inventory has priority over a conflicting security interest
21 in the same inventory and also has priority in identifiable
22 cash proceeds received on or before the delivery of the
23 inventory to a buyer if:

24 (a) The purchase money security interest is perfected
25 at the time the debtor receives possession of the inventory;
26 and

27 (b) The purchase money secured party gives notifica-
28 tion in writing to the holder of the conflicting security
29 interest if the holder had filed a financing statement cover-
30 ing the same types of inventory: (i) Before the date of the
31 filing made by the purchase money secured party; or (ii)
32 before the beginning of the twenty-one-day period where
33 the purchase money security interest is temporarily per-
34 fected without filing or possession (subsection (5) of sec-
35 tion 9-304); and

36 (c) The holder of the conflicting security interest
37 receives the notification within five years before the debtor
38 receives possession of the inventory; and

39 (d) The notification states that the person giving the
40 notice has or expects to acquire a purchase money securi-
41 ty interest in inventory of the debtor, describing such

42 inventory by item or type.

43 (4) A purchase money security interest in collateral
44 other than inventory has priority over a conflicting securi-
45 ty interest in the same collateral or its proceeds if the pur-
46 chase money security interest is perfected at the time the
47 debtor receives possession of the collateral or within twen-
48 ty days thereafter.

49 (5) In all cases not governed by other rules stated in
50 this section (including cases of purchase money security
51 interests which do not qualify for the special priorities set
52 forth in subsections (3) and (4) of this section), priority
53 between conflicting security interests in the same collateral
54 shall be determined according to the following rules:

55 (a) Conflicting security interests rank according to
56 priority in time of filing or perfection. Priority dates from
57 the time a filing is first made covering the collateral or the
58 time the security interest is first perfected, whichever is
59 earlier, provided that there is no period thereafter when
60 there is neither filing nor perfection.

61 (b) So long as conflicting security interests are unper-
62 fected, the first to attach has priority.

63 (6) For the purposes of subsection (5) of this section
64 a date of filing or perfection as to collateral is also a date
65 of filing or perfection as to proceeds.

66 (7) If future advances are made while a security inter-
67 est is perfected by filing, the taking of possession, or un-
68 der section 9-115 or section 9-116 on investment proper-
69 ty, the security interest has the same priority for the pur-
70 poses of subsection (5) or (8) of this section with respect
71 to the future advances as it does with respect to the first
72 advance. If a commitment is made before or while the
73 security interest is so perfected, the security interest has the
74 same priority with respect to advances made pursuant
75 thereto. In other cases a perfected security interest has
76 priority from the date the advance is made.

CHAPTER 250

(H. B. 2226—By Delegates Beach, Doyle and Farris)

[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article eight-a, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said code by adding thereto a new chapter, designated chapter forty-seven-b, relating to adopting the Uniform Partnership Act (1994); general provisions; nature of partnership; relations of partners to persons dealing with partnership; relations of partners to each other and to partnership; transferees and creditors of partner; partner's dissociation; partner's dissociation when business not wound up; winding up partnership business; conversions and mergers; and miscellaneous provisions.

Be it enacted by the Legislature of West Virginia:

That article eight-a, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said code be amended by adding thereto a new chapter, designated chapter forty-seven-b, to read as follows:

CHAPTER 47B. UNIFORM PARTNERSHIP ACT.

Article

1. General Provisions.
2. Nature of Partnership.
3. Relations of Partners to Persons Dealing with Partnership.
4. Relations of Partners to Each Other and to Partnership.
5. Transferees and Creditors of Partner.
6. Partner's Dissociation.
7. Partner's Dissociation when Business Not Wound Up.
8. Winding Up Partnership Business.
9. Conversions and Mergers.
10. Miscellaneous Provisions.

ARTICLE 1. GENERAL PROVISIONS.

§47B-1-1. Definitions.

- §47B-1-2. Knowledge and notice.
- §47B-1-3. Effect of partnership agreement; nonwaivable provisions.
- §47B-1-4. Supplemental principles of law.
- §47B-1-5. Execution, filing and recording of statements.
- §47B-1-6. Law governing internal relations.
- §47B-1-7. Partnership subject to amendment or repeal of chapter.

§47B-1-1. Definitions.

1 In this chapter:

2 (1) "Business" includes every trade, occupation and
3 profession.

4 (2) "Debtor in bankruptcy" means a person who is the
5 subject of:

6 (i) An order for relief under Title 11 of the United
7 States Code or a comparable order under a successor stat-
8 ute of general application; or

9 (ii) A comparable order under federal, state or foreign
10 law governing insolvency.

11 (3) "Distribution" means a transfer of money or other
12 property from a partnership to a partner in the partner's
13 capacity as a partner or to the partner's transferee.

14 (4) "Partnership" means an association of two or more
15 persons to carry on as coowners a business for profit
16 formed under section two, article two of this chapter, pre-
17 decessor law, or comparable law of another jurisdiction.

18 (5) "Partnership agreement" means the agreement,
19 whether written, oral or implied, among the partners con-
20 cerning the partnership, including amendments to the
21 partnership agreement.

22 (6) "Partnership at will" means a partnership in which
23 the partners have not agreed to remain partners until the
24 expiration of a definite term or the completion of a partic-
25 ular undertaking.

26 (7) "Partnership interest" or "partner's interest in the
27 partnership" means all of a partner's interests in the part-

28 nership, including the partner's transferable interest and all
29 management and other rights.

30 (8) "Person" means an individual, corporation, busi-
31 ness trust, estate, trust, partnership, association, joint ven-
32 ture, government, governmental subdivision, agency or
33 instrumentality, or any other legal or commercial entity.

34 (9) "Property" means all property, real, personal or
35 mixed, tangible or intangible, or any interest therein.

36 (10) "State" means a state of the United States, the
37 District of Columbia, the Commonwealth of Puerto Rico,
38 or any territory or insular possession subject to the juris-
39 diction of the United States.

40 (11) "Statement" means a statement of partnership
41 authority under section three, article three of this chapter,
42 a statement of denial under section four, article three of
43 this chapter, a statement of dissociation under section four,
44 article seven of this chapter, a statement of dissolution
45 under section five, article eight of this chapter, a statement
46 of merger under section seven, article nine of this chapter,
47 or an amendment or cancellation of any of the foregoing.

48 (12) "Transfer" includes an assignment, conveyance,
49 lease, mortgage, deed and encumbrance.

§47B-1-2. Knowledge and notice.

1 (a) A person knows a fact if the person has actual
2 knowledge of it.

3 (b) A person has notice of a fact if the person:

4 (1) Knows of it;

5 (2) Has received a notification of it; or

6 (3) Has reason to know it exists from all of the facts
7 known to the person at the time in question.

8 (c) A person notifies or gives a notification to another
9 by taking steps reasonably required to inform the other
10 person in ordinary course, whether or not the other person

11 learns of it.

12 (d) A person receives a notification when the notifica-
13 tion:

14 (1) Comes to the person's attention; or

15 (2) Is duly delivered at the person's place of business
16 or at any other place held out by the person as a place for
17 receiving communications.

18 (e) Except as otherwise provided in subsection (f) of
19 this section, a person other than an individual knows, has
20 notice, or receives a notification of a fact for purposes of a
21 particular transaction when the individual conducting the
22 transaction knows, has notice, or receives a notification of
23 the fact, or in any event when the fact would have been
24 brought to the individual's attention if the person had
25 exercised reasonable diligence. The person exercises rea-
26 sonable diligence if it maintains reasonable routines for
27 communicating significant information to the individual
28 conducting the transaction and there is reasonable compli-
29 ance with the routines. Reasonable diligence does not
30 require an individual acting for the person to communi-
31 cate information unless the communication is part of the
32 individual's regular duties or the individual has reason to
33 know of the transaction and that the transaction would be
34 materially affected by the information.

35 (f) A partner's knowledge, notice or receipt of a notifi-
36 cation of a fact relating to the partnership is effective im-
37 mediately as knowledge by, notice to, or receipt of a noti-
38 fication by the partnership, except in the case of a fraud
39 on the partnership committed by or with the consent of
40 that partner.

§47B-1-3. Effect of partnership agreement; nonwaivable provisions.

1 (a) Except as otherwise provided in subsection (b) of
2 this section, relations among the partners and between the
3 partners and the partnership are governed by the partner-
4 ship agreement. To the extent the partnership agreement

5 does not otherwise provide, this chapter governs relations
6 among the partners and between the partners and the part-
7 nership.

8 (b) The partnership agreement may not:

9 (1) Vary the rights and duties under section five, arti-
10 cle one of this chapter except to eliminate the duty to
11 provide copies of statements to all of the partners;

12 (2) Unreasonably restrict the right of access to books
13 and records under subsection (b), section three, article
14 four of this chapter;

15 (3) Eliminate the duty of loyalty under subsection (b),
16 section four, article four, or subdivision (3), subsection (b),
17 section three, article six of this chapter, but:

18 (i) The partnership agreement may identify specific
19 types or categories of activities that do not violate the duty
20 of loyalty, if not manifestly unreasonable; or

21 (ii) All of the partners or a number or percentage
22 specified in the partnership agreement may authorize or
23 ratify, after full disclosure of all material facts, a specific
24 act or transaction that otherwise would violate the duty of
25 loyalty;

26 (4) Unreasonably reduce the duty of care under sub-
27 section (c), section four, article four or subdivision (3),
28 subsection (b), section three, article six of this chapter;

29 (5) Eliminate the obligation of good faith and fair
30 dealing under subsection (d), section four, article four of
31 this chapter, but the partnership agreement may prescribe
32 the standards by which the performance of the obligation
33 is to be measured, if the standards are not manifestly un-
34 reasonable;

35 (6) Vary the power to dissociate as a partner under
36 subsection (a), section two, article six of this chapter, ex-
37 cept to require the notice under subdivision (1), section
38 one, article six of this chapter to be in writing;

39 (7) Vary the right of a court to expel a partner in the
40 events specified in subdivision (5), section one, article six
41 of this chapter;

42 (8) Vary the requirement to wind up the partnership
43 business in cases specified in subdivisions (4), (5) or (6),
44 section one, article eight of this chapter; or

45 (9) Restrict rights of third parties under this chapter.

§47B-1-4. Supplemental principles of law.

1 (a) Unless displaced by particular provisions of this
2 chapter, the principles of law and equity supplement this
3 chapter.

4 (b) If an obligation to pay interest arises under this
5 chapter and the rate is not specified, the rate is that speci-
6 fied in section thirty-one, article six, chapter fifty-six of
7 this code.

§47B-1-5. Execution, filing and recording of statements.

1 (a) A statement may be filed in the office of the secre-
2 tary of state. A certified copy of a statement that is filed
3 in an office in another state may be filed in the office of
4 the secretary of state. Either filing has the effect provided
5 in this chapter with respect to partnership property located
6 in or transactions that occur in this state.

7 (b) A certified copy of a statement that has been filed
8 in the office of the secretary of state and recorded in the
9 office for recording transfers of real property has the
10 effect provided for recorded statements in this chapter. A
11 recorded statement that is not a certified copy of a state-
12 ment filed in the office of the secretary of state does not
13 have the effect provided for recorded statements in this
14 chapter.

15 (c) A statement filed by a partnership must be execut-
16 ed by at least two partners. Other statements must be exe-
17 cuted by a partner or other person authorized by this
18 chapter. An individual who executes a statement as, or on

19 behalf of, a partner or other person named as a partner in
20 a statement shall personally declare under penalty of per-
21 jury that the contents of the statement are accurate.

22 (d) A person authorized by this chapter to file a state-
23 ment may amend or cancel the statement by filing an
24 amendment or cancellation that names the partnership,
25 identifies the statement, and states the substance of the
26 amendment or cancellation.

27 (e) A person who files a statement pursuant to this
28 section shall promptly send a copy of the statement to
29 every nonfiling partner and to any other person named as
30 a partner in the statement. Failure to send a copy of a
31 statement to a partner or other person does not limit the
32 effectiveness of the statement as to a person not a partner.

33 (f) The secretary of state may collect a fee for filing or
34 providing a certified copy of a statement. The clerk of the
35 county commission of any county may collect a fee for
36 recording a statement.

§47B-1-6. Law governing internal relations.

1 The law of the jurisdiction in which a partnership has
2 its chief executive office governs relations among the
3 partners and between the partners and the partnership.

§47B-1-7. Partnership subject to amendment or repeal of chapter.

1 A partnership governed by this chapter is subject to
2 any amendment to or repeal of this chapter.

ARTICLE 2. NATURE OF PARTNERSHIP.

§47B-2-1. Partnership as entity.

§47B-2-2. Formation of partnership.

§47B-2-3. Partnership property.

§47B-2-4. When property is partnership property.

§47B-2-1. Partnership as entity.

1 A partnership is an entity distinct from its partners.

§47B-2-2. Formation of partnership.

1 (a) Except as otherwise provided in subsection (b) of
2 this section, the association of two or more persons to
3 carry on as coowners a business for profit forms a partner-
4 ship, whether or not the persons intend to form a partner-
5 ship.

6 (b) An association formed under a statute other than
7 this chapter, a predecessor statute, or a comparable statute
8 of another jurisdiction is not a partnership under this
9 chapter.

10 (c) In determining whether a partnership is formed,
11 the following rules apply:

12 (1) Joint tenancy, tenancy in common, tenancy by the
13 entireties, joint property, common property, or part owner-
14 ship does not by itself establish a partnership, even if the
15 coowners share profits made by the use of the property.

16 (2) The sharing of gross returns does not by itself
17 establish a partnership, even if the persons sharing them
18 have a joint or common right or interest in property from
19 which the returns are derived.

20 (3) A person who receives a share of the profits of a
21 business is presumed to be a partner in the business, unless
22 the profits were received in payment:

23 (i) Of a debt by installments or otherwise;

24 (ii) For services as an independent contractor or of
25 wages or other compensation to an employee;

26 (iii) Of rent;

27 (iv) Of an annuity or other retirement or health bene-
28 fit to a beneficiary, representative or designee of a de-
29 ceased or retired partner;

30 (v) Of interest or other charge on a loan, even if the
31 amount of payment varies with the profits of the business,
32 including a direct or indirect present or future ownership

33 of the collateral, or rights to income, proceeds or increase
34 in value derived from the collateral; or

35 (vi) For the sale of the goodwill of a business or other
36 property by installments or otherwise.

§47B-2-3. Partnership property.

1 Property acquired by a partnership is property of the
2 partnership and not of the partners individually.

§47B-2-4. When property is partnership property.

1 (a) Property is partnership property if acquired in the
2 name of:

3 (1) The partnership; or

4 (2) One or more partners with an indication in the
5 instrument transferring title to the property of the person's
6 capacity as a partner or of the existence of a partnership
7 but without an indication of the name of the partnership.

8 (b) Property is acquired in the name of the partnership
9 by a transfer to:

10 (1) The partnership in its name; or

11 (2) One or more partners in their capacity as partners
12 in the partnership, if the name of the partnership is indi-
13 cated in the instrument transferring title to the property.

14 (c) Property is presumed to be partnership property if
15 purchased with partnership assets, even if not acquired in
16 the name of the partnership or of one or more partners
17 with an indication in the instrument transferring title to the
18 property of the person's capacity as a partner or of the
19 existence of a partnership.

20 (d) Property acquired in the name of one or more of
21 the partners, without an indication in the instrument trans-
22 ferring title to the property of the person's capacity as a
23 partner or of the existence of a partnership and without
24 use of partnership assets, is presumed to be separate prop-
25 erty, even if used for partnership purposes.

ARTICLE 3. RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP.

- §47B-3-1. Partner agent of partnership.
- §47B-3-2. Transfer of partnership property.
- §47B-3-3. Statement of partnership authority.
- §47B-3-4. Statement of denial.
- §47B-3-5. Partnership liable for partner's actionable conduct.
- §47B-3-6. Partner's liability.
- §47B-3-7. Actions by and against partnership and partners.
- §47B-3-8. Liability of purported partner.

§47B-3-1. Partner agent of partnership.

1 Subject to the effect of a statement of partnership
2 authority under section three, article three of this chapter:

3 (1) Each partner is an agent of the partnership for the
4 purpose of its business. An act of a partner, including the
5 execution of an instrument in the partnership name, for
6 apparently carrying on in the ordinary course the partner-
7 ship business or business of the kind carried on by the
8 partnership binds the partnership, unless the partner had
9 no authority to act for the partnership in the particular
10 matter and the person with whom the partner was dealing
11 knew or had received a notification that the partner lacked
12 authority.

13 (2) An act of a partner which is not apparently for
14 carrying on in the ordinary course the partnership busi-
15 ness or business of the kind carried on by the partnership
16 binds the partnership only if the act was authorized by the
17 other partners.

§47B-3-2. Transfer of partnership property.

1 (a) Partnership property may be transferred as follows:

2 (1) Subject to the effect of a statement of partnership
3 authority under section three, article three of this chapter,
4 partnership property held in the name of the partnership
5 may be transferred by an instrument of transfer executed
6 by a partner in the partnership name.

7 (2) Partnership property held in the name of one or
8 more partners with an indication in the instrument trans-
9 ferring the property to them of their capacity as partners
10 or of the existence of a partnership, but without an indica-
11 tion of the name of the partnership, may be transferred by
12 an instrument of transfer executed by the persons in
13 whose name the property is held.

14 (3) Partnership property held in the name of one or
15 more persons other than the partnership, without an indi-
16 cation in the instrument transferring the property to them
17 of their capacity as partners or of the existence of a part-
18 nership, may be transferred by an instrument of transfer
19 executed by the persons in whose name the property is
20 held.

21 (b) A partnership may recover partnership property
22 from a transferee only if it proves that execution of the
23 instrument of initial transfer did not bind the partnership
24 under section one, article three of this chapter, and:

25 (1) As to a subsequent transferee who gave value for
26 property transferred under subdivisions (1) and (2), sub-
27 section (a) of this section, proves that the subsequent trans-
28 feree knew or had received a notification that the person
29 who executed the instrument of initial transfer lacked
30 authority to bind the partnership; or

31 (2) As to a transferee who gave value for property
32 transferred under subdivision (3), subsection (a) of this
33 section, proves that the transferee knew or had received a
34 notification that the property was partnership property and
35 that the person who executed the instrument of initial
36 transfer lacked authority to bind the partnership.

37 (c) A partnership may not recover partnership proper-
38 ty from a subsequent transferee if the partnership would
39 not have been entitled to recover the property, under sub-
40 section (b) of this section, from any earlier transferee of
41 the property.

42 (d) If a person holds all of the partners' interests in the

43 partnership, all of the partnership property vests in that
44 person. The person may execute a document in the name
45 of the partnership to evidence vesting of the property in
46 that person and may file or record the document.

§47B-3-3. Statement of partnership authority.

1 (a) A partnership may file a statement of partnership
2 authority, which:

3 (1) Must include:

4 (i) The name of the partnership;

5 (ii) The street address of its chief executive office and
6 of one office in this state, if there is one;

7 (iii) The names and mailing addresses of all of the
8 partners or of an agent appointed and maintained by the
9 partnership for the purpose of subsection (b) of this sec-
10 tion; and

11 (iv) The names of the partners authorized to execute
12 an instrument transferring real property held in the name
13 of the partnership; and

14 (2) May state the authority, or limitations on the au-
15 thority, of some or all of the partners to enter into other
16 transactions on behalf of the partnership and any other
17 matter.

18 (b) If a statement of partnership authority names an
19 agent, the agent shall maintain a list of the names and
20 mailing addresses of all of the partners and make it avail-
21 able to any person on request for good cause shown.

22 (c) If a filed statement of partnership authority is exe-
23 cuted pursuant to subsection (c), section five, article one of
24 this chapter and states the name of the partnership but
25 does not contain all of the other information required by
26 subsection (a) of this section, the statement nevertheless
27 operates with respect to a person not a partner as provided
28 in subsections (d) and (e) of this section.

29 (d) Except as otherwise provided in subsection (g) of
30 this section, a filed statement of partnership authority
31 supplements the authority of a partner to enter into trans-
32 actions on behalf of the partnership as follows:

33 (1) Except for transfers of real property, a grant of
34 authority contained in a filed statement of partnership
35 authority is conclusive in favor of a person who gives
36 value without knowledge to the contrary, so long as and to
37 the extent that a limitation on that authority is not then
38 contained in another filed statement. A filed cancellation
39 of a limitation on authority revives the previous grant of
40 authority.

41 (2) A grant of authority to transfer real property held
42 in the name of the partnership contained in a certified
43 copy of a filed statement of partnership authority record-
44 ed in the office for recording transfers of that real prop-
45 erty is conclusive in favor of a person who gives value with-
46 out knowledge to the contrary, so long as and to the extent
47 that a certified copy of a filed statement containing a limi-
48 tation on that authority is not then of record in the office
49 for recording transfers of that real property. The record-
50 ing in the office for recording transfers of that real prop-
51 erty of a certified copy of a filed cancellation of a limita-
52 tion on authority revives the previous grant of authority.

53 (e) A person not a partner is deemed to know of a
54 limitation on the authority of a partner to transfer real
55 property held in the name of the partnership if a certified
56 copy of the filed statement containing the limitation on
57 authority is of record in the office for recording transfers
58 of that real property.

59 (f) Except as otherwise provided in subsections (d)
60 and (e) of this section and section four, article seven and
61 section five, article eight of this chapter, a person not a
62 partner is not deemed to know of a limitation on the au-
63 thority of a partner merely because the limitation is con-
64 tained in a filed statement.

65 (g) Unless earlier canceled, a filed statement of part-

66 nership authority is canceled by operation of law five
67 years after the date on which the statement, or the most
68 recent amendment, was filed with the secretary of state.

§47B-3-4. Statement of denial.

1 A partner or other person named as a partner in a filed
2 statement of partnership authority or in a list maintained
3 by an agent pursuant to subsection (b), section three, arti-
4 cle three of this chapter may file a statement of denial
5 stating the name of the partnership and the fact that is
6 being denied, which may include denial of a person's
7 authority or status as a partner. A statement of denial is a
8 limitation on authority as provided in subsections (d) and
9 (e), section three, article three of this chapter.

§47B-3-5. Partnership liable for partner's actionable conduct.

1 (a) A partnership is liable for loss or injury caused to
2 a person, or for a penalty incurred, as a result of a wrong-
3 ful act or omission, or other actionable conduct, of a part-
4 ner acting in the ordinary course of business of the part-
5 nership or with authority of the partnership.

6 (b) If, in the course of the partnership's business or
7 while acting with authority of the partnership, a partner
8 receives or causes the partnership to receive money or
9 property of a person not a partner, and the money or
10 property is misapplied by a partner, the partnership is
11 liable for the loss.

§47B-3-6. Partner's liability.

1 (a) Except as otherwise provided in subsection (b) of
2 this section, all partners are liable jointly and severally for
3 all obligations of the partnership unless otherwise agreed
4 by the claimant or provided by law.

5 (b) A person admitted as a partner into an existing
6 partnership is not personally liable for any partnership
7 obligation incurred before the person's admission as a
8 partner.

§47B-3-7. Actions by and against partnership and partners.

1 (a) A partnership may sue and be sued in the name of
2 the partnership.

3 (b) An action may be brought against the partnership
4 and any or all of the partners in the same action or in
5 separate actions.

6 (c) A judgment against a partnership is not by itself a
7 judgment against a partner. A judgment against a partner-
8 ship may not be satisfied from a partner's assets unless
9 there is also a judgment against the partner.

10 (d) A judgment creditor of a partner may not levy
11 execution against the assets of the partner to satisfy a
12 judgment based on a claim against the partnership unless:

13 (1) A judgment based on the same claim has been
14 obtained against the partnership and a writ of execution
15 on the judgment has been returned unsatisfied, in whole or
16 in part;

17 (2) The partnership is a debtor in bankruptcy;

18 (3) The partner has agreed that the creditor need not
19 exhaust partnership assets;

20 (4) A court grants permission to the judgment creditor
21 to levy execution against the assets of a partner based on a
22 finding that partnership assets subject to execution are
23 clearly insufficient to satisfy the judgment, that exhaustion
24 of partnership assets is excessively burdensome, or that the
25 grant of permission is an appropriate exercise of the
26 court's equitable powers; or

27 (5) Liability is imposed on the partner by law or con-
28 tract independent of the existence of the partnership.

29 (e) This section applies to any partnership liability or
30 obligation resulting from a representation by a partner or
31 purported partner under section eight, article three of this
32 chapter.

§47B-3-8. Liability of purported partner.

1 (a) If a person, by words or conduct, purports to be a
2 partner, or consents to being represented by another as a
3 partner, in a partnership or with one or more persons not
4 partners, the purported partner is liable to a person to
5 whom the representation is made, if that person, relying on
6 the representation, enters into a transaction with the actual
7 or purported partnership. If the representation, either by
8 the purported partner or by a person with the purported
9 partner's consent, is made in a public manner, the purport-
10 ed partner is liable to a person who relies upon the pur-
11 ported partnership even if the purported partner is not
12 aware of being held out as a partner to the claimant. If
13 partnership liability results, the purported partner is liable
14 with respect to that liability as if the purported partner
15 were a partner. If no partnership liability results, the pur-
16 ported partner is liable with respect to that liability jointly
17 and severally with any other person consenting to the
18 representation.

19 (b) If a person is thus represented to be a partner in an
20 existing partnership, or with one or more persons not
21 partners, the purported partner is an agent of persons
22 consenting to the representation to bind them to the same
23 extent and in the same manner as if the purported partner
24 were a partner, with respect to persons who enter into
25 transactions in reliance upon the representation. If all of
26 the partners of the existing partnership consent to the
27 representation, a partnership act or obligation results. If
28 fewer than all of the partners of the existing partnership
29 consent to the representation, the person acting and the
30 partners consenting to the representation are jointly and
31 severally liable.

32 (c) A person is not liable as a partner merely because
33 the person is named by another in a statement of partner-
34 ship authority.

35 (d) A person does not continue to be liable as a part-
36 ner merely because of a failure to file a statement of disso-

37 ciation or to amend a statement of partnership authority to
38 indicate the partner's dissociation from the partnership.

39 (e) Except as otherwise provided in subsections (a)
40 and (b) of this section, persons who are not partners as to
41 each other are not liable as partners to other persons.

**ARTICLE 4. RELATIONS OF PARTNERS TO EACH OTHER AND
TO PARTNERSHIP.**

§47B-4-1. Partner's rights and duties.

§47B-4-2. Distributions in kind.

§47B-4-3. Partner's rights and duties with respect to information.

§47B-4-4. General standards of partner's conduct.

§47B-4-5. Actions by partnership and partners.

§47B-4-6. Continuation of partnership beyond definite term or particular undertaking.

§47B-4-1. Partner's rights and duties.

1 (a) Each partner is deemed to have an account that is:

2 (1) Credited with an amount equal to the money plus
3 the value of any other property, net of the amount of any
4 liabilities, the partner contributes to the partnership and
5 the partner's share of the partnership profits; and

6 (2) Charged with an amount equal to the money plus
7 the value of any other property, net of the amount of any
8 liabilities, distributed by the partnership to the partner and
9 the partner's share of the partnership losses.

10 (b) Each partner is entitled to an equal share of the
11 partnership profits and is chargeable with a share of the
12 partnership losses in proportion to the partner's share of
13 the profits.

14 (c) A partnership shall reimburse a partner for pay-
15 ments made and indemnify a partner for liabilities in-
16 curred by the partner in the ordinary course of the busi-
17 ness of the partnership or for the preservation of its busi-
18 ness or property.

19 (d) A partnership shall reimburse a partner for an

20 advance to the partnership beyond the amount of capital
21 the partner agreed to contribute.

22 (e) A payment or advance made by a partner which
23 gives rise to a partnership obligation under subsection (c)
24 or (d) of this section constitutes a loan to the partnership
25 which accrues interest from the date of the payment or
26 advance.

27 (f) Each partner has equal rights in the management
28 and conduct of the partnership business.

29 (g) A partner may use or possess partnership property
30 only on behalf of the partnership.

31 (h) A partner is not entitled to remuneration for ser-
32 vices performed for the partnership, except for reasonable
33 compensation for services rendered in winding up the
34 business of the partnership.

35 (i) A person may become a partner only with the con-
36 sent of all of the partners.

37 (j) A difference arising as to a matter in the ordinary
38 course of business of a partnership may be decided by a
39 majority of the partners. An act outside the ordinary
40 course of business of a partnership and an amendment to
41 the partnership agreement may be undertaken only with
42 the consent of all of the partners.

43 (k) This section does not affect the obligations of a
44 partnership to other persons under section one, article
45 three of this chapter.

§47B-4-2. Distributions in kind.

1 A partner has no right to receive, and may not be
2 required to accept, a distribution in kind.

§47B-4-3. Partner's rights and duties with respect to information.

1 (a) A partnership shall keep its books and records, if
2 any, at its chief executive office.

3 (b) A partnership shall provide partners and their
4 agents and attorneys access to its books and records. It
5 shall provide former partners and their agents and attor-
6 neys access to books and records pertaining to the period
7 during which they were partners. The right of access
8 provides the opportunity to inspect and copy books and
9 records during ordinary business hours. A partnership
10 may impose a reasonable charge, covering the costs of
11 labor and material, for copies of documents furnished.

12 (c) Each partner and the partnership shall furnish to a
13 partner, and to the legal representative of a deceased part-
14 ner or partner under legal disability:

15 (1) Without demand, any information concerning the
16 partnership's business and affairs reasonably required for
17 the proper exercise of the partner's rights and duties under
18 the partnership agreement or this chapter; and

19 (2) On demand, any other information concerning the
20 partnership's business and affairs, except to the extent the
21 demand or the information demanded is unreasonable or
22 otherwise improper under the circumstances.

§47B-4-4. General standards of partner's conduct.

1 (a) The only fiduciary duties a partner owes to the
2 partnership and the other partners are the duty of loyalty
3 and the duty of care set forth in subsections (b) and (c) of
4 this section.

5 (b) A partner's duty of loyalty to the partnership and
6 the other partners is limited to the following:

7 (1) To account to the partnership and hold as trustee
8 for it any property, profit or benefit derived by the partner
9 in the conduct and winding up of the partnership business
10 or derived from a use by the partner of partnership prop-
11 erty, including the appropriation of a partnership opportu-
12 nity;

13 (2) To refrain from dealing with the partnership in the
14 conduct or winding up of the partnership business as or

15 on behalf of a party having an interest adverse to the part-
16 nership; and

17 (3) To refrain from competing with the partnership in
18 the conduct of the partnership business before the dissolu-
19 tion of the partnership.

20 (c) A partner's duty of care to the partnership and the
21 other partners in the conduct and winding up of the part-
22 nership business is limited to refraining from engaging in
23 grossly negligent or reckless conduct, intentional miscon-
24 duct, or a knowing violation of law.

25 (d) A partner shall discharge the duties to the partner-
26 ship and the other partners under this chapter or under the
27 partnership agreement and exercise any rights consistently
28 with the obligation of good faith and fair dealing.

29 (e) A partner does not violate a duty or obligation
30 under this chapter or under the partnership agreement
31 merely because the partner's conduct furthers the partner's
32 own interest.

33 (f) A partner may lend money to and transact other
34 business with the partnership, and as to each loan or trans-
35 action the rights and obligations of the partner are the
36 same as those of a person who is not a partner, subject to
37 other applicable law.

38 (g) This section applies to a person winding up the
39 partnership business as the personal or legal representative
40 of the last surviving partner as if the person were a partner.

§47B-4-5. Actions by partnership and partners.

1 (a) A partnership may maintain an action against a
2 partner for a breach of the partnership agreement, or for
3 the violation of a duty to the partnership, causing harm to
4 the partnership.

5 (b) A partner may maintain an action against the part-
6 nership or another partner for legal or equitable relief,

7 with or without an accounting as to partnership business,
8 to:

9 (1) Enforce the partner's rights under the partnership
10 agreement;

11 (2) Enforce the partner's rights under this chapter,
12 including:

13 (i) The partner's rights under sections one, three or
14 four, article four of this chapter;

15 (ii) The partner's right on dissociation to have the
16 partner's interest in the partnership purchased pursuant to
17 section one, article seven of this chapter or enforce any
18 other right under article six or seven;

19 (iii) The partner's right to compel a dissolution and
20 winding up of the partnership business under section one,
21 article eight of this chapter or enforce any other right
22 under article eight; or

23 (3) Enforce the rights and otherwise protect the inter-
24 ests of the partner, including rights and interests arising
25 independently of the partnership relationship.

26 (c) The accrual of, and any time limitation on, a right
27 of action for a remedy under this section is governed by
28 other law. A right to an accounting upon a dissolution and
29 winding up does not revive a claim barred by law.

**§47B-4-6. Continuation of partnership beyond definite term or
particular undertaking.**

1 (a) If a partnership for a definite term or particular
2 undertaking is continued, without an express agreement,
3 after the expiration of the term or completion of the un-
4 dertaking, the rights and duties of the partners remain the
5 same as they were at the expiration or completion, so far
6 as is consistent with a partnership at will.

7 (b) If the partners, or those of them who habitually
8 acted in the business during the term or undertaking, con-
9 tinue the business without any settlement or liquidation of

- 10 the partnership, they are presumed to have agreed that the
11 partnership will continue.

ARTICLE 5. TRANSFEREES AND CREDITORS OF PARTNER.

§47B-5-1. Partner not coowner of partnership property.

§47B-5-2. Partner's transferable interest in partnership.

§47B-5-3. Transfer of partner's transferable interest.

§47B-5-4. Partner's transferable interest subject to charging order.

§47B-5-1. Partner not coowner of partnership property.

- 1 A partner is not a coowner of partnership property
2 and has no interest in partnership property which can be
3 transferred, either voluntarily or involuntarily.

§47B-5-2. Partner's transferable interest in partnership.

- 1 The only transferable interest of a partner in the part-
2 nership is the partner's share of the profits and losses of
3 the partnership and the partner's right to receive distribu-
4 tions. The interest is personal property.

§47B-5-3. Transfer of partner's transferable interest.

- 1 (a) A transfer, in whole or in part, of a partner's trans-
2 ferable interest in the partnership:

3 (1) Is permissible;

4 (2) Does not by itself cause the partner's dissociation
5 or a dissolution and winding up of the partnership busi-
6 ness; and

7 (3) Does not, as against the other partners or the part-
8 nership, entitle the transferee, during the continuance of
9 the partnership, to participate in the management or con-
10 duct of the partnership business, to require access to infor-
11 mation concerning partnership transactions, or to inspect
12 or copy the partnership books or records.

13 (b) A transferee of a partner's transferable interest in
14 the partnership has a right:

15 (1) To receive, in accordance with the transfer, distri-

16 butions to which the transferor would otherwise be enti-
17 tled;

18 (2) To receive upon the dissolution and winding up of
19 the partnership business, in accordance with the transfer,
20 the net amount otherwise distributable to the transferor;
21 and

22 (3) To seek under subdivision (6), section one, article
23 eight of this chapter a judicial determination that it is equi-
24 table to wind up the partnership business.

25 (c) In a dissolution and winding up, a transferee is
26 entitled to an account of partnership transactions only
27 from the date of the latest account agreed to by all of the
28 partners.

29 (d) Upon transfer, the transferor retains the rights and
30 duties of a partner other than the interest in distributions
31 transferred.

32 (e) A partnership need not give effect to a transferee's
33 rights under this section until it has notice of the transfer.

34 (f) A transfer of a partner's transferable interest in the
35 partnership in violation of a restriction on transfer con-
36 tained in the partnership agreement is ineffective as to a
37 person having notice of the restriction at the time of trans-
38 fer.

§47B-5-4. Partner's transferable interest subject to charging order.

1 (a) On application by a judgment creditor of a part-
2 ner or of a partner's transferee, a court having jurisdiction
3 may charge the transferable interest of the judgment debt-
4 or to satisfy the judgment. The court may appoint a re-
5 ceiver of the share of the distributions due or to become
6 due to the judgment debtor in respect of the partnership
7 and make all other orders, directions, accounts, and inqui-
8 ries the judgment debtor might have made or which the
9 circumstances of the case may require.

10 (b) A charging order constitutes a lien on the judg-
11 ment debtor's transferable interest in the partnership. The
12 court may order a foreclosure of the interest subject to the
13 charging order at any time. The purchaser at the foreclo-
14 sure sale has the rights of a transferee.

15 (c) At any time before foreclosure, an interest
16 charged may be redeemed:

17 (1) By the judgment debtor;

18 (2) With property other than partnership property, by
19 one or more of the other partners; or

20 (3) With partnership property, by one or more of the
21 other partners with the consent of all of the partners whose
22 interests are not so charged.

23 (d) This chapter does not deprive a partner of a right
24 under exemption laws with respect to the partner's interest
25 in the partnership.

26 (e) This section provides the exclusive remedy by
27 which a judgment creditor of a partner or partner's trans-
28 feree may satisfy a judgment out of the judgment debtor's
29 transferable interest in the partnership.

ARTICLE 6. PARTNER'S DISSOCIATION.

§47B-6-1. Events causing partner's dissociation.

§47B-6-2. Partner's power to dissociate; wrongful dissociation.

§47B-6-3. Effect of partner's dissociation.

§47B-6-1. Events causing partner's dissociation.

1 A partner is dissociated from a partnership upon the
2 occurrence of any of the following events:

3 (1) The partnership's having notice of the partner's
4 express will to withdraw as a partner or on a later date
5 specified by the partner;

6 (2) An event agreed to in the partnership agreement as
7 causing the partner's dissociation;

8 (3) The partner's expulsion pursuant to the partnership
9 agreement;

10 (4) The partner's expulsion by the unanimous vote of
11 the other partners if:

12 (i) It is unlawful to carry on the partnership business
13 with that partner;

14 (ii) There has been a transfer of all or substantially all
15 of that partner's transferable interest in the partnership,
16 other than a transfer for security purposes, or a court or-
17 der charging the partner's interest, which has not been
18 foreclosed;

19 (iii) Within ninety days after the partnership notifies a
20 corporate partner that it will be expelled because it has
21 filed a certificate of dissolution or the equivalent, its char-
22 ter has been revoked, or its right to conduct business has
23 been suspended by the jurisdiction of its incorporation,
24 there is no revocation of the certificate of dissolution or
25 no reinstatement of its charter or its right to conduct busi-
26 ness; or

27 (iv) A partnership that is a partner has been dissolved
28 and its business is being wound up;

29 (5) On application by the partnership or another part-
30 ner, the partner's expulsion by judicial determination be-
31 cause:

32 (i) The partner engaged in wrongful conduct that
33 adversely and materially affected the partnership business;

34 (ii) The partner willfully or persistently committed a
35 material breach of the partnership agreement or of a duty
36 owed to the partnership or the other partners under section
37 four, article four of this chapter; or

38 (iii) The partner engaged in conduct relating to the
39 partnership business which makes it not reasonably practi-
40 cable to carry on the business in partnership with the part-
41 ner;

- 42 (6) The partner's:
- 43 (i) Becoming a debtor in bankruptcy;
- 44 (ii) Executing an assignment for the benefit of credi-
45 tors;
- 46 (iii) Seeking, consenting to, or acquiescing in the ap-
47 pointment of a trustee, receiver, or liquidator of that part-
48 ner or of all or substantially all of that partner's property;
49 or
- 50 (iv) Failing, within ninety days after the appointment,
51 to have vacated or stayed the appointment of a trustee,
52 receiver, or liquidator of the partner or of all or substan-
53 tially all of the partner's property obtained without the
54 partner's consent or acquiescence, or failing within ninety
55 days after the expiration of a stay to have the appointment
56 vacated;
- 57 (7) In the case of a partner who is an individual:
- 58 (i) The partner's death;
- 59 (ii) The appointment of a guardian or general conser-
60 vator for the partner; or
- 61 (iii) A judicial determination that the partner has oth-
62 erwise become incapable of performing the partner's du-
63 ties under the partnership agreement;
- 64 (8) In the case of a partner that is a trust or is acting as
65 a partner by virtue of being a trustee of a trust, distribution
66 of the trust's entire transferable interest in the partnership,
67 but not merely by reason of the substitution of a successor
68 trustee;
- 69 (9) In the case of a partner that is an estate or is acting
70 as a partner by virtue of being a personal representative of
71 an estate, distribution of the estate's entire transferable
72 interest in the partnership, but not merely by reason of the
73 substitution of a successor personal representative; or
- 74 (10) Termination of a partner who is not an individual,

75 partnership, corporation, trust or estate.

§47B-6-2. Partner's power to dissociate; wrongful dissociation.

1 (a) A partner has the power to dissociate at any time,
2 rightfully or wrongfully, by express will pursuant to sub-
3 division (1), section one, article six of this chapter.

4 (b) A partner's dissociation is wrongful only if:

5 (1) It is in breach of an express provision of the part-
6 nership agreement; or

7 (2) In the case of a partnership for a definite term or
8 particular undertaking, before the expiration of the term
9 or the completion of the undertaking:

10 (i) The partner withdraws by express will, unless the
11 withdrawal follows within ninety days after another part-
12 ner's dissociation by death or otherwise under subdivisions
13 (6) through (10), section one, article six of this chapter or
14 wrongful dissociation under this subsection;

15 (ii) The partner is expelled by judicial determination
16 under subdivision (5), section one, article six of this chap-
17 ter;

18 (iii) The partner is dissociated by becoming a debtor
19 in bankruptcy; or

20 (iv) In the case of a partner who is not an individual,
21 trust other than a business trust, or estate, the partner is
22 expelled or otherwise dissociated because it willfully dis-
23 solved or terminated.

24 (c) A partner who wrongfully dissociates is liable to
25 the partnership and to the other partners for damages
26 caused by the dissociation. The liability is in addition to
27 any other obligation of the partner to the partnership or to
28 the other partners.

§47B-6-3. Effect of partner's dissociation.

1 (a) If a partner's dissociation results in a dissolution
2 and winding up of the partnership business, article eight of

3 this chapter applies; otherwise, article seven of this chapter
4 applies.

5 (b) Upon a partner's dissociation:

6 (1) The partner's right to participate in the manage-
7 ment and conduct of the partnership business terminates,
8 except as otherwise provided in section three, article eight
9 of this chapter;

10 (2) The partner's duty of loyalty under subdivision
11 (3), section four, article four of this chapter terminates;
12 and

13 (3) The partner's duty of loyalty under subdivisions
14 (1) and (2), section four (b), article four of this chapter,
15 and duty of care under subsection (c), section four, article
16 four of this chapter continue only with regard to matters
17 arising and events occurring before the partner's dissocia-
18 tion, unless the partner participates in winding up the part-
19 nership's business pursuant to section three, article eight of
20 this chapter.

ARTICLE 7. PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP.

§47B-7-1. Purchase of dissociated partner's interest.

§47B-7-2. Dissociated partner's power to bind and liability to partnership.

§47B-7-3. Dissociated partner's liability to other persons.

§47B-7-4. Statement of dissociation.

§47B-7-5. Continued use of partnership name.

§47B-7-1. Purchase of dissociated partner's interest.

1 (a) If a partner is dissociated from a partnership with-
2 out resulting in a dissolution and winding up of the part-
3 nership business under section one, article eight of this
4 chapter, the partnership shall cause the dissociated part-
5 ner's interest in the partnership to be purchased for a
6 buyout price determined pursuant to subsection (b) of this
7 section.

8 (b) The buyout price of a dissociated partner's interest
9 is the amount that would have been distributable to the
10 dissociating partner under subsection (b), section seven,

11 article eight of this chapter if, on the date of dissociation,
12 the assets of the partnership were sold at a price equal to
13 the greater of the liquidation value or the value based on a
14 sale of the entire business as a going concern without the
15 dissociated partner and the partnership being wound up as
16 of that date. Interest must be paid from the date of disso-
17 ciation to the date of payment.

18 (c) Damages for wrongful dissociation under subsec-
19 tion (b), section two, article six of this chapter, and all
20 other amounts owing, whether or not presently due, from
21 the dissociated partner to the partnership, must be offset
22 against the buyout price. Interest must be paid from the
23 date the amount owed becomes due to the date of pay-
24 ment.

25 (d) A partnership shall indemnify a dissociated partner
26 whose interest is being purchased against all partnership
27 liabilities, whether incurred before or after the dissociation,
28 except liabilities incurred by an act of the dissociated
29 partner under section two, article seven of this chapter.

30 (e) If no agreement for the purchase of a dissociated
31 partner's interest is reached within one hundred twenty
32 days after a written demand for payment, the partnership
33 shall pay, or cause to be paid, in cash to the dissociated
34 partner the amount the partnership estimates to be the
35 buyout price and accrued interest, reduced by any offsets
36 and accrued interest under subsection (c) of this section.

37 (f) If a deferred payment is authorized under subsec-
38 tion (h) of this section, the partnership may tender a writ-
39 ten offer to pay the amount it estimates to be the buyout
40 price and accrued interest, reduced by any offsets under
41 subsection (c) of this section, stating the time of payment,
42 the amount and type of security for payment, and the
43 other terms and conditions of the obligation.

44 (g) The payment or tender required by subsection (e)
45 or (f) of this section must be accompanied by the follow-
46 ing:

47 (1) A statement of partnership assets and liabilities as
48 of the date of dissociation;

49 (2) The latest available partnership balance sheet and
50 income statement, if any;

51 (3) An explanation of how the estimated amount of
52 the payment was calculated; and

53 (4) Written notice that the payment is in full satisfac-
54 tion of the obligation to purchase unless, within one hun-
55 dred twenty days after the written notice, the dissociated
56 partner commences an action to determine the buyout
57 price, any offsets under subsection (c) of this section, or
58 other terms of the obligation to purchase.

59 (h) A partner who wrongfully dissociates before the
60 expiration of a definite term or the completion of a partic-
61 ular undertaking is not entitled to payment of any portion
62 of the buyout price until the expiration of the term or
63 completion of the undertaking, unless the partner estab-
64 lishes to the satisfaction of the court that earlier payment
65 will not cause undue hardship to the business of the part-
66 nership. A deferred payment must be adequately secured
67 and bear interest.

68 (i) A dissociated partner may maintain an action
69 against the partnership, pursuant to paragraph (ii), subdivi-
70 sion (2), subsection (b), section five, article four of this
71 chapter, to determine the buyout price of that partner's
72 interest, any offsets under subsection (c) of this section, or
73 other terms of the obligation to purchase. The action
74 must be commenced within one hundred twenty days after
75 the partnership has tendered payment or an offer to pay
76 or within one year after written demand for payment if no
77 payment or offer to pay is tendered. The court shall de-
78 termine the buyout price of the dissociated partner's inter-
79 est, any offset due under subsection (c) of this section, and
80 accrued interest, and enter judgment for any additional
81 payment or refund. If deferred payment is authorized
82 under subsection (h) of this section, the court shall also
83 determine the security for payment and other terms of the

84 obligation to purchase. The court may assess reasonable
85 attorney's fees and the fees and expenses of appraisers or
86 other experts for a party to the action, in amounts the
87 court finds equitable, against a party that the court finds
88 acted arbitrarily, vexatiously, or not in good faith. The
89 finding may be based on the partnership's failure to tender
90 payment or an offer to pay or to comply with subsection
91 (g) of this section.

§47B-7-2. Dissociated partner's power to bind and liability to partnership.

1 (a) For two years after a partner dissociates without
2 resulting in a dissolution and winding up of the partner-
3 ship business, the partnership, including a surviving part-
4 nership under article nine of this chapter, is bound by an
5 act of the dissociated partner which would have bound the
6 partnership under section one, article three of this chapter
7 before dissociation only if at the time of entering into the
8 transaction the other party:

9 (1) Reasonably believed that the dissociated partner
10 was then a partner;

11 (2) Did not have notice of the partner's dissociation;
12 and

13 (3) Is not deemed to have had knowledge under sub-
14 section (e), section three, article three or notice under
15 subsection (c), section four, article seven of this chapter.

16 (b) A dissociated partner is liable to the partnership
17 for any damage caused to the partnership arising from an
18 obligation incurred by the dissociated partner after disso-
19 ciation for which the partnership is liable under subsection
20 (a) of this section.

§47B-7-3. Dissociated partner's liability to other persons.

1 (a) A partner's dissociation does not of itself discharge
2 the partner's liability for a partnership obligation incurred
3 before dissociation. A dissociated partner is not liable for
4 a partnership obligation incurred after dissociation, except

5 as otherwise provided in subsection (b) of this section.

6 (b) A partner who dissociates without resulting in a
7 dissolution and winding up of the partnership business is
8 liable as a partner to the other party in a transaction en-
9 tered into by the partnership, or a surviving partnership
10 under article nine of this chapter, within two years after the
11 partner's dissociation, only if at the time of entering into
12 the transaction the other party:

13 (1) Reasonably believed that the dissociated partner
14 was then a partner;

15 (2) Did not have notice of the partner's dissociation;
16 and

17 (3) Is not deemed to have had knowledge under sub-
18 section (e), section three, article three or notice under
19 subsection (c), section four, article seven, both of this
20 chapter.

21 (c) By agreement with the partnership creditor and the
22 partners continuing the business, a dissociated partner may
23 be released from liability for a partnership obligation.

24 (d) A dissociated partner is released from liability for
25 a partnership obligation if a partnership creditor, with
26 notice of the partner's dissociation but without the part-
27 ner's consent, agrees to a material alteration in the nature
28 or time of payment of a partnership obligation.

§47B-7-4. Statement of dissociation.

1 (a) A dissociated partner or the partnership may file a
2 statement of dissociation stating the name of the partner-
3 ship and that the partner is dissociated from the partner-
4 ship.

5 (b) A statement of dissociation is a limitation on the
6 authority of a dissociated partner for the purposes of sub-
7 sections (d) and (e), section three, article three of this
8 chapter.

9 (c) For the purposes of subdivision (3), subsection (a),

10 section two, and subdivision (3), subsection (b) of section
11 three, article seven of this chapter, a person not a partner is
12 deemed to have notice of the dissociation ninety days after
13 the statement of dissociation is filed.

§47B-7-5. Continued use of partnership name.

1 Continued use of a partnership name, or a dissociated
2 partner's name as part thereof, by partners continuing the
3 business does not of itself make the dissociated partner
4 liable for an obligation of the partners or the partnership
5 continuing the business.

ARTICLE 8. WINDING UP PARTNERSHIP BUSINESS.

§47B-8-1. Events causing dissolution and winding up of partnership business.

§47B-8-2. Partnership continued after dissolution.

§47B-8-3. Right to wind up partnership business.

§47B-8-4. Partner's power to bind partnership after dissolution.

§47B-8-5. Statement of dissolution.

§47B-8-6. Partner's liability to other partners after dissolution.

§47B-8-7. Settlement of accounts and contributions among partners.

§47B-8-1. Events causing dissolution and winding up of partnership business.

1 A partnership is dissolved, and its business must be
2 wound up, only upon the occurrence of any of the follow-
3 ing events:

4 (1) In a partnership at will, the partnership's having
5 notice from a partner, other than a partner who is dissoci-
6 ated under subdivisions (2) through (10), section one,
7 article six of this chapter, of that partner's express will to
8 withdraw as a partner, or on a later date specified by the
9 partner;

10 (2) In a partnership for a definite term or particular
11 undertaking:

12 (i) The expiration of ninety days after a partner's dis-
13 sociation by death or otherwise under subdivisions (6)
14 through (10), section one, article six, or wrongful dissocia-

15 tion under subsection (b), section two, article six, both of
16 this chapter, unless before that time a majority in interest
17 of the remaining partners, including partners who have
18 rightfully dissociated pursuant to paragraph (i), subdivi-
19 sion (2), subsection (b), section two, article six of this
20 chapter, agree to continue the partnership;

21 (ii) The express will of all of the partners to wind up
22 the partnership business; or

23 (iii) The expiration of the term or the completion of
24 the undertaking;

25 (3) An event agreed to in the partnership agreement
26 resulting in the winding up of the partnership business;

27 (4) An event that makes it unlawful for all or substan-
28 tially all of the business of the partnership to be continued,
29 but a cure of illegality within ninety days after notice to
30 the partnership of the event is effective retroactively to the
31 date of the event for purposes of this section;

32 (5) On application by a partner, a judicial determina-
33 tion that:

34 (i) The economic purpose of the partnership is likely
35 to be unreasonably frustrated;

36 (ii) Another partner has engaged in conduct relating
37 to the partnership business which makes it not reasonably
38 practicable to carry on the business in partnership with
39 that partner; or

40 (iii) It is not otherwise reasonably practicable to carry
41 on the partnership business in conformity with the part-
42 nership agreement; or

43 (6) On application by a transferee of a partner's trans-
44 ferable interest, a judicial determination that it is equitable
45 to wind up the partnership business:

46 (i) After the expiration of the term or completion of
47 the undertaking, if the partnership was for a definite term
48 or particular undertaking at the time of the transfer or

49 entry of the charging order that gave rise to the transfer;
50 or

51 (ii) At any time, if the partnership was a partnership at
52 will at the time of the transfer or entry of the charging
53 order that gave rise to the transfer.

§47B-8-2. Partnership continued after dissolution.

1 (a) Subject to subsection (b) of this section, a partner-
2 ship continues after dissolution only for the purpose of
3 winding up its business. The partnership is terminated
4 when the winding up of its business is completed.

5 (b) At any time after the dissolution of a partnership
6 and before the winding up of its business is completed, all
7 of the partners, including any dissociating partner other
8 than a wrongfully dissociating partner, may waive the right
9 to have the partnership's business wound up and the part-
10 nership terminated.

11 In that event:

12 (1) The partnership resumes carrying on its business
13 as if dissolution had never occurred, and any liability
14 incurred by the partnership or a partner after the dissolu-
15 tion and before the waiver is determined as if dissolution
16 had never occurred; and

17 (2) The rights of a third party accruing under subdivi-
18 sion (1), section four, article eight of this chapter or aris-
19 ing out of conduct in reliance on the dissolution before
20 the third party knew or received a notification of the waiv-
21 er may not be adversely affected.

§47B-8-3. Right to wind up partnership business.

1 (a) After dissolution, a partner who has not wrongfully
2 dissociated may participate in winding up the partnership's
3 business, but on application of any partner, partner's legal
4 representative, or transferee, the circuit court or judge
5 thereof in vacation, for good cause shown, may order

6 judicial supervision of the winding up.

7 (b) The legal representative of the last surviving part-
8 ner may wind up a partnership's business.

9 (c) A person winding up a partnership's business may
10 preserve the partnership business or property as a going
11 concern for a reasonable time, prosecute and defend ac-
12 tions and proceedings, whether civil, criminal or adminis-
13 trative, settle and close the partnership's business, dispose
14 of and transfer the partnership's property, discharge the
15 partnership's liabilities, distribute the assets of the part-
16 nership pursuant to section seven, article eight of this chapter,
17 settle disputes by mediation or arbitration, and perform
18 other necessary acts.

§47B-8-4. Partner's power to bind partnership after dissolution.

1 Subject to section five, article eight of this chapter, a
2 partnership is bound by a partner's act after dissolution
3 that:

4 (1) Is appropriate for winding up the partnership busi-
5 ness; or

6 (2) Would have bound the partnership under section
7 one, article three of this chapter before dissolution, if the
8 other party to the transaction did not have notice of the
9 dissolution.

§47B-8-5. Statement of dissolution.

1 (a) After dissolution, a partner who has not wrongfully
2 dissociated may file a statement of dissolution stating the
3 name of the partnership and that the partnership has dis-
4 solved and is winding up its business.

5 (b) A statement of dissolution cancels a filed statement
6 of partnership authority for the purposes of subsection
7 (d), section three, article three of this chapter and is a limi-
8 tation on authority for the purposes of subsection (e),
9 section three, article three of this chapter.

10 (c) For the purposes of section one, article three and
11 section four, article eight, both of this chapter, a person
12 not a partner is deemed to have notice of the dissolution
13 and the limitation on the partners' authority as a result of
14 the statement of dissolution ninety days after it is filed.

15 (d) After filing and, if appropriate, recording a state-
16 ment of dissolution, a dissolved partnership may file and,
17 if appropriate, record a statement of partnership authority
18 which will operate with respect to a person not a partner as
19 provided in subsections (d) and (e), section three, article
20 three of this chapter in any transaction, whether or not the
21 transaction is appropriate for winding up the partnership
22 business.

§47B-8-6. Partner's liability to other partners after dissolution.

1 (a) Except as otherwise provided in subsection (b) of
2 this section, after dissolution a partner is liable to the other
3 partners for the partner's share of any partnership liability
4 incurred under section four, article eight of this chapter.

5 (b) A partner who, with knowledge of the dissolution,
6 incurs a partnership liability under subdivision (2), section
7 four, article eight of this chapter by an act that is not ap-
8 propriate for winding up the partnership business is liable
9 to the partnership for any damage caused to the partner-
10 ship arising from the liability.

§47B-8-7. Settlement of accounts and contributions among partners.

1 (a) In winding up a partnership's business, the assets of
2 the partnership, including the contributions of the partners
3 required by this section, must be applied to discharge its
4 obligations to creditors, including, to the extent permitted
5 by law, partners who are creditors. Any surplus must be
6 applied to pay in cash the net amount distributable to
7 partners in accordance with their right to distributions
8 under subsection (b) of this section.

9 (b) Each partner is entitled to a settlement of all part-
10 nership accounts upon winding up the partnership busi-

11 ness. In settling accounts among the partners, the profits
12 and losses that result from the liquidation of the partner-
13 ship assets must be credited and charged to the partners'
14 accounts. The partnership shall make a distribution to a
15 partner in an amount equal to any excess of the credits
16 over the charges in the partner's account. A partner shall
17 contribute to the partnership an amount equal to any ex-
18 cess of the charges over the credits in the partner's ac-
19 count.

20 (c) If a partner fails to contribute, all of the other part-
21 ners shall contribute, in the proportions in which those
22 partners share partnership losses, the additional amount
23 necessary to satisfy the partnership obligations. A partner
24 or partner's legal representative may recover from the
25 other partners any contributions the partner makes to the
26 extent the amount contributed exceeds that partner's share
27 of the partnership obligations.

28 (d) After the settlement of accounts, each partner shall
29 contribute, in the proportion in which the partner shares
30 partnership losses, the amount necessary to satisfy partner-
31 ship obligations that were not known at the time of the
32 settlement.

33 (e) The estate of a deceased partner is liable for the
34 partner's obligation to contribute to the partnership.

35 (f) An assignee for the benefit of creditors of a part-
36 nership or a partner, or a person appointed by a court to
37 represent creditors of a partnership or a partner, may en-
38 force a partner's obligation to contribute to the partner-
39 ship.

ARTICLE 9. CONVERSIONS AND MERGERS.

§47B-9-1. Definitions.

§47B-9-2. Conversion of partnership to limited partnership.

§47B-9-3. Conversion of limited partnership to partnership.

§47B-9-4. Effect of conversion; entity unchanged.

§47B-9-5. Merger of partnerships.

§47B-9-6. Effect of merger.

§47B-9-7. Statement of merger.

§47B-9-8. Nonexclusive.

§47B-9-1. Definitions.

1 In this article:

2 (1) "General partner" means a partner in a partnership
3 and a general partner in a limited partnership.

4 (2) "Limited partner" means a limited partner in a
5 limited partnership.

6 (3) "Limited partnership" means a limited partnership
7 created under section one, et seq., article nine, chapter
8 forty-seven of this code, predecessor law, or comparable
9 law of another jurisdiction.

10 (4) "Partner" includes both a general partner and a
11 limited partner.

§47B-9-2. Conversion of partnership to limited partnership.

1 (a) A partnership may be converted to a limited part-
2 nership pursuant to this section.

3 (b) The terms and conditions of a conversion of a
4 partnership to a limited partnership must be approved by
5 all of the partners or by a number or percentage specified
6 for conversion in the partnership agreement.

7 (c) After the conversion is approved by the partners,
8 the partnership shall file a certificate of limited partnership
9 in the jurisdiction in which the limited partnership is to be
10 formed. The certificate must include:

11 (1) A statement that the partnership was converted to a
12 limited partnership from a partnership;

13 (2) Its former name; and

14 (3) A statement of the number of votes cast by the
15 partners for and against the conversion and, if the vote is
16 less than unanimous, the number or percentage required
17 to approve the conversion under the partnership agree-
18 ment.

19 (d) The conversion takes effect when the certificate of
20 limited partnership is filed or at any later date specified in
21 the certificate.

22 (e) A general partner who becomes a limited partner
23 as a result of the conversion remains liable as a general
24 partner for an obligation incurred by the partnership be-
25 fore the conversion takes effect. If the other party to a
26 transaction with the limited partnership reasonably be-
27 lieves when entering the transaction that the limited part-
28 ner is a general partner, the limited partner is liable for an
29 obligation incurred by the limited partnership within nine-
30 ty days after the conversion takes effect. The limited
31 partner's liability for all other obligations of the limited
32 partnership incurred after the conversion takes effect is
33 that of a limited partner as provided in section one et seq.,
34 article nine, chapter forty-seven of this code.

§47B-9-3. Conversion of limited partnership to partnership.

1 (a) A limited partnership may be converted to a part-
2 nership pursuant to this section.

3 (b) Notwithstanding a provision to the contrary in a
4 limited partnership agreement, the terms and conditions of
5 a conversion of a limited partnership to a partnership must
6 be approved by all of the partners.

7 (c) After the conversion is approved by the partners,
8 the limited partnership shall cancel its certificate of limited
9 partnership.

10 (d) The conversion takes effect when the certificate of
11 limited partnership is canceled.

12 (e) A limited partner who becomes a general partner
13 as a result of the conversion remains liable only as a limit-
14 ed partner for an obligation incurred by the limited part-
15 nership before the conversion takes effect. The partner is
16 liable as a general partner for an obligation of the partner-
17 ship incurred after the conversion takes effect.

§47B-9-4. Effect of conversion; entity unchanged.

1 (a) A partnership or limited partnership that has been
2 converted pursuant to this article is for all purposes the
3 same entity that existed before the conversion.

4 (b) When a conversion takes effect:

5 (1) All property owned by the converting partnership
6 or limited partnership remains vested in the converted
7 entity;

8 (2) All obligations of the converting partnership or
9 limited partnership continue as obligations of the convert-
10 ed entity; and

11 (3) An action or proceeding pending against the con-
12 verting partnership or limited partnership may be contin-
13 ued as if the conversion had not occurred.

§47B-9-5. Merger of partnerships.

1 (a) Pursuant to a plan of merger approved as provided
2 in subsection (c) of this section, a partnership may be
3 merged with one or more partnerships or limited partner-
4 ships.

5 (b) The plan of merger must set forth:

6 (1) The name of each partnership or limited partner-
7 ship that is a party to the merger;

8 (2) The name of the surviving entity into which the
9 other partnerships or limited partnerships will merge;

10 (3) Whether the surviving entity is a partnership or a
11 limited partnership and the status of each partner;

12 (4) The terms and conditions of the merger;

13 (5) The manner and basis of converting the interests
14 of each party to the merger into interests or obligations of
15 the surviving entity, or into money or other property, in
16 whole or part; and

17 (6) The street address of the surviving entity's chief
18 executive office.

19 (c) The plan of merger must be approved:

20 (1) In the case of a partnership that is a party to the
21 merger, by all of the partners, or a number or percentage
22 specified for merger in the partnership agreement; and

23 (2) In the case of a limited partnership that is a party
24 to the merger, by the vote required for approval of a
25 merger by the law of the state or foreign jurisdiction in
26 which the limited partnership is organized and, in the
27 absence of such a specifically applicable law, by all of the
28 partners, notwithstanding a provision to the contrary in the
29 partnership agreement.

30 (d) After a plan of merger is approved and before the
31 merger takes effect, the plan may be amended or aban-
32 doned as provided in the plan.

33 (e) The merger takes effect on the later of:

34 (1) The approval of the plan of merger by all parties
35 to the merger, as provided in subsection (c) of this section;

36 (2) The filing of all documents required by law to be
37 filed as a condition to the effectiveness of the merger; or

38 (3) Any effective date specified in the plan of merger.

§47B-9-6. Effect of merger.

1 (a) When a merger takes effect:

2 (1) The separate existence of every partnership or
3 limited partnership that is a party to the merger, other than
4 the surviving entity, ceases;

5 (2) All property owned by each of the merged part-
6 nerships or limited partnerships vests in the surviving enti-
7 ty;

8 (3) All obligations of every partnership or limited
9 partnership that is a party to the merger become the obli-
10 gations of the surviving entity; and

11 (4) An action or proceeding pending against a part-
12 nership or limited partnership that is a party to the merger

13 may be continued as if the merger had not occurred, or
14 the surviving entity may be substituted as a party to the
15 action or proceeding.

16 (b) The secretary of state of this state is the agent for
17 service of process in an action or proceeding against a
18 surviving foreign partnership or limited partnership to
19 enforce an obligation of a domestic partnership or limited
20 partnership that is a party to a merger. The surviving
21 entity shall promptly notify the secretary of state of the
22 mailing address of its chief executive office and of any
23 change of address. Upon receipt of process, the secretary
24 of state shall mail a copy of the process to the surviving
25 foreign partnership or limited partnership.

26 (c) A partner of the surviving partnership or limited
27 partnership is liable for:

28 (1) All obligations of a party to the merger for which
29 the partner was personally liable before the merger;

30 (2) All other obligations of the surviving entity in-
31 curred before the merger by a party to the merger, but
32 those obligations may be satisfied only out of property of
33 the entity; and

34 (3) All obligations of the surviving entity incurred
35 after the merger takes effect, but those obligations may be
36 satisfied only out of property of the entity if the partner is
37 a limited partner.

38 (d) If the obligations incurred before the merger by a
39 party to the merger are not satisfied out of the property of
40 the surviving partnership or limited partnership, the gener-
41 al partners of that party immediately before the effective
42 date of the merger shall contribute the amount necessary
43 to satisfy that party's obligations to the surviving entity, in
44 the manner provided in section seven, article eight of this
45 chapter or in the limited partnership act of the jurisdiction
46 in which the party was formed, as the case may be, as if the
47 merged party were dissolved.

48 (e) A partner of a party to a merger who does not
49 become a partner of the surviving partnership or limited
50 partnership is dissociated from the entity, of which that

51 partner was a partner, as of the date the merger takes ef-
52 fect. The surviving entity shall cause the partner's interest
53 in the entity to be purchased under section one, article
54 seven of this chapter or another statute specifically appli-
55 cable to that partner's interest with respect to a merger.
56 The surviving entity is bound under section two, article
57 seven of this chapter by an act of a general partner disso-
58 ciated under this subsection, and the partner is liable under
59 section three, article seven of this chapter for transactions
60 entered into by the surviving entity after the merger takes
61 effect.

§47B-9-7. Statement of merger.

1 (a) After a merger, the surviving partnership or limited
2 partnership may file a statement that one or more partner-
3 ships or limited partnerships have merged into the surviv-
4 ing entity.

5 (b) A statement of merger must contain:

6 (1) The name of each partnership or limited partner-
7 ship that is a party to the merger;

8 (2) The name of the surviving entity into which the
9 other partnerships or limited partnership were merged;

10 (3) The street address of the surviving entity's chief
11 executive office and of an office in this state, if any; and

12 (4) Whether the surviving entity is a partnership or a
13 limited partnership.

14 (c) Except as otherwise provided in subsection (d) of
15 this section, for the purposes of section two, article three of
16 this chapter, property of the surviving partnership or limit-
17 ed partnership which before the merger was held in the
18 name of another party to the merger is property held in
19 the name of the surviving entity upon filing a statement of
20 merger.

21 (d) For the purposes of section two, article three of this
22 chapter, real property of the surviving partnership or limit-
23 ed partnership which before the merger was held in the
24 name of another party to the merger is property held in
25 the name of the surviving entity upon recording a certified

26 copy of the statement of merger in the office for record-
27 ing transfers of that real property.

28 (e) A filed and, if appropriate, recorded statement of
29 merger, executed and declared to be accurate pursuant to
30 subsection (c), section five, article one of this chapter,
31 stating the name of a partnership or limited partnership
32 that is a party to the merger in whose name property was
33 held before the merger and the name of the surviving
34 entity, but not containing all of the other information
35 required by subsection (b) of this section, operates with
36 respect to the partnerships or limited partnerships named
37 to the extent provided in subsections (c) and (d) of this
38 section.

§47B-9-8. Nonexclusive.

1 This article is not exclusive. Partnerships or limited
2 partnerships may be converted or merged in any other
3 manner provided by law.

ARTICLE 10. MISCELLANEOUS PROVISIONS.

§47B-10-1. Uniformity of application and construction.

§47B-10-2. Short title.

§47B-10-3. Severability clause.

§47B-10-4. Applicability.

§47B-10-5. Savings clause.

§47B-10-1. Uniformity of application and construction.

1 This chapter shall be applied and construed to effectu-
2 ate its general purpose to make uniform the law with re-
3 spect to the subject of this chapter among states enacting
4 it.

§47B-10-2. Short title.

1 This chapter may be cited as the Uniform Partnership
2 Act.

§47B-10-3. Severability clause.

1 If any provision of this chapter or its application to
2 any person or circumstance is held invalid, the invalidity

3 does not affect other provisions or applications of this
4 chapter which can be given effect without the invalid pro-
5 vision or application, and to this end the provisions of this
6 chapter are severable.

§47B-10-4. Applicability.

1 (a) Before the first day of July, one thousand nine
2 hundred ninety-five, this chapter governs only a partner-
3 ship formed:

4 (1) After the effective date of this chapter, unless that
5 partnership is continuing the business of a dissolved part-
6 nership under section forty-one, article eight-a, chapter
7 forty-seven of this code; and

8 (2) Before the effective date of this chapter, that elects,
9 as provided by subsection (c) of this section, to be gov-
10 erned by this chapter.

11 (b) After the first day of July, one thousand nine hun-
12 dred ninety-five, this chapter governs all partnerships.

13 (c) Before the first day of July, one thousand nine
14 hundred ninety-five, a partnership voluntarily may elect,
15 in the manner provided in its partnership agreement or by
16 law for amending the partnership agreement, to be gov-
17 erned by this chapter. The provisions of this chapter relat-
18 ing to the liability of the partnership's partners to third
19 parties apply to limit those partners' liability to a third
20 party who had done business with the partnership within
21 one year preceding the partnership's election to be gov-
22 erned by this chapter, only if the third party knows or has
23 received a notification of the partnership's election to be
24 governed by this chapter.

§47B-10-5. Savings clause.

1 This chapter does not affect an action or proceeding
2 commenced or right accrued before this chapter takes
3 effect.

CHAPTER 251

(Com. Sub. for H. B. 2820—By Mr. Speaker, Mr. Chambers, and Delegates Leach, Bennett, J. Martin, Linch, Willison and Everson)

[Passed March 10, 1995; in effect ninety days from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact sections one, two and three, article two, chapter nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the veterans home in Barboursville and its ability to meet state and federal funding requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STATE HOMES FOR VETERANS.

§9A-2-1. State homes for veterans.

§9A-2-2. Funds collected from the federal government; other sources; use of funds.

§9A-2-3. Powers of division of veterans' affairs.

§9A-2-1. State homes for veterans.

1 In consultation with the governor and other appropri-
2 ate state agencies, the division of veterans' affairs shall
3 establish and maintain a home for qualified veterans. The
4 home in Barboursville shall be designated as the sole vet-
5 erans home of its type in the state. As used in this article
6 the term "qualified veteran" means a veteran as determined
7 by the division of veterans' affairs, who meets the require-
8 ments under federal regulations and laws.

9 Any individual enlisting for the first time on or after
10 the eighth day of September, one thousand nine hundred

11 eighty, who fails to complete at least twenty-four months
12 of his or her enlistment is not eligible for any right, privi-
13 lege or benefit for which eligibility is based on active duty
14 in the armed forces. This provision does not apply when a
15 person: (a) Is discharged because of hardship; (b) is re-
16 tired or separated because of disability; or (c) is later de-
17 termined to have a service connected disability incurred
18 during a completed period of enlistment.

19 In the event that a residential vacancy exists at any
20 veterans home or facility created and established pursuant
21 to this article, a veteran who has been a resident of the state
22 of West Virginia for one year or more prior to filing for
23 admission shall be given preference in filling such resi-
24 dential vacancy over nonresident veterans.

§9A-2-2. Funds collected from the federal government; other sources; use of funds.

1 The division of veterans' affairs is hereby authorized
2 and directed to receive moneys from the federal govern-
3 ment, any agency thereof, from state appropriations, from
4 resident contributions or from any other appropriate
5 source, for the purpose of maintaining the state veterans'
6 home at Barboursville, which purpose shall include, but
7 not limited to, expenditures for improvement and renova-
8 tion of physical facilities, personal care costs and medical,
9 nursing and dental services.

10 The money so collected shall be placed in special
11 accounts according to the source of funds and limitation
12 on the use of the funds. These accounts shall be adminis-
13 tered by the director of the West Virginia division of veter-
14 ans' affairs. These funds shall be deposited in the state
15 treasury and paid out only on such vouchers as may be
16 authorized and approved by the director of the West Vir-
17 ginia division of veterans' affairs, in the same manner and
18 under the same restrictions as are now provided by law for
19 the disbursement of funds by that division. These funds
20 shall only be used as directed or restricted by the source
21 of the funds.

§9A-2-3. Powers of division of veterans' affairs.

1 The division of veterans' affairs is authorized and
2 empowered to establish rules and regulations providing
3 for the tenure, treatment, eligibility and discharge of
4 eligible veterans at the veterans' home. The rules shall be
5 promulgated to ensure that the division, in carrying out its
6 duties, shall comply with all federal requirements imposed
7 on such a facility. Moreover, notwithstanding any code
8 provisions to the contrary, rules shall be promulgated that:
9 (1) Meet federal standards for domiciliary care; (2) define
10 domiciliary; (3) define admittance to comply with state
11 and federal requirements including current West Virginia
12 resident or enlisted in service from West Virginia, war time
13 service or service during a declared national emergency,
14 Veterans Administration eligibility requirements for per
15 diem, honorably discharged, suffering from a disability
16 due to age, disease or defect that prevents them from
17 earning a living.

CHAPTER 252

(Com. Sub. For H. B. 2045—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed March 3, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, five and twenty-seven, article one, chapter twenty-two-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the water development authority; reinstating annual salaries of appointed board members; refinancing projects; and increasing the authorized limit on borrowing of the water development authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

§22C-1-4. Water development authority; water development board; organization of authority and board; appointment of board members; their term of office, compensation and expenses; director of authority.

22C-1-5. Authority may construct, finance, maintain, etc., water development projects; loans to governmental agencies are subject to terms of loan agreements.

§22C-1-27. Authorized limit on borrowing.

§22C-1-4. Water development authority; water development board; organization of authority and board; appointment of board members; their term of office, compensation and expenses; director of authority.

1 The water development authority is continued. The
2 authority is a governmental instrumentality of the state
3 and a body corporate. The exercise by the authority of the
4 powers conferred by this article and the carrying out of its
5 purposes and duties are essential governmental functions
6 and for a public purpose.

7 The authority is controlled, managed and operated by
8 the seven-member board known as the water development
9 board. The director of the division of environmental
10 protection, and the commissioner of the bureau of public
11 health and the state officer or employee who in the
12 judgment of the governor is most responsible for
13 economic or community development are members ex
14 officio of the board. The governor shall designate
15 annually the member who is the state officer or employee
16 most responsible for economic or community develop-
17 ment. The other four members of the board are appointed
18 by the governor, by and with the advice and consent of the
19 Senate, for terms of two, three, four and six years,
20 respectively. The successor of each such appointed
21 member shall be appointed for a term of six years in the
22 same manner the original appointments were made, except
23 that any person appointed to fill a vacancy occurring prior
24 to the expiration of the term for which his or her
25 predecessor was appointed shall be appointed only for the
26 remainder of such term. Each board member serves until
27 the appointment and qualification of his or her successor.
28 No more than two of the appointed board members shall

29 at any one time belong to the same political party.
30 Appointed board members may be reappointed to serve
31 additional terms.

32 All members of the board shall be citizens of the state.
33 Each appointed member of the board, before entering
34 upon his or her duties, shall comply with the requirements
35 of article one, chapter six of this code and give bond in
36 the sum of twenty-five thousand dollars in the manner
37 provided in article two, chapter six of this code. The
38 governor may remove any board member for cause as
39 provided in article six, chapter six of this code.

40 Annually the board shall elect one of its appointed
41 members as chair and another as vice chair, and shall
42 appoint a secretary-treasurer, who need not be a member
43 of the board. Four members of the board are a quorum
44 and the affirmative vote of four members is necessary for
45 any action taken by vote of the board. No vacancy in the
46 membership of the board impairs the rights of a quorum
47 by such vote to exercise all the rights and perform all the
48 duties of the board and the authority. The person
49 appointed as secretary-treasurer, including a board
50 member if he or she is so appointed, shall give bond in the
51 sum of fifty thousand dollars in the manner provided in
52 article two, chapter six of this code.

53 The director of the division of environmental
54 protection, the commissioner of the bureau of public
55 health and the state officer or employee most responsible
56 for economic or community development shall not receive
57 any compensation for serving as board members. Each of
58 the four appointed members of the board shall receive an
59 annual salary of five thousand dollars, payable in monthly
60 installments. Each of the seven board members shall be
61 reimbursed for all reasonable and necessary expenses
62 actually incurred in the performance of his or her duties
63 as a member of such board. All such expenses incurred by
64 the board are payable solely from funds of the authority
65 or from funds appropriated for such purpose by the
66 Legislature and no liability or obligation shall be incurred
67 by the authority beyond the extent to which moneys are
68 available from funds of the authority or from such
69 appropriations.

70 There shall also be a director of the authority

71 appointed by the board.

22C-1-5. Authority may construct, finance, maintain, etc., water development projects; loans to governmental agencies are subject to terms of loan agreements.

1 To accomplish the public policies and purposes and to
2 meet the responsibility of the state as set forth in this
3 article, the water development authority may initiate,
4 acquire, construct, maintain, repair and operate water
5 development projects or cause the same to be operated
6 pursuant to a lease, sublease or agreement with any person
7 or governmental agency; may make loans and grants to
8 governmental agencies for the acquisition or construction
9 of water development projects by governmental agencies,
10 which loans may include amounts to refinance debt issued
11 for existing water development projects of the govern-
12 mental agency when the refinancing is in conjunction with
13 the financing for a new water development project
14 regardless of the source of the financing for the new
15 project: *Provided*, That the amount of the refinancing may
16 not exceed fifty percent of the aggregate amount of the
17 refinancing of an existing project and the financing of a
18 new project; and may issue water development revenue
19 bonds of this state, payable solely from revenues, to pay
20 the cost of projects, or finance projects, in whole or in part,
21 by loans to governmental agencies. A water development
22 project shall not be undertaken unless it has been
23 determined by the authority to be consistent with any
24 applicable comprehensive plan of water management
25 approved by the director of the division of environmental
26 protection or in the process of preparation by the director
27 and to be consistent with the standards set by the state
28 environmental quality board, for the waters of the state
29 affected thereby. Any resolution of the authority provid-
30 ing for acquiring or constructing projects or for making a
31 loan or grant for projects shall include a finding by the
32 authority that the determinations have been made. A loan
33 agreement shall be entered into between the authority and
34 each governmental agency to which a loan is made for the
35 acquisition or construction of a water development project,
36 which loan agreement shall include, without limitation, the

37 following provisions:

38 (1) The cost of the project, the amount of the loan, the
39 terms of repayment of the loan and the security therefor,
40 which may include, in addition to the pledge of all
41 revenues from the project after a reasonable allowance for
42 operation and maintenance expenses, a deed of trust or
43 other appropriate security instrument creating a lien on
44 the project;

45 (2) The specific purposes for which the proceeds of
46 the loan shall be expended including the refinancing of
47 existing water development project debt as provided
48 above, the procedures as to the disbursement of loan
49 proceeds and the duties and obligations imposed upon the
50 governmental agency in regard to the construction or
51 acquisition of the project;

52 (3) The agreement of the governmental agency to
53 impose, collect, and, if required to repay the obligations of
54 the governmental agency under the loan agreement,
55 increase service charges from persons using the project,
56 which service charges shall be pledged for the repayment
57 of the loan together with all interest, fees and charges
58 thereon and all other financial obligations of the
59 governmental agency under the loan agreement; and

60 (4) The agreement of the governmental agency to
61 comply with all applicable laws, rules and regulations
62 issued by the authority or other state, federal and local
63 bodies in regard to the construction, operation,
64 maintenance and use of the project.

§22C-1-27. Authorized limit on borrowing.

1 The aggregate principal amount of bonds and notes
2 issued by the authority shall not exceed three hundred
3 million dollars outstanding at any one time: *Provided*,
4 That in computing the total amount of bonds and notes
5 which may at any one time be outstanding, the principal
6 amount of any outstanding bonds or notes refunded or to
7 be refunded either by application of the proceeds of the
8 sale of any refunding bonds or notes of the authority or
9 by exchange for any refunding bonds or notes, shall be
10 excluded.

CHAPTER 253

(Com. Sub. For S. B. 250—By Senators Tomblin, Mr. President, and Boley)
[By Request of the Executive]

[Passed February 10, 1995; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections five-b and eighteen, article two, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section two, article two-a of said chapter; to amend and reenact section eight, article three, chapter twenty-two of said code; to amend and reenact sections one, four, eleven, thirteen and sixteen, article one, chapter twenty-three of said code; to further amend said article by adding thereto a new section, designated section eighteen; to amend and reenact sections one, one-d, three, four, five, five-a, nine, fourteen and fifteen, article two of said chapter; to amend and reenact section one, article three of said chapter; to further amend said article by adding thereto two new sections, designated sections four and five; to amend and reenact sections one-a, one-c, one-d, three, four, six, six-a, six-c, seven, seven-a, ten, fifteen, fifteen-b, sixteen, eighteen, twenty-four and twenty-five, article four of said chapter; to amend and reenact sections one and two, article four-c of said chapter; and to amend and reenact article five of said chapter, all relating generally to workers' compensation and reform thereof; proof of coverage for mining permits; representation of the commissioner; executive director of workers' compensation division; release of information; hearings; notice to parties and attorneys; felony offense for failure to subscribe, make payment or file reports and the criminal penalties therefor; venue for offenses; felony offense for making false report or statement and the criminal penalties therefor; subpoenas of division employees; coverage for volunteers; premium taxes; failure to subscribe and consequent noncoverage of partner, proprietor or officer; definitions; primary contractor liability; notice of subcontractor default; report forms; classification of industries; premium tax setting methodologies; defaulted employers; repayment agreements; penalties; wage reports; amounts of premium taxes to be filed; collections; rules; refunds of

deposits; self insurance generally; security; self administration of benefits by employer; sale or transfer of business; attachment of liens; assumption of predecessor's premium tax rate; relief therefrom; surplus fund; second injury benefits determination; definitions; moneys from chapter funds not abandoned property; interest on chapter funds to be retained by said funds; electronic invoices, payments and transfers; mailing of reports of injuries; conditional order of compensability; when back payments of disability awards to be made; payments for health care services and goods; generic drugs; out-of-state health care providers; refusal to accept fee schedule payments; assumption of payments by claimant; exceptions; managed care organizations; choice of health care providers; limitations thereon; funeral expenses; fee schedules; criminal penalties; benefit rates; cessation of payments at retirement age; disability awards; medical impairment; medical panel; standards of review; limits thereon; threshold for requests for permanent total disability awards; standard of review and limits thereon of decisions by occupational pneumoconiosis board; patient-physician privilege; exceptions; cessation of certain permanent disability benefits upon return to work; change in method of payments of certain dependents' benefits; annuities; elections for reduced benefits; time for filing claims applications and limitations thereon; reopening time limits and expiration of right to reopen; time requirements for decisions on reopening requests; consolidation of disability requests; what awards qualify for permanent total disability consideration; offset for earnings; employers' excess liability fund; sale or abolition thereof; parties to objections and appeals; office of judges generally; correction of decisions by division; processing of applications for modifications of prior awards; compromise and settlement; review and approval thereof; continuance of office of judges and chief administrative law judge; relationship thereof to compensation programs performance council; termination; salary; reports; employees; approval of rules; appeals board; duties; reports; employees; standards of review by appeals board and supreme court of appeals; and remands.

Be it enacted by the Legislature of West Virginia:

That sections five-b and eighteen, article two, chapter

twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section two, article two-a of said chapter be repealed; that section eight, article three, chapter twenty-two of said code be amended and reenacted; that sections one, four, eleven, thirteen and sixteen, article one, chapter twenty-three of said code be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eighteen; that sections one, one-d; three, four, five, five-a, nine, fourteen and fifteen, article two of said chapter be amended and reenacted; that section one, article three of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections four and five; that sections one-a, one-c, one-d, three, four, six, six-a, six-c, seven, seven-a, ten, fifteen, fifteen-b, sixteen, eighteen, twenty-four and twenty-five, article four of said chapter be amended and reenacted; that sections one and two, article four-c of said chapter be amended and reenacted; and that article five of said chapter be amended and reenacted, all to read as follows:

Chapter

22. Environmental Resources.

23. Workers' Compensation.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-8. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.

1 No person may engage in surface-mining operations
2 unless such person has first obtained a permit from the
3 director in accordance with the following:

4 (1) All permits issued pursuant to the requirements of
5 this article shall be issued for a term not to exceed five
6 years: *Provided*, That if the applicant demonstrates that a
7 specified longer term is reasonably needed to allow the
8 applicant to obtain necessary financing for equipment and
9 the opening of the operation, and if the application is full
10 and complete for such specified longer term, the director

11 may extend a permit for such longer term: *Provided,*
12 *however,* That subject to the prior approval of the director,
13 with such approval being subject to the provisions of sub-
14 section (c), section eighteen of this article, a successor in
15 interest to a permittee who applies for a new permit, or
16 transfer of a permit, within thirty days of succeeding to
17 such interest, and who is able to obtain the bond coverage
18 of the original permittee, may continue surface-mining
19 and reclamation operations according to the approved
20 mining and reclamation plan of the original permittee
21 until such successor's permit application or application for
22 transfer is granted or denied.

23 (2) Proof of insurance is required on an annual basis.

24 (3) A permit terminates if the permittee has not com-
25 menced the surface-mining operations covered by such
26 permit within three years of the date the permit was issued:
27 *Provided,* That the director may grant reasonable exten-
28 sions of time upon a timely showing that such extensions
29 are necessary by reason of litigation precluding such com-
30 mencement, or threatening substantial economic loss to
31 the permittee, or by reason of conditions beyond the con-
32 trol and without the fault or negligence of the permittee:
33 *Provided, however,* That with respect to coal to be mined
34 for use in a synthetic fuel facility or specific major electric
35 generating facility, the permittee shall be deemed to have
36 commenced surface-mining operations at such time as the
37 construction of the synthetic fuel or generating facility is
38 initiated.

39 (4) Each application for a new surface-mining permit
40 filed pursuant to this article shall be accompanied by a fee
41 of one thousand dollars. All permit fees and renewal fees
42 provided for in this section or elsewhere in this article shall
43 be collected by the director and deposited with the treasur-
44 er of the state of West Virginia to the credit of the operat-
45 ing permit fees fund and shall be used, upon requisition of
46 the director, for the administration of this article.

47 (5) Prior to the issuance of any permit, the director
48 shall ascertain from the commissioner of the division of
49 labor whether the applicant is in compliance with section
50 fourteen, article five, chapter twenty-one of this code.

51 Upon issuance of the permit, the director shall forward a
52 copy to the commissioner of the division of labor, who
53 shall assure continued compliance under such permit.

54 (6) (A) Prior to the issuance of any permit the director
55 shall ascertain from the commissioner of the bureau of
56 employment programs whether the applicant is in compli-
57 ance with the provisions of section five, article two, chapter
58 twenty-three of this code with regard to any required sub-
59 scription to the workers' compensation fund, the payment
60 of premiums to the fund, the timely filing of payroll re-
61 ports and the maintenance of an adequate premium de-
62 posit. If the applicant is delinquent or defaulted, or has
63 been terminated, then the permit shall not be issued until
64 the applicant returns to compliance or is restored by the
65 workers' compensation division under a reinstatement
66 agreement: *Provided*, That in all such inquiries the com-
67 missioner of the bureau of employment programs shall
68 make response to the division of environmental protection
69 within fifteen calendar days, otherwise failure to respond
70 timely shall be considered to indicate the applicant is in
71 compliance and such failure will not be used to preclude
72 issuance of the permit.

73 (B) It is a requirement of this article that each operator
74 maintain continued compliance with the provisions of
75 section five, article two, chapter twenty-three of this code
76 and provide proof of compliance to the director on an
77 annual basis.

CHAPTER 23. WORKERS' COMPENSATION.

Article

1. General Administrative Provisions.
2. Employers and Employees Subject to Chapter; Extraterritorial Coverage.
3. Workers' Compensation Fund.
4. Disability and Death Benefits.
- 4C. Employers' Excess Liability Fund.
5. Review.

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-1. Commissioner of the bureau of employment programs; compensa-
tion programs performance council; official seal; continuation
of authority of commissioner; legal services; rules.

- §23-1-4. Office hours; records; confidentiality; exceptions; executive director.
- §23-1-11. Depositions; investigations.
- §23-1-13. Rules of procedure and evidence; persons authorized to appear in proceedings; withholding of psychiatric and psychological reports and providing summaries thereof.
- §23-1-16. Omission to subscribe; failure to report or perform required duty; false testimony or statements; criminal penalties; venue.
- §23-1-18. Division employees not subject to subpoena for workers' compensation hearings.

§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 (a) 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 sole
4 responsibility for the administration of this chapter except
5 for such matters as are entrusted to the compensation
6 programs performance council created pursuant to section
7 one, article three, chapter twenty-one-a of this code. In
8 the administration of this chapter, the commissioner shall
9 exercise all the powers and duties described in this chapter
10 and in article two, chapter twenty-one-a of this code.

11 (b) The commissioner is authorized to promulgate
12 rules and regulations to implement the provisions of this
13 chapter.

14 (c) The commissioner shall have an official seal for
15 the authentication of orders and proceedings, upon which
16 seal shall be engraved the words "West Virginia Commis-
17 sioner of Employment Programs" and such other design
18 as the commissioner may prescribe. The courts in this
19 state shall take judicial notice of the seal of the commis-
20 sioner and in all cases copies of orders, proceedings or
21 records in the office of the West Virginia commissioner of
22 employment programs shall be equal to the original in
23 evidence.

24 (d) Pursuant to the provisions of chapter four, article
25 ten of this code, the commissioner of the bureau of em-
26 ployment programs shall continue to administer this chap-

27 ter until the first day of July, one thousand nine hundred
28 ninety-six, to allow the joint committee on government
29 operations to monitor compliance with recommendations
30 set forth in the full performance audit of the office of the
31 workers' compensation commissioner.

32 (e) The attorney general shall perform all legal servic-
33 es required by the commissioner under the provisions of
34 this chapter: *Provided*, That in any case in which an ap-
35 plication for review is prosecuted from any final decision
36 of the workers' compensation appeal board to the supreme
37 court of appeals, as provided by section four, article five
38 of this chapter, or in any court proceeding before the
39 workers' compensation appeal board, or in any proceed-
40 ings before the office of judges, or in any case in which a
41 petition for an extraordinary writ is filed in the supreme
42 court of appeals or in any circuit court, in which such
43 representation shall appear to the commissioner to be
44 desirable, the commissioner may designate a regular em-
45 ployee of this office, qualified to practice before such
46 court to represent the commissioner upon such appeal or
47 proceeding, and in no case shall the person so appearing
48 for the commissioner before the court receive remunera-
49 tion therefor other than such person's regular salary.

**§23-1-4. Office hours; records; confidentiality; exceptions;
executive director.**

1 (a) The offices of the workers' compensation division
2 shall be open for the transaction of business between the
3 hours of eight-thirty o'clock a.m., and five o'clock p.m., of
4 each and every day, excepting Saturdays, Sundays and
5 legal holidays, and be open upon such additional days and
6 at such additional times as the division may elect. As the
7 chief executive officer of the bureau of employment pro-
8 grams, the commissioner shall designate an executive
9 director to serve as the chief operating officer for the daily
10 operations of the workers' compensation division: *Provid-*
11 *ed*, That in any instance in this chapter which refers to the
12 commissioner's secretary, such reference shall be taken to
13 mean the executive director.

14 (b) Except as expressly provided for in this subsection,
15 information obtained regarding employers and claimants

16 pursuant to this chapter for the purposes of its administra-
17 tion shall not be subject to the provisions of chapter
18 twenty-nine-b of this code unless such provisions are here-
19 after specifically made applicable in whole or in part.
20 Such information as may be reasonably necessary may be
21 released in formal orders or opinions of any tribunal or
22 court which is presented with an issue arising under this
23 chapter as well as in the presentations of the parties before
24 any such tribunal or court. Similarly, claimants or other
25 interested parties to an issue arising under this chapter
26 may, upon request, obtain information from the division's
27 records to the extent necessary for the proper presentation
28 or defense of a claim or other matter. Information may
29 be released pursuant to the provisions of chapter
30 twenty-nine-b of this code only if all identifying informa-
31 tion has first been eliminated from the records. Nothing
32 in this subsection shall prevent the release of information
33 to another agency of the state or of the federal govern-
34 ment for the legitimate purposes of those agencies: *Pro-*
35 *vided*, That any such agency shall guarantee the confiden-
36 tiality of the information so provided to the fullest extent
37 possible in keeping with its own statutory and regulatory
38 mandates. Nothing in this section shall prevent the divi-
39 sion from complying with any subpoena duces tecum:
40 *Provided, however*, That the issuing tribunal or court shall
41 take such actions as may be proper to maintain the confi-
42 dentiality of the information.

43 The division may release, pursuant to a proper request
44 under the provisions of chapter twenty-nine-b of this code,
45 the following information:

46 (1) The base premium tax rate for a specific employ-
47 er;

48 (2) Whether or not a specific employer has obtained
49 coverage under the provisions of this chapter;

50 (3) Whether or not a specific employer is in good
51 standing or is delinquent or in default according to the
52 division's records and the time periods thereof; and

53 (4) If a specific employer is delinquent or in default,
54 what the payments due the division are and what the com-

55 ponents of that payment are including the time periods
56 affected.

§23-1-11. Depositions; investigations.

1 (a) In an investigation into any matter arising under
2 articles one through five of this chapter, the division may
3 cause depositions of witnesses residing within or without
4 the state to be taken in the manner prescribed by law for
5 like depositions in the circuit court, but such depositions
6 shall be upon reasonable notice to claimant and employer
7 or other affected persons or their respective attorneys.
8 The division shall designate the person to represent it for
9 the taking of any such deposition.

10 (b) The division shall also have discretion to accept
11 and consider depositions taken within or without the state
12 by either the claimant or employer or other affected per-
13 son, provided due and reasonable notice of the taking of
14 such depositions was given to the other parties or their
15 attorneys, if any: *Provided*, That the division, upon due
16 notice to the parties, shall have authority to refuse or per-
17 mit the taking of such depositions or to reject such deposi-
18 tions after the taking thereof, if they were taken at such
19 place or under such circumstances as imposed an undue
20 burden or hardship upon the other parties, and the divi-
21 sion's discretion to accept, refuse to approve, or reject such
22 depositions shall be binding in the absence of abuse of
23 such discretion.

**§23-1-13. Rules of procedure and evidence; persons autho-
rized to appear in proceedings; withholding of
psychiatric and psychological reports and pro-
viding summaries thereof.**

1 (a) The workers' compensation division shall adopt
2 reasonable and proper rules of procedure, regulate and
3 provide for the kind and character of notices, and the
4 service thereof, in cases of accident and injury to employ-
5 ees, the nature and extent of the proofs and evidence, the
6 method of taking and furnishing the same to establish the
7 rights to benefits or compensation from the fund hereinaf-
8 ter provided for, or directly from employers as hereinafter
9 provided, as the case may require, and the method of mak-

10 ing investigations, physical examinations and inspections,
11 and prescribe the time within which adjudications and
12 awards shall be made.

13 (b) At hearings and other proceedings before the
14 division or before the duly authorized representative of
15 the division, an employer who is a natural person may
16 appear, and a claimant may appear, only as follows:

17 (1) By an attorney duly licensed and admitted to the
18 practice of law in this state;

19 (2) By a nonresident attorney duly licensed and ad-
20 mitted to practice before a court of record of general
21 jurisdiction in another state or country or in the District of
22 Columbia who has complied with the provisions of rule
23 8.0—admission pro hac vice, West Virginia supreme court
24 rules for admission to the practice of law, as amended;

25 (3) By a representative from a labor organization who
26 has been recognized by the division as being qualified to
27 represent a claimant or who is an individual otherwise
28 found to be qualified by the division to act as a represen-
29 tative. Such representative shall participate in the presen-
30 tation of facts, figures and factual conclusions as distin-
31 guished from the presentation of legal conclusions in
32 respect to such facts and figures; or

33 (4) Pro se.

34 (c) At hearings and other proceedings before the divi-
35 sion or before the duly authorized representative of the
36 division, an employer who is not a natural person may
37 appear only as follows:

38 (1) By an attorney duly licensed and admitted to the
39 practice of law in this state;

40 (2) By a nonresident attorney duly licensed and ad-
41 mitted to practice before a court of record of general
42 jurisdiction in another state or country or in the District of
43 Columbia who has complied with the provisions of rule
44 8.0—admission pro hac vice, West Virginia supreme court
45 rules for admission to the practice of law, as amended;

46 (3) By a member of the board of directors of a corpo-

47 ration or by an officer of the corporation, for purposes of
48 representing the interest of the corporation in the presen-
49 tation of facts, figures and factual conclusions as distin-
50 guished from the presentation of legal conclusions in
51 respect to such facts and figures; or

52 (4) By a representative from an employer service com-
53 pany who has been recognized by the division as being
54 qualified to represent an employer or who is an individual
55 otherwise found to be qualified by the division to act as a
56 representative. Such representative shall participate in the
57 presentation of facts, figures and factual conclusions as
58 distinguished from the presentation of legal conclusions in
59 respect to such facts and figures.

60 (d) The division or its representative may require an
61 individual appearing on behalf of a natural person or
62 corporation to produce satisfactory evidence that he or she
63 is properly qualified and authorized to so appear pursuant
64 to this section.

65 (e) Subsections (b), (c) and (d) of this section shall not
66 be construed as being applicable to proceedings before
67 the office of judges pursuant to the provisions of article
68 five of this chapter.

69 (f) At the direction of a treating or evaluating psychia-
70 trist or clinical doctoral level psychologist, a psychiatric or
71 psychological report concerning a claimant who is receiv-
72 ing treatment or is being evaluated for psychiatric or psy-
73 chological problems may be withheld from the claimant.
74 In that event, a summary of the report shall be compiled
75 by the reporting psychiatrist or clinical doctoral level
76 psychologist which summary shall be provided to the
77 claimant upon his or her request. Any representative or
78 attorney of the claimant must agree to provide such a
79 claimant with only the summary before the full report
80 shall be provided to the representative or attorney for his
81 or her use in preparing the claimant's case. Such a report
82 shall only be withheld from the claimant in those instances
83 where the treating or evaluating psychiatrist or clinical
84 doctoral level psychologist certifies that exposure to the
85 contents of the full report is likely to cause serious harm
86 to the claimant or is likely to cause the claimant to pose a

87 serious threat of harm to a third party.

88 (g) In any matter arising under articles one through
89 five of this chapter in which the division is required to give
90 notice to a party, if a party is represented by an attorney
91 or other representative, then notice to the attorney or other
92 representative shall be sufficient notice to the party so
93 represented.

**§23-1-16. Omission to subscribe; failure to report or perform
required duty; false testimony or statements;
criminal penalties; venue.**

1 (a) Any person, firm, partnership, company, corpora-
2 tion or association who, as an employer, is required by the
3 provisions of this chapter to subscribe to the workers'
4 compensation fund, and who knowingly and willfully fails
5 to subscribe thereto, or who knowingly and willfully fails
6 to make any payment or file a report as required by the
7 provisions of this chapter within the time periods specified
8 by law, is guilty of a felony, and, upon conviction thereof,
9 shall be fined not less than one thousand dollars and not
10 more than ten thousand dollars. Upon any second or
11 subsequent conviction under this subsection, any person
12 so convicted shall be imprisoned in the penitentiary for a
13 definite term of imprisonment which is not less than one
14 year nor more than three years or fined not less than five
15 thousand dollars nor more than twenty-five thousand
16 dollars: *Provided*, That in the case of a person other than
17 a natural person, the amount of the fine shall be not less
18 than ten thousand dollars nor more than twenty-five thou-
19 sand dollars. The venue for prosecution of any violation
20 of this subsection is either the county in which the defen-
21 dant's principal business operations are located, or in
22 Kanawha County where the fund is located. In charging a
23 person with a second or subsequent offense under the
24 provisions of this subsection, the warrant, indictment or
25 information must set forth the date and particulars of the
26 previous offense or offenses. No person may be convict-
27 ed of a second or subsequent offense unless the conviction
28 for the previous offense has become final, and unless a
29 prior offense occurred within the ten year period next
30 preceding the second or subsequent offense.

31 (b) Any person or firm, or the officer of any corpora-
32 tion, who knowingly and willfully makes a false report or
33 statement under oath, affidavit or certification respecting
34 any information required to be provided under this chap-
35 ter, shall be guilty of a felony, and, upon conviction there-
36 of, shall be fined not less than one thousand dollars nor
37 more than ten thousand dollars or confined in the peniten-
38 tiary for a definite term of imprisonment which is not less
39 than one year nor more than three years, or both.

§23-1-18. Division employees not subject to subpoena for workers' compensation hearings.

1 No employee of the workers' compensation division
2 shall be compelled to testify as to the basis, findings or
3 reasons for any decision or order rendered by the em-
4 ployee under this chapter in any hearing conducted pur-
5 suant to article five of this chapter.

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.

- §23-2-1. Employers subject to chapter; elections not to provide certain coverages; notices; filing of business registration certificates.
- §23-2-1d. Primary contractor liability; definitions; applications and exceptions; certificates of good standing; reimbursement and indemnification; termination of contracts; effective date; collections efforts.
- §23-2-3. Report forms and other forms for use of employers.
- §23-2-4. Classification of industries; rate of premiums; authority to adopt various systems; accounts.
- §23-2-5. Application; payment of premium taxes; gross wages; payroll report; deposits; delinquency; default; reinstatement; payment of benefits; notice to employees; criminal provisions; penalties.
- §23-2-5a. Collection of premiums from defaulting employers; interest and penalties; civil remedies; creation and enforcement of lien against employer and purchaser; duty of secretary of state to register liens; distraint powers; insolvency proceedings; secretary of state to withhold certificates of dissolution; injunctive relief; bond; attorney fees and costs.
- §23-2-9. Election of employer to be self-insured and to provide own system of compensation; mandatory participation in second injury reserve; exceptions; catastrophe coverage; self-administration.

- §23-2-14. Sale or transfer of business; attachment of lien for premium, etc., payments due; criminal penalties for failure to pay; creation and avoidance or elimination of lien; enforcement of lien; successor liability; enforcement of lien.
- §23-2-15. Liabilities of successor employer; waiver of payment by division; assignment of predecessor employer's premium rate to successor.

§23-2-1. Employers subject to chapter; elections not to provide certain coverages; notices; filing of business registration certificates.

1 (a) The state of West Virginia and all governmental
2 agencies or departments created by it, including county
3 boards of education, political subdivisions of the state, any
4 volunteer fire department or company and other emergen-
5 cy service organizations as defined by article five, chapter
6 fifteen of this code, and all persons, firms, associations and
7 corporations regularly employing another person or per-
8 sons for the purpose of carrying on any form of industry,
9 service or business in this state, are employers within the
10 meaning of this chapter and are hereby required to sub-
11 scribe to and pay premium taxes into the workers' com-
12 pensation fund for the protection of their employees and
13 shall be subject to all requirements of this chapter and all
14 rules and regulations prescribed by the workers' compen-
15 sation division with reference to rate, classification and
16 premium payment: *Provided*, That such rates will be ad-
17 justed by the division to reflect the demand on the com-
18 pensation fund by the covered employer.

19 (b) The following employers are not required to sub-
20 scribe to the fund, but may elect to do so:

21 (1) Employers of employees in domestic services; or

22 (2) Employers of five or fewer full-time employees in
23 agricultural service; or

24 (3) Employers of employees while said employees are
25 employed without the state except in cases of temporary
26 employment without the state; or

27 (4) Casual employers. An employer is deemed to be a
28 casual employer when the number of his or her employees

29 does not exceed three and the period of employment is
30 temporary, intermittent and sporadic in nature and does
31 not exceed ten calendar days in any calendar quarter; or

32 (5) Churches; or

33 (6) Employers engaged in organized professional
34 sports activities, including employers of trainers and jock-
35 eys engaged in thoroughbred horse racing; or

36 (7) Any volunteer rescue squad or volunteer police
37 auxiliary unit organized under the auspices of a county
38 commission, municipality or other government entity or
39 political subdivision; volunteer organizations created or
40 sponsored by government entities, political subdivisions;
41 or, area or regional emergency medical services boards of
42 directors in furtherance of the purposes of the emergency
43 medical services act of article four-c, chapter sixteen of
44 this code: *Provided*, That should any of the employers
45 described in this subdivision have paid employees, then to
46 the extent of those paid employees the employer must
47 subscribe to and pay premium taxes into the workers'
48 compensation fund based upon the gross wages of the
49 paid employees; but, with regard to the volunteers, such
50 coverage remains optional.

51 (c) Notwithstanding any other provision of this chap-
52 ter to the contrary, whenever there are churches in a circuit
53 which employ one individual clergyman and the payments
54 to such clergyman from such churches constitute his or
55 her full salary, such circuit or group of churches may elect
56 to be considered a single employer for the purpose of
57 premium payment into the workers' compensation fund.

58 (d) Employers who are not required to subscribe to
59 the workers' compensation fund may voluntarily choose to
60 subscribe to and pay premiums into the fund for the pro-
61 tection of their employees and in such case shall be sub-
62 ject to all requirements of this chapter and all rules and
63 regulations prescribed by the division with reference to
64 rates, classifications and premium payments and shall
65 afford to them the protection of this chapter, including
66 section six of this article, but the failure of such employers
67 to choose to subscribe to and to pay premiums into the

68 fund shall not impose any liability upon them other than
69 such liability as would exist notwithstanding the provisions
70 of this chapter.

71 (e) Any foreign corporation employer whose employ-
72 ment in this state is to be for a definite or limited period
73 which could not be considered "regularly employing"
74 within the meaning of this section may choose to pay into
75 the workers' compensation fund the premiums herein
76 provided for, and at the time of making application to the
77 workers' compensation division, such employer shall fur-
78 nish a statement under oath showing the probable length
79 of time the employment will continue in this state, the
80 character of the work, an estimate of the monthly payroll
81 and any other information which may be required by the
82 division. At the time of making application such employer
83 shall deposit with the division to the credit of the workers'
84 compensation fund the amount required by section five of
85 this article, which amount shall be returned to the employ-
86 er if the employer's application be rejected by the division.
87 Upon notice to such employer of the acceptance of his or
88 her application by the division, he or she shall be an em-
89 ployer within the meaning of this chapter and subject to
90 all of its provisions.

91 (f) Any foreign corporation employer choosing to
92 comply with the provisions of this chapter and to receive
93 the benefits hereunder shall, at the time of making appli-
94 cation to the division in addition to other requirements of
95 this chapter, furnish the division with a certificate from the
96 secretary of state, where such certificate is necessary, show-
97 ing that it has complied with all the requirements neces-
98 sary to enable it legally to do business in this state and no
99 application of such foreign corporation employer shall be
100 accepted by the division until such certificate is filed.

101 (g) The following employers may elect not to provide
102 coverage to certain of their employees under the provi-
103 sions of this chapter:

104 (1) Employers of employees who are officers of and
105 stockholders in a corporation qualifying for special tax
106 treatment under subchapter S of the Internal Revenue

107 Code of the United States may elect not to provide cover-
108 age to such employees; or

109 (2) If an employer is a partnership, sole proprietor-
110 ship, association or corporation, such employer may elect
111 not to include as an "employee" within this chapter, any
112 member of such partnership, the owner of the sole propri-
113 etorship or any corporate officer or member of the board
114 of directors of the association or corporation. The offi-
115 cers of a corporation or an association shall consist of a
116 president, a vice-president, a secretary and a treasurer, each
117 of whom shall be elected by the board of directors at such
118 time and in such manner as may be prescribed by the
119 bylaws. Such other officers and assistant officer as may
120 be deemed necessary may be elected or appointed by the
121 board of directors or chosen in such other manner as may
122 be prescribed by the bylaws and, if so elected, appointed
123 or chosen, such employer may elect not to include any
124 such officer or assistant officer as an "employee" within
125 the meaning of this chapter: *Provided*, That except for
126 those persons who are members of the board of directors
127 or who are the corporation's or association's president,
128 vice-president, secretary and treasurer and who may be
129 excluded by reason of their aforementioned positions
130 from the benefits of this chapter even though their duties,
131 responsibilities, activities or actions may have a dual ca-
132 pacity of work which is ordinarily performed by an offi-
133 cer and also of work which is ordinarily performed by a
134 worker, an administrator or an employee who is not an
135 officer, no such other officer or assistant officer who is
136 elected or appointed shall be excluded by election from
137 coverage or be denied the benefits of this chapter merely
138 because he or she is such an officer or assistant officer if,
139 as a matter of fact:

140 (A) He or she is engaged in a dual capacity of having
141 the duties and responsibilities for work ordinarily per-
142 formed by an officer and also having duties and work
143 ordinarily performed by a worker, administrator or em-
144 ployee who is not an officer;

145 (B) He or she is engaged ordinarily in performing the
146 duties of a worker, an administrator or an employee who is

147 not an officer and receives pay therefor in the capacity of
148 an employee; or

149 (C) If he or she is engaged in an employment palpa-
150 bly separate and distinct from his or her official duties as
151 an officer of the association or corporation.

152 (h) In the event of election under subsection (g) of
153 this section, the employer shall serve upon the division
154 written notice naming the positions not to be covered and
155 shall not include such "employee's" remuneration for
156 premium purposes in all future payroll reports, and such
157 partner, proprietor or corporate or executive officer shall
158 not be deemed an employee within the meaning of this
159 chapter after such notice has been served. Notwithstanding
160 the provisions of subsection (g), section five of this article,
161 if an employer has not subscribed to the fund even though
162 it is obligated to do so under the provisions of this article,
163 then any such partner, proprietor or corporate or execu-
164 tive officer shall not be covered and shall not receive the
165 benefits of this chapter.

166 (i) "Regularly employing" or "regular employment"
167 shall mean employment by an employer which is not a
168 casual employer under this section.

**§23-2-1d. Primary contractor liability; definitions; applica-
tions and exceptions; certificates of good stand-
ing; reimbursement and indemnification; termi-
nation of contracts; effective date; collections
efforts.**

1 (a) For the exclusive purposes of this section, the term
2 "employer" as defined in section one of this article shall
3 include any primary contractor who regularly subcon-
4 tracts with other employers for the performance of any
5 work arising from or as a result of the primary contractor's
6 own contract: *Provided*, That a subcontractor shall not
7 include one providing goods rather than services. In the
8 event that such a subcontracting employer defaults on its
9 obligations to make payments to the commissioner, then
10 such primary contractor shall be liable for such payments.
11 Notwithstanding the foregoing, nothing contained in this
12 section shall extend or except to such primary contractor

13 or subcontractors the provisions of sections six, six-a or
14 eight of this article. This section is applicable only with
15 regard to subcontractors with whom the primary contrac-
16 tor has a contract for any work or services for a period
17 longer than thirty-days: *Provided, however,* That this
18 section shall also be applicable to contracts for consecutive
19 periods of work that total more than thirty days. It is not
20 applicable to the primary contractor with regard to
21 sub-subcontractors. However, a subcontractor for the
22 purposes of a contract with the primary contractor can
23 itself become a primary contractor with regard to other
24 employers with whom it subcontracts.

25 (b) A primary contractor may avoid initial liability
26 under subsection (a) of this section if it obtains from the
27 commissioner, prior to the initial performance of any
28 work by the subcontractor's employees, a certificate that
29 the subcontractor is in good standing with the workers'
30 compensation fund.

31 (1) Failure to obtain the certificate of good standing
32 prior to the initial performance of any work by the sub-
33 contractor shall result in the primary contractor being
34 equally liable with the subcontractor for all delinquent and
35 defaulted premium taxes, premium deposits, interest and
36 other penalties arising during the life of the contract or
37 due to work performed in furtherance of the contract:
38 *Provided,* That the division shall be entitled to collect only
39 once for the amount of premiums, premium deposits and
40 interest due to the default, but the division may impose
41 other penalties on the primary contractor or on the sub-
42 contractor, or both.

43 (2) In order to continue avoiding liability under this
44 section, the primary contractor shall request that the com-
45 missioner of the bureau of employment programs inform
46 the primary contractor of any subsequent default by the
47 subcontractor. In the event that the subcontractor does
48 default, the commissioner shall then notify the primary
49 contractor of the default by placing a notice in the first
50 class United States mail, postage prepaid, and addressed to
51 the primary contractor at the address furnished to the
52 commissioner by the primary contractor. Such mailing

53 shall be good and sufficient notice to the primary contrac-
54 tor of the subcontractor's default. However, the primary
55 contractor shall not become liable under this section until
56 the first day of the calendar quarter following the calendar
57 quarter in which the notice is given and then such liability
58 shall only be for that following calendar quarter and
59 thereafter and only if the subcontract has not been termi-
60 nated: *Provided*, That the commissioner shall be entitled
61 to collect only once for the amount of premiums, premi-
62 um deposits and interest due to the default, but the com-
63 missioner may impose other penalties on the primary
64 contractor or on the subcontractor, or both.

65 (c) In any situation where a subcontractor defaults
66 with regard to its payment obligations under this chapter
67 or fails to provide a certificate of good standing as provid-
68 ed for in this section, such default or failure shall be good
69 and sufficient cause for a primary contractor to hold the
70 subcontractor responsible and to seek reimbursement or
71 indemnification for any amounts paid on behalf of the
72 subcontractor to avoid or cure a workers' compensation
73 default, plus related costs including reasonable attorneys'
74 fees, and to terminate its subcontract with the subcontrac-
75 tor notwithstanding any provision to the contrary in the
76 contract.

77 (d) The provisions of this section are applicable only
78 to those contracts entered into or extended on or after the
79 first day of January, one thousand nine hundred
80 ninety-four.

81 (e) The division may take any action authorized by
82 section five-a of this article in furtherance of its efforts to
83 collect amounts due from the primary contractor under
84 this section.

§23-2-3. Report forms and other forms for use of employers.

1 The division shall prepare and furnish report forms
2 for the use of employers subject to this chapter. Every
3 employer receiving from the division any form or forms
4 with direction for completion and returning to the division
5 shall return the same, within the period fixed by the divi-
6 sion, completed so as to answer fully and correctly all

7 pertinent questions therein propounded, and if unable to
8 do so, shall give good and sufficient reasons for such
9 failure. Every employer subject to the provisions of this
10 chapter, shall make application to the division on the
11 forms prescribed by the division for such purpose; and
12 any employer who shall terminate his or her business or
13 for any other reason is no longer subject to this chapter
14 shall so notify the division on forms to be furnished by
15 the division for that purpose.

**§23-2-4. Classification of industries; rate of premiums; author-
ity to adopt various systems; accounts.**

1 (a) The commissioner, in conjunction with the com-
2 pensation programs performance council, is authorized to
3 establish by rule a system for determining the classifica-
4 tion and distribution into classes of employers subject to
5 this chapter, a system for determining rates of premium
6 taxes applicable to employers subject to this chapter, a
7 system of multiple policy options with criteria for sub-
8 scription thereto, and criteria for an annual employer's
9 statement providing both benefits liability information and
10 rate determination information.

11 (1) In addition, the rule shall provide for, but not be
12 limited to:

13 (A) Rate adjustments by industry or individual em-
14 ployer, including merit rate adjustments;

15 (B) Notification regarding rate adjustments prior to
16 the quarter in which the rate adjustments will be in effect;

17 (C) Chargeability of claims; and

18 (D) Such further matters that are necessary and consis-
19 tent with the goals of this chapter;

20 (2) The rule shall be consistent with the duty of the
21 commissioner and the compensation programs perfor-
22 mance council to fix and maintain the lowest possible rates
23 of premium taxes consistent with the maintenance of a
24 solvent workers' compensation fund and the reduction of
25 any deficit that may exist in such fund and in keeping
26 with their fiduciary obligations to the fund;

27 (3) The rule shall be consistent with generally accept-
28 ed accounting principles;

29 (4) The rule shall be consistent with classification and
30 rate-making methodologies found in the insurance indus-
31 try; and

32 (5) The rule shall be consistent with the principles of
33 promoting more effective workplace health and safety
34 programs as contained in article two-b of this chapter.

35 (b) Notwithstanding any other provision of this chap-
36 ter to the contrary, the compensation programs perfor-
37 mance council may elect to premise its premium tax deter-
38 mination methodology on the aggregate number of hours
39 worked by employees of the employer rather than upon
40 the gross wages of the employer. Such an election may
41 apply to all industrial classifications or to less than all. If
42 this election is made, then in all instances in which this
43 chapter refers to gross wage reports for the purpose of
44 premium tax determination such references shall be taken
45 to mean a report of the number of hours so worked.

46 (c) The rule authorized by subsection (a) of this sec-
47 tion shall be promulgated on or before the first day of
48 July, one thousand nine hundred ninety-six. Until the rule
49 is finally promulgated the prior provisions of this section
50 as found in chapter one hundred seventy-one of the acts
51 of the Legislature, one thousand nine hundred
52 ninety-three, shall remain in effect.

53 (d) In accordance with generally accepted accounting
54 principles, the workers' compensation division shall keep
55 an accurate accounting of all money or moneys earned,
56 due, and received by the workers' compensation fund, and
57 of the liability incurred and disbursements made against
58 the same; and an accurate account of all money or mon-
59 eys earned, due and received from each individual sub-
60 scriber, and of the liability incurred and disbursements
61 made against the same.

**§23-2-5. Application; payment of premium taxes; gross wag-
es; payroll report; deposits; delinquency; default;
reinstatement; payment of benefits; notice to em-
ployees; criminal provisions; penalties.**

1 (a) For the purpose of creating a workers' compensa-
2 tion fund, each employer who is required to subscribe to
3 the fund or who elects to subscribe to the fund shall pay
4 premium taxes calculated as a percentage of the employ-
5 er's gross wages payroll at the rate determined by the
6 workers' compensation division and then in effect. At the
7 time each employer subscribes to the fund, the application
8 required by the division shall be filed and a premium
9 deposit equal to the first quarter's estimated premium tax
10 payment shall be remitted. The minimum quarterly pre-
11 mium to be paid by any employer shall be twenty-five
12 dollars.

13 (1) Thereafter, premium taxes shall be paid quarterly
14 on or before the last day of the month following the end
15 of the quarter, and shall be the prescribed percentage of
16 the entire gross wages of all employees, from which net
17 payroll is calculated and paid, during the preceding quar-
18 ter: *Provided*, That the division may permit employers
19 who shall qualify under the provisions of rules to be pro-
20 mulgated and made effective on or after the first day of
21 July, one thousand nine hundred ninety-six, by the com-
22 pensation programs performance council to report gross
23 wages and pay premium taxes at other intervals.

24 (2) At the time each premium is paid, every subscrib-
25 ing employer shall make a gross wages payroll report to
26 the division for the preceding quarter. The report shall be
27 on the form or forms prescribed by the division, and shall
28 contain all information required by the division.

29 (3) After subscribing to the fund, each employer shall
30 remit with each gross wages payroll report and premium
31 tax payment an amount calculated to be sufficient to
32 maintain a premium deposit equal to the previous quarter's
33 premium payment: *Provided*, That the division may re-
34 duce the amount of the premium deposit required from
35 seasonal employers for those quarters during which em-
36 ployment is significantly reduced. The premium deposit
37 shall be credited to the employer's account on the books
38 of the division and used to pay premiums and any other
39 sums due the fund when an employer becomes delinquent
40 or in default as provided in this article.

41 (4) All premium taxes and premium deposits required
42 by this article to be paid shall be paid by the employers to
43 the division, which shall maintain a record of all sums so
44 received. Any such sum mailed to the division shall be
45 deemed to be received on the date the envelope transmit-
46 ting it is postmarked by the United States postal service.
47 All sums received by the division shall be deposited in the
48 state treasury to the credit of the workers' compensation
49 division in the manner now prescribed by law.

50 (5) The division may encourage employer efforts to
51 create and maintain safe workplaces, to encourage loss
52 prevention programs, and to encourage employer provid-
53 ed wellness programs, through the normal operation of the
54 experience rating formula, seminars and other public
55 presentations, the development of model safety programs
56 and other initiatives as may be determined by the commis-
57 sioner and the compensation programs performance
58 council.

59 (b) Failure of an employer to timely pay premium
60 taxes, to timely file a payroll report, or to maintain an
61 adequate premium deposit, shall cause the employer's
62 account to become delinquent. No employer will be de-
63 clared delinquent or be assessed any penalty therefor if
64 the division determines that such delinquency has been
65 caused by delays in the administration of the fund. The
66 division shall, in writing, within sixty days of the end of
67 each quarter notify all delinquent employers of their fail-
68 ure to timely pay premiums, to timely file a payroll report,
69 or to maintain an adequate premium deposit. Each em-
70 ployer who shall fail to timely file any quarterly payroll
71 report or timely pay the premium tax due with such re-
72 port, or both, for any quarter commencing on and after
73 the first day of July, one thousand nine hundred
74 ninety-five, shall pay a late reporting or payment penalty
75 of the greater of fifty dollars or ten percent of the premi-
76 um tax due, but not to exceed five hundred dollars, with
77 such report. Such late penalty shall be paid with the most
78 recent quarter's report and payment and is due when that
79 quarter's report and payment are filed. If such late penalty
80 is not paid when due, the same may be charged to and
81 collected by the division from the employer's premium

82 deposit account or otherwise as provided for by law. The
83 notification shall demand the filing of the delinquent
84 payroll report and payment of delinquent premium taxes,
85 the penalty for late reporting or payment of premium
86 taxes or premium deposit, the interest penalty and an
87 amount sufficient to maintain the premium deposit, before
88 the end of the third month following the end of the pre-
89 ceding quarter. Interest shall accrue and be charged on
90 the delinquent premium payment and premium deposit
91 pursuant to section thirteen of this article.

92 (c) Whenever the division notifies an employer of the
93 delinquent status of its account, the notification shall ex-
94 plain the legal consequence of subsequent default by an
95 employer required to subscribe to the fund and the legal
96 consequences of termination of an electing employer's
97 account.

98 (d) Failure by the employer, who is required to sub-
99 scribe to the fund and who fails to resolve the delinquency
100 within the prescribed period, shall place the account in
101 default and shall deprive such default employer of the
102 benefits and protection afforded by this chapter, including
103 section six of this article, and the employer shall be liable
104 as provided in section eight of this article. The default
105 employer's liability under said sections shall be retroactive
106 to midnight of the last day of the month following the end
107 of the quarter for which the delinquency occurs. The
108 division shall notify the default employer of the method
109 by which the employer may be reinstated with the fund.
110 The division shall also notify the employees of such em-
111 ployer by written notice as hereinafter provided for in this
112 section.

113 (e) Failure by any employer, who voluntarily elects to
114 subscribe, to resolve the delinquency within the prescribed
115 period shall place the account in default and shall auto-
116 matically terminate the election of such employer to pay
117 into the workers' compensation fund and shall deprive
118 such employer and the employees of the default elective
119 employer of the benefits and protection afforded by this
120 chapter, including section six of this article, and such
121 employer shall be liable as provided in section eight of

122 this article. The default employer's liability under said
123 section shall be retroactive to midnight of the last day of
124 the month following the end of the quarter for which the
125 delinquency occurs. Employees who were the subject of
126 the default employer's voluntary election to provide them
127 the benefits afforded by this chapter shall have such pro-
128 tection terminated at the time of their employer's default.

129 (f) (1) Except as provided for in subdivision (3) of
130 this subsection, any employer who is required to subscribe
131 to the fund and who is in default on the effective date of
132 this section or who subsequently defaults, and any em-
133 ployer who has elected to subscribe to the fund and who
134 defaults and whose account is terminated prior to the ef-
135 fective date of this section or whose account is subsequent-
136 ly terminated, shall be restored immediately to the benefits
137 and protection of this chapter only upon the filing of all
138 delinquent payroll and other reports required by the divi-
139 sion and payment into the fund of all unpaid premiums,
140 an adequate premium deposit, accrued interest and the
141 penalty for late reporting and payment. Interest shall be
142 calculated as provided for by section thirteen of this arti-
143 cle. In addition, for every defaulted or terminated em-
144 ployer whose default or termination lasts for two consecu-
145 tive quarters or who has defaulted or been terminated for
146 two quarters out of the preceding eight consecutive quar-
147 ters, then when any such employer's application for rein-
148 statement is filed or upon any such employer's restoration
149 to the benefits and protection of this chapter, for the next
150 eight quarters, including the quarter in which such restora-
151 tion occurs, or when any such employer's application for
152 reinstatement is filed, the employer shall pay premium
153 taxes to the division at a penalty rate. The applicable
154 penalty premium tax shall be determined by first calculat-
155 ing the employer's premium under the provisions of sec-
156 tion four of this article, but including any applicable expe-
157 rience modification, and then multiplying that premium
158 by one hundred ten percent.

159 The division shall not have the authority to waive ei-
160 ther accrued interest or the imposition of the penalty pre-
161 mium rate. Any employer whose default or termination
162 does not last for two consecutive quarters or who has not

163 been in default two quarters out of the preceding eight
164 consecutive quarters shall not have a penalty premium rate
165 imposed. The provisions of section seventeen of this arti-
166 cle apply to any action or decision of the division under
167 this section. For purposes of section four of this article,
168 the extra ten percent of premium constituting the penalty
169 shall not be used in determining any entitlement to experi-
170 ence modification of the employer's premium tax rate for
171 future years.

172 (2) The division shall have the authority to restore a
173 defaulted or terminated employer through a reinstatement
174 agreement. Such reinstatement agreement shall require
175 the payment in full of all premium taxes, premium depos-
176 its, the penalty for late reporting and payment, past ac-
177 crued interest and future interest calculated pursuant to the
178 provisions of section thirteen of this article. The reinstate-
179 ment agreement shall not permit any modification or
180 waiver of the penalty premium rate provided for in subdi-
181 vision (1) of this subsection. Notwithstanding the filing of
182 a reinstatement application or the entering into of a rein-
183 statement agreement, the division is authorized to file a
184 lien against the employer as provided by section five-a of
185 this article. In addition, entry into a reinstatement agree-
186 ment is discretionary with the division. Such discretion
187 shall be exercised in keeping with the fiduciary obliga-
188 tions owed to the workers' compensation fund. Should the
189 division decline to enter into a reinstatement agreement
190 and should the employer not comply with the provisions
191 of subdivision (1) of this subsection, then the division may
192 proceed with any of the collection efforts provided for by
193 section five-a of this article or as otherwise provided for
194 by this code. Applications for reinstatement shall: (A) Be
195 made upon forms prescribed by the division; (B) include a
196 report of the gross wages payroll of the employer which
197 had not been reported to the division during the entire
198 period of delinquency and default, which gross wages
199 information shall be certified by the employer or its au-
200 thorized agent; and (C) include a payment of a portion of
201 the liability equal to one half of one percent of the gross
202 payroll during the period of delinquency and default or
203 equal to another portion of the liability as may be deter-

204 mined from time to time by rule but not to exceed the
205 amount of the entire liability due and owing for the period
206 of delinquency and default. An employer who applies for
207 reinstatement shall be entitled to the benefits and protec-
208 tion of this chapter on the day a properly completed and
209 acceptable application which is accompanied by the appli-
210 cation payment is received by the division: *Provided*, That
211 if the division reinstates an employer subject to the terms
212 of a reinstatement agreement, the subsequent failure of the
213 employer to make scheduled payments or to pay accrued
214 or future interest in accordance with the reinstatement
215 agreement or to timely file current quarterly reports and
216 to pay current quarterly premiums within the month fol-
217 lowing the end of the quarter for which the report and
218 payment are due, or to otherwise maintain its account in
219 good standing or, if the reinstatement agreement does not
220 require earlier restoration of the premium deposit, to re-
221 store the premium deposit to the required amount by the
222 end of the repayment period shall cause the reinstatement
223 application and the reinstatement agreement to be null,
224 void and of no effect, and the employer shall be denied
225 the benefits and protection of this chapter effective from
226 the date that such employer's account originally became
227 delinquent.

228 (3) Any employer who fails to maintain its account in
229 good standing with regard to subsequent premium taxes
230 and premium deposits after filing an application for rein-
231 statement and prior to the final resolution of an applica-
232 tion for reinstatement by entering into a reinstatement
233 agreement or by payment of the liability in full as provid-
234 ed for in subdivision (1) of this subsection shall cause the
235 reinstatement application to be null, void and of no effect,
236 and the employer shall be denied the benefits and protec-
237 tion of this chapter effective from the date that such em-
238 ployer's account originally became delinquent.

239 (4) Following any failure of an employer to comply
240 with the provisions of a repayment agreement, the division
241 may then make and continue with any of the collection
242 efforts provided for by this chapter or elsewhere in this
243 code even if the employer files another reinstatement
244 application.

245 (g) With the exception noted in subsection (h), section
246 one of this article, no employee of an employer required
247 by this chapter to subscribe to the workers' compensation
248 fund shall be denied benefits provided by this chapter
249 because the employer failed to subscribe or because the
250 employer's account is either delinquent or in default.

251 (h) (1) The provisions of this section shall not deprive
252 any individual of any cause of action which has accrued as
253 a result of an injury or death which occurred during any
254 period of delinquency not resolved in accordance with the
255 provisions of this article, or subsequent failure to comply
256 with the terms of the repayment agreement.

257 (2) Upon withdrawal from the fund or termination of
258 election of any employer, the employer shall be refunded
259 the balance due the employer of its deposit, after deduct-
260 ing all amounts owed by the employer to the workers'
261 compensation fund and other agencies of this state, and
262 the division shall notify the employees of such employer
263 of said termination in such manner as the division may
264 deem best and sufficient.

265 (3) Notice to employees in this section provided for
266 shall be given by posting written notice that the employer
267 is defaulted under the compensation law of West Virginia,
268 and in the case of employers required by this chapter to
269 subscribe and pay premiums to the fund, that the default-
270 ed employer is liable to its employees for injury or death,
271 both in workers' compensation benefits and in damages at
272 common law or by statute; and in the case of employers
273 not required by this chapter to subscribe and pay premi-
274 ums to the fund, but voluntarily electing to do so as herein
275 provided, that neither the employer nor the employees of
276 such employer are protected by said laws as to any injury
277 or death sustained after the date specified in said notice.
278 Such notice shall be in the form prescribed by the division
279 and shall be posted in a conspicuous place at the chief
280 works of the employer, as the same appear in records of
281 the division. If said chief works of the employer cannot be
282 found or identified, then said notices shall be posted at the
283 front door of the courthouse of the county in which said

284 chief works are located, according to the division's re-
285 cords.

286 Any person who shall, prior to the reinstatement of
287 said employer, as hereinbefore provided for, or prior to
288 sixty days after the posting of said notice, whichever shall
289 first occur, remove, deface or render illegible said notice,
290 shall be guilty of a misdemeanor, and, upon conviction
291 thereof, shall be fined one thousand dollars, and said no-
292 tice shall state this provision upon its face. The division
293 may require any sheriff, deputy sheriff, constable or other
294 official of the state of West Virginia, who may be autho-
295 rized to serve civil process, to post such notice and to
296 make return thereof of the fact of such posting to the
297 division, and any failure of such officer to post any notice
298 within ten days after he or she shall have received the same
299 from the division, without just cause or excuse, shall con-
300 stitute a willful failure or refusal to perform a duty re-
301 quired of him or her by law within the meaning of section
302 twenty-eight, article five, chapter sixty-one of this code.
303 Any person actually injured by reason of such failure
304 shall have an action against said official, and upon any
305 official bond he or she may have given, for such damages
306 as such person may actually have incurred, but not to
307 exceed, in the case of any surety upon said bond, the
308 amount of the penalty of said bond. Any official posting
309 said notice as herein required shall be entitled to the same
310 fee as is now or may hereafter be provided for the service
311 of process in suits instituted in courts of record in the state
312 of West Virginia, which fee shall be paid by the division
313 out of any funds at its disposal, but shall be charged by
314 the division against the account of the employer to whose
315 delinquency such notice relates.

**§23-2-5a. Collection of premiums from defaulting employers;
interest and penalties; civil remedies; creation
and enforcement of lien against employer and
purchaser; duty of secretary of state to register
liens; distraint powers; insolvency proceedings;
secretary of state to withhold certificates of disso-
lution; injunctive relief; bond; attorney fees and
costs.**

1 (a) The workers' compensation division in the name of
2 the state may commence a civil action against an employer
3 who, after due notice, defaults in any payment required by
4 this chapter. If judgment is against the employer, such
5 employer shall pay the costs of the action. Civil action
6 under this section shall be given preference on the calen-
7 dar of the court over all other civil actions. Upon prevail-
8 ing in any such civil action, the division shall be entitled to
9 recover its attorneys' fees and costs of action from the
10 employer.

11 (b) In addition to the foregoing provisions of this
12 section, any payment, interest and penalty thereon due and
13 unpaid under this chapter shall be a personal obligation of
14 the employer immediately due and owing to the division
15 and shall, in addition thereto, be a lien enforceable against
16 all the property of the employer: *Provided*, That no such
17 lien shall be enforceable as against a purchaser (including
18 a lien creditor) of real estate or personal property for a
19 valuable consideration without notice, unless docketed as
20 provided in section one, article ten-c, chapter thirty-eight
21 of this code: *Provided, however*, That such lien may be
22 enforced as other judgment liens are enforced through the
23 provisions of chapter thirty-eight of this code and the
24 same shall be deemed by the circuit court to be a judg-
25 ment lien for this purpose.

26 (c) In addition to all other civil remedies prescribed
27 herein, the division may in the name of the state, after
28 giving appropriate notice as required by due process,
29 distraint upon any personal property, including intangible
30 property, of any employer delinquent for any payment,
31 interest and penalty thereon. If the division has good
32 reason to believe that such property or a substantial por-
33 tion thereof is about to be removed from the county in
34 which it is situated, upon giving appropriate notice, either
35 before or after the seizure, as is proper in the circumstanc-
36 es, the division may likewise distraint in the name of the
37 state before such delinquency occurs. For such purpose,
38 the division may require the services of a sheriff of any
39 county in the state in levying such distress in the county in
40 which the sheriff is an officer and in which such personal
41 property is situated. A sheriff so collecting any payment,

42 interest and penalty thereon shall be entitled to such com-
43 pensation as is provided by law for his or her services in
44 the levy and enforcement of executions. Upon prevailing
45 in any distraint action, the division shall be entitled to
46 recover its attorneys' fees and costs of action from the
47 employer.

48 (d) In case a business subject to the payments, interest
49 and penalties thereon imposed under this chapter shall be
50 operated in connection with a receivership or insolvency
51 proceeding in any state court in this state, the court under
52 whose direction such business is operated shall, by the
53 entry of a proper order or decree in the cause, make pro-
54 visions, so far as the assets in administration will permit,
55 for the regular payment of such payments, interest and
56 penalties as the same become due.

57 (e) The secretary of state of this state shall withhold
58 the issuance of any certificate of dissolution or withdrawal
59 in the case of any corporation organized under the laws of
60 this state or organized under the laws of any other state
61 and admitted to do business in this state, until notified by
62 the division that all payments, interest and penalties there-
63 on against any such corporation which is an employer
64 under this chapter have been paid or that provision satis-
65 factory to the division has been made for payment.

66 (f) In any case when an employer required to sub-
67 scribe to the fund defaults in payments of premium, pre-
68 mium deposits, penalty or interest thereon, for as many as
69 two calendar quarters, which quarters need not be consec-
70 utive, and remains in default after due notice, the division
71 may bring action in the circuit court of Kanawha County
72 to enjoin such employer from continuing to carry on the
73 business in which such liability was incurred: *Provided,*
74 That the division may as an alternative to this action re-
75 quire such delinquent employer to file a bond in the form
76 prescribed by the commissioner with satisfactory surety in
77 an amount not less than fifty percent more than the pay-
78 ments, interest and penalties due.

§23-2-9. Election of employer to be self-insured and to provide own system of compensation; mandatory participation in second injury reserve; exceptions; catastrophe coverage; self-administration.

1 (a) Notwithstanding any provisions of this chapter to
2 the contrary, the following types of employers may apply
3 for permission to self-insure their workers' compensation
4 risk including their risk of catastrophic injuries. Except as
5 provided for in subsection (e) of this section, no employer
6 may self-insure its second injury risk.

7 (1) The types of employers are:

8 (A) Any employer who is of sufficient capability and
9 financial responsibility to ensure the payment to injured
10 employees and the dependents of fatally injured employ-
11 ees of benefits provided for in this chapter at least equal in
12 value to the compensation provided for in this chapter; or

13 (B) Any employer of such capability and financial
14 responsibility who maintains its own benefit fund or sys-
15 tem of compensation to which its employees are not re-
16 quired or permitted to contribute and whose benefits are at
17 least equal in value to those provided for in this chapter.

18 (2) In order to be approved for self-insurance status,
19 the employer must:

20 (A) Have an effective health and safety program at its
21 workplaces; and

22 (B) Provide security or bond in an amount to be deter-
23 mined by the compensation programs performance coun-
24 cil which shall balance the employer's financial condition
25 based upon an analysis of its audited financial statements
26 and the full accrued value based upon generally accepted
27 accounting principles of the employer's existing and ex-
28 pected liability; and

29 (C) Security or bond which may be in such form as
30 the commissioner and the compensation programs perfor-
31 mance council created pursuant to section one, article
32 three, chapter twenty-one-a of this code permits.

33 (3) Any employer whose record upon the books of
34 the division shows a liability, as determined on an accrued
35 basis against the workers' compensation fund incurred on
36 account of injury to or death of any of the employer's
37 employees, in excess of premiums paid by such employer,

38 shall not be granted the right, individually and directly or
39 from such benefit funds or system of compensation, to be
40 self-insured until the employer has paid into the workers'
41 compensation fund the amount of such excess of liability
42 over premiums paid, including the employer's proper
43 proportion of the liability incurred on account of catastro-
44 phes or second injuries as defined in section one, article
45 three of this chapter and charged against such fund.

46 (4) Upon a finding that the employer has met all of
47 the requirements of this section, the employer may be
48 permitted self-insurance status. An annual review of each
49 self-insurer's continuing ability to meet its obligations and
50 the requirements of this section shall be made by the
51 workers' compensation division. This review shall include
52 a redetermination of the amount of security or bond
53 which shall be provided by the employer. Failure to pro-
54 vide any new amount or form of security or bond may, in
55 the division's discretion, cause the employer's
56 self-insurance status to be terminated. The security or
57 bond provided by employers prior to the second day of
58 February, one thousand nine hundred ninety-five, shall
59 continue in full force and effect until the performance of
60 the employer's annual review and the entry of any appro-
61 priate decision on the amount or form of the employer's
62 security or bond.

63 (5) Whenever a self-insured employer shall furnish
64 security or bond, including replacement and amended
65 bonds and other securities, as security to ensure the em-
66 ployer's or guarantor's payment of all obligations under
67 this chapter for which the security or bond was furnished,
68 such security or bond shall be in the most current form or
69 forms approved and authorized by the division for use by
70 the employer or its guarantors, surety companies, banks,
71 financial institutions or others in its behalf for such pur-
72 pose.

73 (b) Each self-insured employer shall, on or before the
74 last day of the first month of each quarter, file with the
75 division a certified statement of the total gross wages and
76 earnings of all of the employer's employees subject to this
77 chapter for the preceding quarter. Each self-insured em-

78 ployer shall pay into the workers' compensation fund as
79 portions of its self-insured premium tax:

80 (1) A sum sufficient to pay the employer's proper
81 portion of the expense of the administration of this chap-
82 ter;

83 (2) A sum sufficient to pay the employer's proper
84 portion of the expense of claims for those employers who
85 are in default in the payment of premium taxes or other
86 obligations;

87 (3) A sum sufficient to pay the employer's fair portion
88 of the expenses of the disabled workers' relief fund; and

89 (4) A sum sufficient to maintain as an advance deposit
90 an amount equal to the previous quarter's payment of each
91 of the foregoing three sums.

92 (c) The required payments to the employer's injured
93 employees or dependents of fatally injured employees as
94 benefits provided for by this chapter including second
95 injury benefits and catastrophic injury benefits, if applica-
96 ble, shall constitute the remaining portion of the
97 self-insurer's premium tax.

98 (1) If an employer defaults in the payment of any
99 portion of its self-insured premium taxes, the division
100 may, in an appropriate case, determine the full accrued
101 value based upon generally accepted accounting princi-
102 ples of the employer's liability including the costs of all
103 awarded claims and of all incurred but not reported
104 claims. The amount so determined may then, in an appro-
105 priate case, be assessed against the employer and the divi-
106 sion may demand and collect the present value of such
107 defaulted tax liability. Interest shall accrue upon the de-
108 manded amount as provided for in section thirteen of this
109 article until the premium tax is fully paid. Payment of all
110 amounts then due to the division and to the employer's
111 employees is a sufficient basis for reinstating the employer
112 to good standing with the fund.

113 (2) Such premium tax assessments are special revenue
114 taxes under and according to the provisions of state work-
115 ers' compensation law and are deemed to be tax claims, as

116 priority claims or administrative expense claims according
117 to those provisions under the law provided in the United
118 States bankruptcy code. In addition, as the same was pre-
119 viously intended by the prior provisions of this section,
120 this amendment and reenactment is for the purpose of
121 clarification of the taxing authority of the workers' com-
122 pensation division.

123 (d) Each self-insured employer shall elect whether or
124 not to self-insure its catastrophic injury risk as defined in
125 subsection (c), section one, article three of this chapter.

126 (1) If the employer does not elect to self-insure its
127 catastrophic risk, then the employer shall pay premium
128 taxes for this coverage in the same manner as is provided
129 for in section four of this article and in rules adopted to
130 implement said section. Until such rules are adopted, the
131 employer's premium taxes shall be determined in accor-
132 dance with the provisions of chapter one hundred
133 seventy-four, acts of the Legislature, one thousand nine
134 hundred ninety-one. If the employees of such an em-
135 ployer suffer injury or death from a catastrophe, then the
136 payment of the resulting benefits shall be made from the
137 catastrophe reserve of the surplus fund provided for in
138 subsection (b), section one, article three of this chapter.
139 Such an employer's catastrophic liability shall not be in-
140 cluded in the liabilities upon which the employer's security
141 or bond is determined in subsection (a) of this section.

142 (2) If an otherwise self-insured employer elects to
143 self-insure its catastrophic risk, then the security or bond
144 required in subsection (a) of this section shall include the
145 liability for the catastrophic risk.

146 (e) (1) Any self-insured employer who was, prior to
147 the second day of February, one thousand nine hundred
148 ninety-five, permitted to self-insure its second injury risk
149 as defined in subsection (d), section one, article three of
150 this chapter, may elect to continue to self-insure its second
151 injury risk for so long as it meets the requirements of this
152 chapter. Any employer which was previously permitted to
153 self-insure its second injury risk who then elects to termi-
154 nate that self-insurance status shall not thereafter be per-
155 mitted to self-insure its second injury risk.

156 (2) For those employers previously permitted to
157 self-insure their second injury risks, the amount of the
158 security or bond required in subsection (a) of this section
159 shall include the liability for that risk. All benefits provid-
160 ed for by this chapter which are awarded to the employer's
161 employees which constitute second injury life awards shall
162 then be paid by the employer and not the division.

163 (3) (A) For those employers which do not self-insure
164 their second injury risk, the premium tax for second inju-
165 ry coverage shall be determined by the rules which imple-
166 ment section four of this article. Such rules may provide
167 for merit rate adjustments of the amount of premium tax
168 to be paid based upon the accrued costs to be determined
169 under generally accepted accounting principles of second
170 injury benefits paid and to be paid to the employer's em-
171 ployees. Until such rules are adopted, the employer's
172 premium taxes shall be determined in accordance with the
173 provisions of chapter one hundred seventy-four, acts of
174 the Legislature, one thousand nine hundred ninety-one.

175 (B) In case there is a second injury to an employee of
176 any employer making such second injury premium tax
177 payments, the employer shall be liable to pay compensa-
178 tion or expenses arising from or necessitated by the sec-
179 ond injury and such compensation and expenses shall be
180 charged against the employer. After the completion of
181 these payments, the employee shall be paid the remainder
182 of the compensation and expenses that would be due for
183 permanent total disability from the second injury reserve
184 of the surplus fund. Such additional compensation and
185 expenses shall not be charged against such employer.

186 (f) The compensation programs performance council
187 may create, implement, establish and administer a perpetu-
188 al self-insurance security risk pool of funds, sureties, secu-
189 rities, insurance provided by private insurance carriers or
190 other states' programs, and other property, of both real
191 and personal properties, to secure the payment of obliga-
192 tions of self-insured employers. If such pool is created,
193 the compensation programs performance council shall
194 adopt rules for the organizational plan, participation, con-
195 tributions and other payments which may be required of

196 self-insured employers under this section. The council, in
197 order to create and fund such a risk pool, may adopt a
198 rule authorizing the division to assess each self-insured
199 employer in proportion according to each employer's
200 portion of the unsecured obligation and liability or to
201 assess according to some other method provided for by
202 rule which shall properly create and fund such risk pool to
203 serve the needs of employees, employers and the workers'
204 compensation fund by providing adequate security. The
205 council, in funding such security risk pool, may authorize
206 the division to use any assessments, premium tax assess-
207 ments and revenues and appropriations as may be made
208 available to the division.

209 (g) Any self-insured employer which has had a period
210 of inactivity due to the nonemployment of employees
211 which results in its reporting of no wages on quarterly
212 reports to the division for a period of four or more con-
213 secutive quarters shall have its status at the division inacti-
214 vated and shall be required to apply for reactivation to
215 status as a self-insured employer prior to its reemployment
216 of employees. Despite such inactivation, the self-insured
217 employer shall continue to make payments on all awards
218 for which it is responsible. Upon application for reactiva-
219 tion of its status as an operating self-insured employer, the
220 employer must document that it meets the eligibility re-
221 quirements needed to maintain self-insured status under
222 this section and any rules adopted to implement it. If the
223 employer is unable to requalify and obtain approval for
224 reactivation, the employer shall, effective with the date of
225 employment of any employee, become a subscriber to the
226 workers' compensation fund, but shall continue to be a
227 self-insurer as to the prior period of active status and to
228 furnish security or bond and meet its prior self-insurance
229 obligations.

230 (h) In any case under the provisions of this section
231 that shall require the payment of compensation or benefits
232 by an employer in periodical payments and the nature of
233 the case makes it possible to compute the present value of
234 all future payments, then the division may, in its discretion,
235 at any time compute and permit to be paid into the work-
236 ers' compensation fund an amount equal to the present

237 value of all unpaid future payments on the award or
238 awards for which liability exists in trust. Thereafter, such
239 employer shall be discharged from any further portion of
240 premium tax liability upon such award or awards and
241 payment of the award or awards shall be assumed by the
242 division.

243 (i) Any employer subject to this chapter, who shall
244 elect to carry the employer's own risk by being
245 self-insured and who has complied with the requirements
246 of this section and of any applicable rules, shall not be
247 liable to respond in damages at common law or by statute
248 for the injury or death of any employee, however occur-
249 ring, after such election's approval and during the period
250 that the employer is allowed to carry the employer's own
251 risk.

§23-2-14. Sale or transfer of business; attachment of lien for premium, etc., payments due; criminal penalties for failure to pay; creation and avoidance or elimination of lien; enforcement of lien; successor liability; enforcement of lien.

1 (a) If any employer shall sell or otherwise transfer
2 substantially all of the employer's assets, so as to give up
3 substantially all of the employer's capacity and ability to
4 continue in the business in which the employer has previ-
5 ously engaged, then:

6 (1) Such employer's premium taxes, premium depos-
7 its, interest and other payments owed to the division shall
8 be due and owing to the division upon the execution of
9 the agreement of sale or other transfer;

10 (2) Any repayment agreement entered into by the
11 employer with the division pursuant to section five of this
12 article shall terminate upon the execution of the aforesaid
13 agreement of sale or other transfer and all amounts owed
14 to the division but not yet paid shall become due; and

15 (3) Upon execution of an agreement of sale or other
16 transfer, as aforesaid, the division shall continue to have a
17 lien, as provided for in section five-a of this article, against
18 all of the remaining property of the employer as well as

19 all of the sold or transferred assets, which lien shall consti-
20 tute a personal obligation of the employer.

21 (b) Notwithstanding any provisions of section five-a of
22 this article to the contrary, in the event that a new employ-
23 er acquires by sale or other transfer or assumes all or sub-
24 stantially all of a predecessor employer's assets, then:

25 (1) Any liens for payments owed to the division for
26 premium taxes, premium deposits, interest, penalty premi-
27 um rate or other payments owed to the division by the
28 predecessor employer shall be extended to the successor
29 employer;

30 (2) Any liens held by the division against the prede-
31 cessor employer's property shall be extended to all of the
32 assets of the successor employer;

33 (3) Liens acquired in the manner described in subdivi-
34 sions (1) and (2) of this subsection shall be enforceable by
35 the division to the same extent as provided for the en-
36 forcement of liens against the predecessor employer in
37 section five-a of this article; and

38 (4) Unless all amounts owed by the predecessor em-
39 ployer are paid prior to or at the sale or other transfer,
40 prior defaults by a predecessor employer shall accrue to
41 the new employer for purposes of determining whether
42 the new employer is subject to the penalty premium rate
43 provisions of subdivision (1), subsection (f), section five of
44 this article.

45 (c) Notwithstanding the provisions of section five-a of
46 this article to the contrary, if any employer as described in
47 subsection (a) of this section shall sell or otherwise transfer
48 a portion of the employer's assets so as to affect the em-
49 ployer's capacity to do business, then:

50 (1) Such employer's premium taxes, premium depos-
51 its, interest, penalty premium rate and other payments
52 owed to the division shall be due and owing to the division
53 upon the execution of the agreement of sale or other
54 transfer;

55 (2) Any repayment agreement entered into by the

56 employer with the division pursuant to section five of the
57 article shall terminate upon the execution of the aforesaid
58 agreement of sale or other transfer and all amounts owed
59 to the division but not yet paid shall become due; and

60 (3) Upon execution of an agreement of sale or other
61 transfer, as aforesaid, the division shall continue to have a
62 lien, as provided for in section five-a of this article, against
63 all of the remaining property of the employer as well as all
64 the sold or transferred assets, which lien shall constitute a
65 personal obligation of the employer.

66 (d) If an employer subject to subsection (a), (b) or (c)
67 of this section pays to the division, prior to the execution
68 of an agreement of sale or other transfer, a sum sufficient
69 to retire all of the indebtedness that the employer would
70 owe at the time of the execution, then the division shall
71 issue a certificate to the employer stating that the employ-
72 er's account is in good standing with the division and that
73 the assets may be sold or otherwise transferred without the
74 attachment of the division's lien. An agreement of sale or
75 other transfer may provide for the creation of an escrow
76 account into which the employers shall pay the full
77 amount owed to the division. The subsequent timely pay-
78 ment of that full amount to the division shall operate to
79 place both employers in good standing with the division to
80 the extent of the predecessor employer's liabilities retroac-
81 tive to the date of sale or other transfer. In the event that
82 the employer would not owe any sum to the division on
83 the aforesaid date of execution, then a certificate shall also
84 be issued to the employer upon the employer's request
85 stating that the employer's account is in good standing
86 with the division and that the assets may be sold or other-
87 wise transferred without the attachment of the division's
88 lien.

89 (e) As used in this article, the term "assets" means all
90 property of whatever type in which the employer has an
91 interest including, but not limited to, good will, business
92 assets, customers, clients, contracts, access to leases such as
93 the right to sublease, assignment of contracts for the sale
94 of products, operations, stock of goods or inventory, ac-
95 counts receivable, equipment or transfer of substantially
96 all of its employees.

97 (f) The transfer of any assets of the employer shall be
98 presumed to be a transfer of all or substantially all of the
99 assets if the transfer affects the employer's capacity to do
100 business. The presumption can be overcome upon peti-
101 tion presented and an administrative hearing in accor-
102 dance with section fifteen of this article and in consider-
103 ation of the factors thereunder.

104 (g) The foregoing provisions are expressly intended to
105 impose upon such successor employers the duty of ob-
106 taining from the division or predecessor employer, prior
107 to the date of such acquisition, a valid "certificate of good
108 standing to transfer a business or business assets" to verify
109 that the predecessor employer's account with the division
110 is in good standing.

**§23-2-15. Liabilities of successor employer; waiver of pay-
ment by division; assignment of predecessor
employer's premium rate to successor.**

1 (a) At any time prior to or following the acquisition
2 described in subsection (a), (b) or (c), section fourteen of
3 this article, the buyer or other recipient may file a certified
4 petition with the division requesting that the division waive
5 the payment by the buyer or other recipient of premiums,
6 premium deposits, interest and imposition of the modified
7 rate of premiums attributable to the predecessor employer
8 or other penalty, or any combination thereof. The divi-
9 sion shall review the petition by considering the seven
10 factors set forth below:

11 (1) The exact nature of the default;

12 (2) The amount owed to the division;

13 (3) The solvency of the fund;

14 (4) The financial condition of the buyer or other re-
15 cipient;

16 (5) The equities exhibited towards the fund by the
17 buyer or other recipient during the acquisition process;

18 (6) The potential economic impact upon the state and
19 the specific geographic area in which the buyer or other

20 recipient is to be or is located, if the acquisition were not
21 to occur; and

22 (7) Whether the assets are purchased in an arms-length
23 transaction.

24 Unless requested by a party or by the division, no
25 hearing need be held on the petition. However, any deci-
26 sion made by the division on the petition shall be in writ-
27 ing and shall include appropriate findings of fact and
28 conclusions of law. Such decision shall be effective ten
29 days following notice to the public of the decision unless
30 an objection is filed in the manner herein provided. Such
31 notice shall be given by the division's filing with the secre-
32 tary of state, for publication in the state register, of a no-
33 tice of the decision. At the time of filing the notice of its
34 decision, the division shall also file with the secretary of
35 state a true copy of the decision. The publication shall
36 include a statement advising that any person objecting to
37 the decision must file, within ten days after publication of
38 the notice, a verified response with the division setting
39 forth the objection and the basis therefor. If any such
40 objection is filed, the division shall hold an administrative
41 hearing, conducted pursuant to article five, chapter
42 twenty-nine-a of this code, within fifteen days of receiving
43 the response unless the buyer or other recipient consents
44 to a later hearing. Nothing in this subsection shall be
45 construed to be applicable to the seller or other transferor
46 or to affect in any way a proceeding under sections five
47 and five-a of this article.

48 (b) In the factual situations set forth in subsection (a),
49 (b) or (c), section fourteen of this article, if the predeces-
50 sor's modified rate of premium tax, as calculated in accord-
51 ance with section four of this article, is greater than the
52 manual rate of premium tax, as calculated in accordance
53 with said section, for other employers in the same class or
54 group, then, if the new employer does not already have a
55 modified rate of premium, it shall also assume the prede-
56 cessor employer's modified rates for the payment of pre-
57 miums as determined under sections four and five of this
58 article until sufficient time has elapsed for the new em-
59 ployer's experience record to be combined with the expe-

60 rience record of the predecessor employer so as to calcu-
61 late the new employer's own modified rate of premium
62 tax. As provided for by subdivision (4), subsection (b),
63 section fourteen of this article, the new employer may
64 avoid this assumption of the predecessor's rate of premium
65 tax if all liabilities of the predecessor are paid prior to or
66 at the time of the sale or other transfer.

ARTICLE 3. WORKERS' COMPENSATION FUND.

§23-3-1. Compensation fund; surplus fund; catastrophe and catastrophe payment defined; second injury and second injury reserve; compensation by employers.

§23-3-4. Disbursements not considered as abandoned property; interest to be retained.

§23-3-5. Authorization to require the electronic invoices and transfers.

§23-3-1. Compensation fund; surplus fund; catastrophe and catastrophe payment defined; second injury and second injury reserve; compensation by employers.

1 (a) The commissioner shall establish a workers' com-
2 pensation fund from the premiums and other funds paid
3 thereto by employers, as herein provided, for the benefit
4 of employees of employers who have paid the premiums
5 applicable to such employers and have otherwise complied
6 fully with the provisions of section five, article two of this
7 chapter, and for the benefit, to the extent elsewhere in this
8 chapter set out, of employees of employers who have
9 elected, under section nine, article two of this chapter, to
10 make payments into the surplus fund hereinafter provided
11 for, and for the benefit of the dependents of all such em-
12 ployees, and for the payment of the administration ex-
13 penses of this chapter .

14 (b) A portion of all premiums that shall be paid into
15 the workers' compensation fund by subscribers not elect-
16 ing to carry their own risk under section nine, article two
17 of this chapter, shall be set aside to create and maintain a
18 surplus fund to cover the catastrophe hazard, the second
19 injury hazard, and all losses not otherwise specifically
20 provided for in this chapter. The percentage to be set
21 aside shall be determined pursuant to the rules adopted to
22 implement section four, article two of this chapter and

23 shall be in an amount sufficient to maintain a solvent sur-
24 plus fund. All interest earned on investments by the work-
25 ers' compensation fund, which is attributable to the surplus
26 fund, shall be credited to the surplus fund.

27 (c) A catastrophe is hereby defined as an accident in
28 which three or more employees are killed or receive inju-
29 ries, which, in the case of each individual, consist of: Loss
30 of both eyes or the sight thereof; or loss of both hands or
31 the use thereof; or loss of both feet or the use thereof; or
32 loss of one hand and one foot or the use thereof. The
33 aggregate of all medical and hospital bills and other costs,
34 and all benefits payable on account of a catastrophe is
35 hereby defined as "catastrophe payment". In case of a
36 catastrophe to the employees of an employer who is an
37 ordinary premium-paying subscriber to the fund, or to the
38 employees of an employer who, having elected to carry
39 the employer's own risk under section nine, article two of
40 this chapter, has heretofore elected, or may hereafter elect,
41 to pay into the catastrophe reserve of the surplus fund
42 under the provisions of that section, then the catastrophe
43 payment arising from such catastrophe shall not be
44 charged against, or paid by, such employer but shall be
45 paid from the catastrophe reserve of the surplus fund.

46 (d) (1) If an employee who has a definitely ascertain-
47 able physical impairment, caused by a previous occupa-
48 tional injury, occupational pneumoconiosis or occupation-
49 al disease, irrespective of its compensability, becomes
50 permanently and totally disabled through the combined
51 effect of such previous injury and a second injury re-
52 ceived in the course of and as a result of his or her em-
53 ployment, the employer shall be chargeable only for the
54 compensation payable for such second injury: *Provided,*
55 That in addition to such compensation, and after the com-
56 pletion of the payments therefor, the employee shall be
57 paid the remainder of the compensation that would be due
58 for permanent total disability out of a special reserve of
59 the surplus fund known as the second injury reserve, creat-
60 ed in the manner hereinbefore set forth. The procedure
61 by which the claimant's request for a permanent total dis-
62 ability award under this section is ruled upon shall require
63 that the issue of the claimant's degree of permanent dis-

64 ability first be determined. Thereafter, by means of a
65 separate order, a decision shall be made as to whether the
66 award shall be a second injury award under this subsection
67 or a permanent total disability award to be charged to the
68 employer's account or to be paid directly by the employer
69 if the employer has elected to be self-insured under the
70 provisions of section nine, article two of this chapter.

71 (2) If an employee of an employer, where the employ-
72 er has elected to carry his or her own risk under section
73 nine, article two of this chapter, and is permitted not to
74 make payments into the second injury reserve of surplus
75 fund under the provisions of said section, has a definitely
76 ascertainable physical impairment caused by a previous
77 occupational injury, occupational pneumoconiosis or
78 occupational disease, irrespective of its compensability,
79 and becomes permanently and totally disabled from the
80 combined effect of such previous injury and a second
81 injury received in the course of and as a result of his or
82 her employment, the employee shall be granted an award
83 of total permanent disability and his or her employer shall,
84 upon order of the division, compensate the said employee
85 in the same manner as if the total permanent disability of
86 the employee had resulted from a single injury while in
87 the employ of such employer.

88 (e) Employers electing, as herein provided, to com-
89 pensate individually and directly their injured employees
90 and their fatally injured employees' dependents shall do so
91 in the manner prescribed by the division, and shall make
92 all reports and execute all blanks, forms and papers as
93 directed by the division, and as provided in this chapter.

**§23-3-4. Disbursements not considered as abandoned prop-
erty; interest to be retained.**

1 (a) All disbursements from the workers' compensation
2 fund and of the other funds created pursuant to this chap-
3 ter which might otherwise be presumed to be abandoned
4 and subject to the custody of the state as unclaimed prop-
5 erty under the provisions of article eight, chapter thirty-six
6 of this code shall be deposited by the state treasurer to the
7 credit of the workers' compensation fund or to such other
8 affected fund.

9 (b) Notwithstanding any provision of law to the con-
10 trary, all interest and other earnings accruing to the invest-
11 ments and deposits of the workers' compensation fund and
12 of the other funds created pursuant to this chapter shall be
13 credited only to the account of the workers' compensation
14 fund or to such other affected fund.

§23-3-5. Authorization to require the electronic invoices and transfers.

1 (a) The workers' compensation division is authorized
2 to establish a program to require the acceptance of dis-
3 bursements by electronic transfer from the workers' com-
4 pensation fund to employers, vendors and all others law-
5 fully entitled to receive such disbursements: *Provided*,
6 That claimants may not be required to accept such trans-
7 fers but may elect to do so.

8 (b) The division is further authorized to establish a
9 program to require payments of deposits, premiums and
10 other funds into the workers' compensation fund by elec-
11 tronic transfer of funds.

12 (c) The division is further authorized to establish a
13 program that invoices and other charges against the work-
14 ers' compensation fund may be submitted to the division
15 by electronic means.

16 (d) Any program authorized by this section must be
17 implemented through the issuance of a rule pursuant to
18 subdivisions (b) and (c), section seven, article three, chap-
19 ter twenty-one-a of this code.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1a. Report of injuries by employee.

§23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of division to collect payments improperly made.

§23-4-1d. Method and time of payments for permanent disability.

§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; legislative approval; guidelines; preferred provider agreements; charges in excess of scheduled amounts not to be made; required disclosure of financial interest in sale or rental of medically related mechanical appliances

- or devices; promulgation of rules to enforce requirement; consequences of failure to disclose; contract by employer with hospital, physician, etc., prohibited; criminal penalties for violation; payments to certain providers prohibited; medical cost and care programs; payments; interlocutory orders.
- §23-4-4. Funeral expenses; wrongfully seeking payment; criminal penalties.
- §23-4-6. Classification of and criteria for disability benefits.
- §23-4-6a. Benefits and mode of payment to employees and dependents for occupational pneumoconiosis; further adjustment of claim for occupational pneumoconiosis.
- §23-4-6c. Benefits payable to certain sheltered workshop employees; limitations.
- §23-4-7. Release of medical information to employer; legislative findings; effect of application for benefits; duty of employer.
- §23-4-7a. Monitoring of injury claims; legislative findings; review of medical evidence; recommendation of authorized treating physician; independent medical evaluations; temporary total disability benefits and the termination thereof; mandatory action; additional authority.
- §23-4-10. Classification of death benefits; "dependent" defined.
- §23-4-15. Application for benefits.
- §23-4-15b. Determination of nonmedical questions by division; claims for occupational pneumoconiosis; hearing.
- §23-4-16. Division's jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses; reopening cases involving permanent total disability; promulgation of rules.
- §23-4-18. Mode of paying benefits generally; exemptions of compensation from legal process.
- §23-4-24. Permanent total disability awards; retirement age; limitations on eligibility and the introduction of evidence; effects of other types of awards; procedures; requests for awards; jurisdiction.
- §23-4-25. Permanent total disability benefits; reduction of disability benefits for wages earned by claimant.

§23-4-1a. Report of injuries by employee.

- 1 Every employee who sustains an injury subject to this
- 2 chapter, or his or her representative, shall immediately on
- 3 the occurrence of such injury or as soon thereafter as
- 4 practicable give or cause to be given to the employer or
- 5 any of the employer's agents a written notice of the occur-
- 6 rence of such injury, with like notice or a copy thereof to
- 7 the workers' compensation division stating in ordinary
- 8 language the name and address of the employer, the name

9 and address of the employee, the time, place, nature and
10 cause of the injury, and whether temporary total disability
11 has resulted therefrom. Such notice shall be given person-
12 ally to the employer or any of the employer's agents, or
13 may be sent by certified mail addressed to the employer at
14 the employer's last known residence or place of business.
15 Such notice may be given to the workers' compensation
16 division by mail.

**§23-4-1c. Payment of temporary total disability benefits di-
rectly to claimant; payment of medical benefits;
payments of benefits during protest; right of
division to collect payments improperly made.**

1 (a) In any claim for benefits under this chapter, the
2 workers' compensation division shall determine whether
3 the claimant has sustained a compensable injury within the
4 meaning of section one of this article and the division
5 shall enter an order giving all parties immediate notice of
6 such decision.

7 (1) The division may enter an order conditionally
8 approving the claimant's application if the division finds
9 that obtaining additional medical evidence or evaluations
10 or other evidence related to the issue of compensability
11 would aid the division in making a correct final decision.
12 Benefits shall be paid during the period of conditional
13 approval; however, if the final decision is one that rejects
14 the claim, then any such payments shall be considered an
15 overpayment. The division may only recover the amount
16 of such an overpayment as provided for in subsection (i)
17 of this section.

18 (2) In making a determination regarding the compen-
19 sability of a newly filed claim or upon a filing for the
20 reopening of a prior claim pursuant to the provisions of
21 section sixteen of this article based upon an allegation of
22 recurrence, reinjury, aggravation or progression of the
23 previous compensable injury or in the case of a filing of a
24 request for any other benefits under the provisions of this
25 chapter, the division shall consider the date of the filing of
26 the claim for benefits for a determination of the following:

27 (A) Whether the claimant had scheduled shutdown

28 beginning within one week of the date of the filing; or

29 (B) Whether the claimant received notice within sixty
30 days of the filing that his or her employment position was
31 to be eliminated, including, but not limited to, the claim-
32 ant's worksite, a layoff or the elimination of the claimant's
33 employment position; or

34 (C) Whether the claimant is receiving unemployment
35 compensation benefits at the time of the filing; or

36 (D) Whether the claimant has received unemployment
37 compensation benefits within sixty days of the filing.

38 In the event of an affirmative finding upon any of
39 these four factors, then such finding shall be given proba-
40 tive weight in the overall determination of the compensa-
41 bility of the claim or of the merits of the reopening re-
42 quest.

43 (3) Any party shall have the right to object to the
44 order of the division and obtain an evidentiary hearing as
45 provided in section one, article five of this chapter.

46 (b) Where it appears from the employer's report, or
47 from proper medical evidence, that a compensable injury
48 will result in a disability which will last longer than three
49 days as provided in section five of this article, the division
50 may immediately enter an order commencing the pay-
51 ment of temporary total disability benefits to the claimant
52 in the amounts provided for in sections six and fourteen
53 of this article, and the payment of the expenses provided
54 for in subsection (a), section three of this article, relating
55 to said injury, without waiting for the expiration of the
56 thirty-day period during which objections may be filed to
57 such findings as provided in section one, article five of this
58 chapter. The division shall enter an order commencing
59 the payment of temporary total disability or medical bene-
60 fits within fifteen days of receipt of either the employee's
61 or employer's report of injury, whichever is received soon-
62 er, and also upon receipt of either a proper physician's
63 report or any other information necessary for a determi-
64 nation. The division shall give to the parties immediate
65 notice of any order granting temporary total disability or
66 medical benefits.

67 (c) The division may enter orders granting temporary
68 total disability benefits upon receipt of medical evidence
69 justifying the payment of such benefits. In no claim shall
70 the division enter an order granting prospective temporary
71 total disability benefits for a period of more than ninety
72 days: *Provided*, That when the division determines that
73 the claimant remains disabled beyond the period specified
74 in the prior order granting temporary total disability bene-
75 fits, the division shall enter an order continuing the pay-
76 ment of temporary total disability benefits for an addition-
77 al period not to exceed ninety days, and shall give imme-
78 mediate notice to all parties of such decision.

79 (d) Upon receipt of the first report of injury in claim,
80 the division shall request from the employer or employers
81 any wage information necessary for determining the rate
82 of benefits to which the employee is entitled. If an em-
83 ployer does not furnish the division with this information
84 within fifteen days from the date the division received the
85 first report of injury in the case, the employee shall be
86 paid temporary total disability benefits for lost time at the
87 rate the division obtains from reports made pursuant to
88 section eleven, article ten, chapter twenty-one-a of this
89 code. If no such wages have been reported, then the divi-
90 sion shall make such payments at the rate the division
91 finds would be justified by the usual rate of pay for the
92 occupation of the injured employee. The division shall
93 adjust the rate of benefits both retroactively and prospec-
94 tively upon receipt of proper wage information. The
95 division shall have access to all wage information in the
96 possession of any state agency.

97 (e) Subject to the limitations set forth in section six-
98 teen of this article, upon a finding of the division that a
99 claimant who has sustained a previous compensable injury
100 which has been closed by any order of the division, or by
101 the claimant's return to work, suffers further temporary
102 total disability or requires further medical or hospital
103 treatment resulting from the compensable injury, the divi-
104 sion shall immediately enter an order commencing the
105 payment of temporary total disability benefits to the
106 claimant in the amount provided for in sections six and
107 fourteen of this article, and the expenses provided for in

108 subsection (a), section three of this article, relating to said
109 disability, without waiting for the expiration of the
110 thirty-day period during which objections may be filed to
111 such findings as provided in section one, article five of this
112 chapter. The division shall give immediate notice to the
113 parties of its order.

114 (f) Where the employer is a subscriber to the workers'
115 compensation fund under the provisions of article three of
116 this chapter, and upon the findings aforesaid, the division
117 shall mail all workers' compensation checks paying tem-
118 porary total disability benefits directly to the claimant and
119 not to the employer for delivery to the claimant.

120 (g) Where the employer has elected to carry its own
121 risk under section nine, article two of this chapter, and
122 upon the findings aforesaid, the division shall immediately
123 issue a pay order directing the employer to pay such
124 amounts as are due the claimant for temporary total dis-
125 ability benefits. A copy of the order shall be sent to the
126 claimant. The self-insured employer shall commence
127 such payments by mailing or delivering the payments
128 directly to the employee within ten days of the date of the
129 receipt of the pay order by the employer. If the
130 self-insured employer believes that its employee is entitled
131 to benefits, the employer may start payments before re-
132 ceiving a pay order from the division.

133 (h) In the event that an employer files a timely objec-
134 tion to any order of the division with respect to compensa-
135 bility, or any order denying an application for modifica-
136 tion with respect to temporary total disability benefits, or
137 with respect to those expenses outlined in subsection (a),
138 section three of this article, the division shall continue to
139 pay to the claimant such benefits and expenses during the
140 period of such disability. Where it is subsequently found
141 by the division that the claimant was not entitled to receive
142 such temporary total disability benefits or expenses, or
143 any part thereof, so paid, the division shall, when the em-
144 ployer is a subscriber to the fund, credit said employer's
145 account with the amount of the overpayment; and, when
146 the employer has elected to carry its own risk, the division
147 shall refund to such employer the amount of the overpay-

148 ment. The amounts so credited to a subscriber or repaid
149 to a self-insurer shall be charged by the division to the
150 surplus fund created in section one, article three of this
151 chapter.

152 (i) When the employer has protested the compensabili-
153 ty or applied for modification of a temporary total disabili-
154 ty benefit award or expenses and the final decision in
155 such case determines that the claimant was not entitled to
156 such benefits or expenses, the amount of such benefits or
157 expenses shall be considered overpaid. The division may
158 only recover the amount of such benefits or expenses by
159 withholding, in whole or in part, as determined by the
160 division, future permanent partial disability benefits pay-
161 able to the individual in the same or other claims and
162 credit such amount against the overpayment until it is
163 repaid in full.

164 (j) In the event that the division finds that based upon
165 the employer's report of injury, the claim is not compensa-
166 ble, the division shall provide a copy of such employer's
167 report to the claimant in addition to the order denying the
168 claim.

§23-4-1d. Method and time of payments for permanent disability.

1 (a) If the division makes an award for permanent par-
2 tial or permanent total disability, the division or
3 self-insured employer shall start payment of benefits by
4 mailing or delivering the amount due directly to the em-
5 ployee within fifteen days from the date of the award:
6 *Provided*, That the division may withhold payment of the
7 portion of the award that is the subject of the following
8 subsection until seventy-seven days have expired without
9 an objection being filed.

10 (b) On and after the first day of July, one thousand
11 nine hundred ninety-five, whenever the division, the office
12 of judges or the workers' compensation appeal board
13 enters an order granting the claimant a permanent total
14 disability award and an objection or appeal is then filed by
15 the employer or the division, the division shall begin the
16 payment of monthly permanent total disability benefits.

17 However, any payment for a back period of benefits from
18 the onset date of total permanent disability to the date of
19 the award shall be limited to a period of twelve months of
20 benefits. If, after all litigation is completed and the time
21 for the filing of any further objections or appeals to the
22 award has expired, the award of permanent total disability
23 benefits is upheld, then the claimant shall receive the re-
24 mainder of benefits due to him or her based upon the
25 onset date of total permanent disability that was finally
26 determined.

27 (c) If the claimant is then owed any additional pay-
28 ment of back permanent total disability benefits, then the
29 division shall not only pay the claimant the sum owed but
30 shall also add thereto interest at the simple rate of six per-
31 cent per annum from the date of the initial award granting
32 the total permanent disability to the date of the final order
33 upholding the award. In the event that an intermediate
34 order directed an earlier onset date of permanent total
35 disability than was found in the initial award, the interest
36 earning period for that additional period shall begin upon
37 the date of the intermediate award. Any interest payable
38 shall be charged to the account of the employer or shall
39 be paid by the employer if it has elected to carry its own
40 risk.

41 (d) If a timely protest to the award is filed, as provided
42 in section one or nine, article five of this chapter, the divi-
43 sion or self-insured employer shall continue to pay to the
44 claimant such benefits during the period of such disability
45 unless it is subsequently found that the claimant was not
46 entitled to receive the benefits, or any part thereof, so paid,
47 in which event the division shall, where the employer is a
48 subscriber to the fund, credit said employer's account with
49 the amount of the overpayment; and, where the employer
50 has elected to carry the employer's own risk, the division
51 shall refund to such employer the amount of the overpay-
52 ment. The amounts so credited to a subscriber or repaid
53 to a self-insurer shall be charged by the division to the
54 surplus fund created by section one, article three of this
55 chapter. If the final decision in any case determines that a
56 claimant was not lawfully entitled to benefits paid to him
57 or her pursuant to a prior decision, such amount of bene-

58 fits so paid shall be deemed overpaid. The division may
59 only recover such amount by withholding, in whole or in
60 part, as determined by the division, future permanent par-
61 tial disability benefits payable to the individual in the same
62 or other claims and credit such amount against the over-
63 payment until it is repaid in full.

§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; legislative approval; guidelines; preferred provider agreements; charges in excess of scheduled amounts not to be made; required disclosure of financial interest in sale or rental of medically related mechanical appliances or devices; promulgation of rules to enforce requirement; consequences of failure to disclose; contract by employer with hospital, physician, etc., prohibited; criminal penalties for violation; payments to certain providers prohibited; medical cost and care programs; payments; interlocutory orders.

1 (a) The workers' compensation division shall establish
2 and alter from time to time as the division may determine
3 to be appropriate a schedule of the maximum reasonable
4 amounts to be paid to health care providers, providers of
5 rehabilitation services, providers of durable medical and
6 other goods and providers of other supplies and medically
7 related items or other persons, firms or corporations for
8 the rendering of treatment or services to injured employ-
9 ees under this chapter. The division also, on the first day
10 of each regular session and also from time to time, as the
11 division may consider appropriate, shall submit the sched-
12 ule, with any changes thereto, to the Legislature. The
13 promulgation of the schedule is not subject to the legisla-
14 tive rule-making review procedures established in sections
15 nine through sixteen, article three, chapter twenty-nine-a
16 of this code.

17 The division shall disburse and pay from the fund for
18 such personal injuries to such employees as may be enti-
19 tled thereto hereunder as follows:

20 (1) Such sums for health care services, rehabilitation
21 services, durable medical and other goods and other sup-

22 plies and medically related items as may be reasonably
23 required. The division shall determine that which is rea-
24 sonably required within the meaning of this section in
25 accordance with the guidelines developed by the health
26 care advisory panel pursuant to section three-b of this
27 article: *Provided*, That nothing herein shall prevent the
28 implementation of guidelines applicable to a particular
29 type of treatment or service or to a particular type of inju-
30 ry before guidelines have been developed for other types
31 of treatment or services or injuries: *Provided, however*,
32 That any guidelines for utilization review which are devel-
33 oped in addition to the guidelines provided for in said
34 section may be utilized by the division until superseded by
35 guidelines developed by the health care advisory panel
36 pursuant to said section. Each health care provider who
37 seeks to provide services or treatment which are not within
38 any such guideline shall submit to the division specific
39 justification for the need for such additional services in the
40 particular case and the division shall have the justification
41 reviewed by a health care professional before authorizing
42 any such additional services. The division is authorized to
43 enter into preferred provider and managed care agree-
44 ments.

45 (2) Payment for health care services, rehabilitation
46 services, durable medical and other goods and other sup-
47 plies and medically related items authorized under this
48 subsection may be made to the injured employee or to the
49 person, firm or corporation who or which has rendered
50 such treatment or furnished health care services, rehabilita-
51 tion services, durable medical or other goods or other
52 supplies and items, or who has advanced payment for
53 same, as the division may deem proper, but no such pay-
54 ments or disbursements shall be made or awarded by the
55 division unless duly verified statements on forms pre-
56 scribed by the division shall be filed with the division
57 within two years after the rendering of such treatment or
58 the delivery of such goods, supplies or items: *Provided*,
59 That no payment hereunder shall be made unless such
60 verified statement shows no charge for or with respect to
61 such treatment or for or with respect to any of the items
62 specified above has been or will be made against the in-

63 injured employee or any other person, firm or corporation,
64 and when an employee covered under the provisions of
65 this chapter is injured in the course of and as a result of
66 his or her employment and is accepted for health care
67 services, rehabilitation services, or the provision of durable
68 medical or other goods or other supplies or medically
69 related items, the person, firm or corporation rendering
70 such treatment is hereby prohibited from making any
71 charge or charges therefor or with respect thereto against
72 the injured employee or any other person, firm or corpo-
73 ration which would result in a total charge for the treat-
74 ment rendered in excess of the maximum amount set forth
75 therefor in the division's schedule established as aforesaid.

76 (3) Any pharmacist filling a prescription for medica-
77 tion for a workers' compensation claimant shall dispense a
78 generic brand of the prescribed medication if a generic
79 brand exists. If a generic brand does not exist, then the
80 pharmacist may dispense the name brand. In the event
81 that a physician wishes to prescribe the use of the name
82 brand of a given prescription medication, then he or she
83 must indicate in his or her own handwriting on the pre-
84 scription order form that the brand name medication is to
85 be issued. In the event that a claimant wishes to receive
86 the name brand medication in lieu of the generic brand
87 and if the physician has not indicated that the brand name
88 is required, then the claimant may receive the name brand
89 medication but, in that event, the claimant will be personal-
90 ly liable for the difference in costs between the generic
91 brand medication and the brand name medication.

92 (4) In the event that a claimant elects to receive health
93 care services from a health care provider from outside of
94 the state of West Virginia and if that health care provider
95 refuses to abide by and accept as full payment the reim-
96 bursement made by the workers' compensation division
97 pursuant to the schedule of maximum reasonable amounts
98 of fees authorized by subsection (a) of this section, then,
99 with the exceptions noted below, the claimant will be per-
100 sonably liable for the difference between the scheduled
101 fee and the amount demanded by the out-of-state health
102 care provider.

103 (A) In the event of an emergency where there is an
104 urgent need for immediate medical attention in order to
105 prevent the death of a claimant or to prevent serious and
106 permanent harm to the claimant, if the claimant receives
107 the emergency care from an out-of-state health care pro-
108 vider who refuses to accept as full payment the scheduled
109 amount, then that claimant will not be personally liable for
110 the difference between the amount scheduled and the
111 amount demanded by the health care provider. Upon the
112 claimant's attaining a stable medical condition and being
113 able to be transferred to either a West Virginia health care
114 provider or an out-of-state health care provider who has
115 agreed to accept the scheduled amount of fees as payment
116 in full, if such claimant refuses to seek the specified alter-
117 native health care providers, then he or she will be person-
118 ally liable for the difference in costs between the sched-
119 uled amount and the amount demanded by the health care
120 provider for services provided after attaining stability and
121 being able to be transferred.

122 (B) In the event that there is no health care provider
123 reasonably near to the claimant's home who is qualified to
124 provide the claimant's needed medical services and who is
125 either located in the state of West Virginia or who has
126 agreed to accept as payment in full the scheduled amounts
127 of fees, then the division upon application by the claimant
128 may authorize the claimant to receive medical services
129 from another health care provider and such claimant shall
130 not be personally liable for the difference in costs between
131 the scheduled amount and the amount demanded by the
132 health care provider.

133 (b) No employer shall enter into any contracts with
134 any hospital, its physicians, officers, agents or employees
135 to render medical, dental or hospital service or to give
136 medical or surgical attention therein to any employee for
137 injury compensable within the purview of this chapter, and
138 no employer shall permit or require any employee to
139 contribute, directly or indirectly, to any fund for the pay-
140 ment of such medical, surgical, dental or hospital service
141 within such hospital for such compensable injury. Any
142 employer violating this section shall be liable in damages
143 to the employer's employees as provided in section eight,

144 article two of this chapter, and any employer or hospital or
145 agent or employee thereof violating the provisions of this
146 section shall be guilty of a misdemeanor, and, upon con-
147 viction thereof, shall be punished by a fine not less than
148 one hundred dollars nor more than one thousand dollars
149 or by imprisonment not exceeding one year, or both:
150 *Provided*, That the foregoing provisions of this subsection
151 shall not be deemed to prohibit an employer from partici-
152 pating in a preferred provider organization or program or
153 a health maintenance organization or managed care orga-
154 nization or other medical cost containment relationship
155 with the providers of medical, hospital or other health
156 care: *Provided, however*, That nothing in this section shall
157 be deemed to restrict the right of a claimant to select his or
158 her initial health care provider for treatment of a compen-
159 sable injury or disease. Should such a claimant thereafter
160 wish to change his or her health care provider and if his or
161 her employer has established and maintains a managed
162 health care program consisting of a preferred provider
163 organization or program, a health maintenance organiza-
164 tion, then the claimant shall select a new health care pro-
165 vider through such managed care program. Moreover, if
166 the division enters into an agreement which has been ap-
167 proved by the compensation programs performance coun-
168 cil with a preferred provider organization or program, a
169 health maintenance organization or other health care de-
170 livery organization or organizations, then if a claimant
171 seeks to change his or her initial choice of health care
172 provider and if the claimant's employer does not provide
173 access to such an organization as part of the employer's
174 general health insurance benefit, then the claimant shall be
175 provided with a new health care provider from the divi-
176 sion's preferred provider organization or program, health
177 maintenance organization or other health care delivery
178 organization or organizations available to him or her.

179 (c) When an injury has been reported to the division
180 by the employer without protest, the division may pay, or
181 order an employer who or which made the election and
182 who or which received the permission mentioned in sec-
183 tion nine, article two of this chapter to pay, within the
184 maximum amount provided by schedule established by

185 the division as aforesaid, bills for health care services with-
186 out requiring the injured employee to file an application
187 for benefits.

188 (d) The division shall provide for the replacement of
189 artificial limbs, crutches, hearing aids, eyeglasses and all
190 other mechanical appliances provided in accordance with
191 this section which later wear out, or which later need to be
192 refitted because of the progression of the injury which
193 caused the same to be originally furnished, or which are
194 broken in the course of and as a result of the employee's
195 employment. The fund or self-insured employer shall
196 pay for these devices, when needed, notwithstanding any
197 time limits provided by law.

198 (e) No payment shall be made to a health care provid-
199 er who is suspended or terminated under the terms of
200 section three-c of this article except as provided in subsec-
201 tion (c) of said section.

202 (f) The division is authorized to engage in and con-
203 tract for medical cost containment programs, medical case
204 management programs and utilization review programs.
205 Payments for these programs shall be made from the su-
206 persedeas reserve of the surplus fund. Any order issued
207 pursuant to any such program shall be interlocutory in
208 nature until an objecting party has exhausted all review
209 processes provided for by the division.

210 (g) Notwithstanding the foregoing, the division may
211 establish fee schedules, make payments and take other
212 actions required or allowed pursuant to article
213 twenty-nine-d, chapter sixteen of this code.

**§23-4-4. Funeral expenses; wrongfully seeking payment;
criminal penalties.**

1 (a) In case the personal injury causes death, reasonable
2 funeral expense, in an amount to be fixed from time to
3 time by the division, shall be paid from the fund, payment
4 to be made to the persons who have furnished the services
5 and supplies, or to the persons who have advanced pay-
6 ment for same, as the division may deem proper, in addi-

7 tion to such award as may be made to the employee's
8 dependents.

9 (b) A funeral director, or any person who furnished
10 the services and supplies associated with the funeral ex-
11 penses, or a person who has advanced payment for same,
12 is prohibited from making any charge or charges against
13 the employee's dependents for funeral expenses which
14 would result in a total charge for funeral expenses in ex-
15 cess of the amount fixed by the division unless:

16 (1) The person seeking funeral expenses notifies, in
17 writing and prior to the rendering of any service, the em-
18 ployee's dependent as to the exact cost of the service and
19 the exact amount the employee's dependent would be
20 responsible for paying in excess of the amount fixed by
21 the division; and

22 (2) The person seeking funeral expenses secures, in
23 writing and prior to the rendering of any service, consent
24 from the employee's dependent that he or she will be re-
25 sponsible to make payment for the amount in excess of
26 the amount fixed by the division.

27 (c) Any person who knowingly and willfully seeks or
28 receives payment of funeral expenses in excess of the
29 amount fixed by the division without satisfying both of
30 the requirements of subsection (b) of this section is guilty
31 of a misdemeanor, and, upon conviction thereof, shall be
32 fined three thousand dollars or confined in jail for a defi-
33 nite term of confinement of twelve months, or both.

§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 compen-
3 sation shall be as provided in the following schedule:

4 (a) The expressions "average weekly wage earnings,
5 wherever earned, of the injured employee, at the date of
6 injury" and "average weekly wage in West Virginia", as
7 used in this chapter, shall have the meaning and shall be
8 computed as set forth in section fourteen of this article
9 except for the purpose of computing temporary total
10 disability benefits for part-time employees pursuant to the
11 provisions of section six-d of this article.

12 (b) If the injury causes temporary total disability, the
13 employee shall receive during the continuance thereof a
14 maximum weekly benefit to be computed on the basis of
15 seventy percent of the average weekly wage earnings,
16 wherever earned, of the injured employee, at the date of
17 injury, not to exceed one hundred percent of the average
18 weekly wage in West Virginia: *Provided*, That in the case
19 of a claimant whose injury occurred prior to the second
20 day of February, one thousand nine hundred ninety-five,
21 the maximum benefit rate shall be the rate applied under
22 the prior enactment of this subsection which was in effect
23 at the time the injury occurred, and the rate shall not be
24 affected by the amendment and reenactment of this sec-
25 tion during the regular session of the Legislature in the
26 year one thousand nine hundred ninety-five.

27 The minimum weekly benefits paid hereunder shall
28 not be less than thirty-three and one-third percent of the
29 average weekly wage in West Virginia, except as provided
30 in section six-d and section nine of this article. In no
31 event, however, shall such minimum weekly benefits ex-
32 ceed the level of benefits determined by use of the then
33 applicable federal minimum hourly wage: *Provided*, That
34 any claimant receiving permanent total disability benefits,
35 permanent partial disability benefits or dependents' bene-
36 fits prior to the first day of July, one thousand nine hun-
37 dred ninety-four, shall not have his or her benefits re-
38 duced based upon the requirement herein that the mini-
39 mum weekly benefit shall not exceed the applicable feder-
40 al minimum hourly wage.

41 (c) Subdivision (b) of this section shall be limited as
42 follows: Aggregate award for a single injury causing
43 temporary disability shall be for a period not exceeding
44 two hundred eight weeks.

45 (d) For all awards of permanent total disability bene-
46 fits that are made on or after the second day of February,
47 one thousand nine hundred ninety-five, including those
48 claims in which a request for an award was pending before
49 the division or which were in litigation but not yet submit-
50 ted for a decision, then benefits shall be payable until the
51 claimant attains the age necessary to receive federal old

52 age retirement benefits under the provisions of the Social
53 Security Act, 42 U.S.C. 401 and 402, in effect on the
54 effective date of this section. Such a claimant shall be
55 paid benefits so as not to exceed a maximum benefit of
56 sixty-six and two-thirds percent of the claimant's average
57 weekly wage earnings, wherever earned, at the time of the
58 date of injury not to exceed one hundred percent of the
59 average weekly wage in West Virginia. The minimum
60 weekly benefits paid hereunder shall be as is provided for
61 in subdivision (b) of this section. In all claims in which an
62 award for permanent total disability benefits was made
63 prior to the second day of February, one thousand nine
64 hundred ninety-five, such awards shall continue to be paid
65 at the rate in effect prior to the said date, subject to annual
66 adjustments for changes in the average weekly wage in
67 West Virginia: *Provided*, That the provisions of sections
68 one through eight, article four-a of this chapter shall be
69 applied thereafter to all such prior awards that were previ-
70 ously subject to its provisions. A single or aggregate per-
71 manent disability of eighty-five percent or more shall
72 entitle the employee to a rebuttable presumption of a
73 permanent total disability for the purpose of paragraph
74 (2), subdivision (n) of this section: *Provided, however*,
75 That the claimant must also be at least fifty percent medi-
76 cally impaired upon a whole body basis. The presump-
77 tion may be rebutted if the evidence establishes that the
78 claimant is not permanently and totally disabled pursuant
79 to subdivision (n) of this section. Under no circumstances
80 shall the division grant an additional permanent disability
81 award to a claimant receiving a permanent total disability
82 award: *Provided further*, That if any claimant thereafter
83 sustains another compensable injury and has permanent
84 partial disability resulting therefrom, the total permanent
85 disability award benefit rate shall be computed at the high-
86 est benefit rate justified by any of the compensable inju-
87 ries, and the cost of any increase in the permanent total
88 disability benefit rate shall be paid from the second injury
89 reserve created by section one, article three of this chapter.

90 (e) (1) For all awards made on or after the second day
91 of February, one thousand nine hundred ninety-five, if the
92 injury causes permanent disability less than permanent

93 total disability, the percentage of disability to total disabili-
94 ty shall be determined and the award computed on the
95 basis of four weeks' compensation for each percent of
96 disability determined, at the maximum or minimum bene-
97 fit rates provided for in subdivision (d) of this section:
98 *Provided*, That in the case of a claimant whose injury
99 occurred prior to the second day of February, one thou-
100 sand nine hundred ninety-five, the maximum benefit rate
101 shall be the rate applied under the prior enactment of this
102 section which was in effect at the time the injury occurred,
103 and the rate shall not be affected by the amendment and
104 reenactment of this section during the regular session of
105 the Legislature in the year one thousand nine hundred
106 ninety-five.

107 (2) If a claimant is released by his or her treating phy-
108 sician to return to work at the job he or she held before
109 the occupational injury occurred and if the claimant's
110 preinjury employer does not offer the preinjury job or a
111 comparable job to the employee when such a position is
112 available to be offered, then the award for the percentage
113 of partial disability shall be computed on the basis of six
114 weeks of compensation for each percent of disability.

115 (3) The minimum weekly benefit under this subdivi-
116 sion shall be as provided in subdivision (b) of this section
117 for temporary total disability.

118 (f) If the injury results in the total loss by severance of
119 any of the members named in this subdivision, the per-
120 centage of disability shall be determined by the percent-
121 age of disability, specified in the following table:

122 The loss of a great toe shall be considered a ten per-
123 cent disability.

124 The loss of a great toe (one phalanx) shall be consid-
125 ered a five percent disability.

126 The loss of other toes shall be considered a four per-
127 cent disability.

128 The loss of other toes (one phalanx) shall be consid-
129 ered a two percent disability.

- 130 The loss of all toes shall be considered a twenty-five
131 percent disability.
- 132 The loss of forepart of foot shall be considered a thir-
133 ty percent disability.
- 134 The loss of a foot shall be considered a thirty-five
135 percent disability.
- 136 The loss of a leg shall be considered a forty-five per-
137 cent disability.
- 138 The loss of thigh shall be considered a fifty percent
139 disability.
- 140 The loss of thigh at hip joint shall be considered a
141 sixty percent disability.
- 142 The loss of a little or fourth finger (one phalanx) shall
143 be considered a three percent disability.
- 144 The loss of a little or fourth finger shall be considered
145 a five percent disability.
- 146 The loss of ring or third finger (one phalanx) shall be
147 considered a three percent disability.
- 148 The loss of ring or third finger shall be considered a
149 five percent disability.
- 150 The loss of middle or second finger (one phalanx)
151 shall be considered a three percent disability.
- 152 The loss of middle or second finger shall be consid-
153 ered a seven percent disability.
- 154 The loss of index or first finger (one phalanx) shall be
155 considered a six percent disability.
- 156 The loss of index or first finger shall be considered a
157 ten percent disability.
- 158 The loss of thumb (one phalanx) shall be considered a
159 twelve percent disability.
- 160 The loss of thumb shall be considered a twenty per-
161 cent disability.

162 The loss of thumb and index finger shall be consid-
163 ered a thirty-two percent disability.

164 The loss of index and middle finger shall be consid-
165 ered a twenty percent disability.

166 The loss of middle and ring finger shall be considered
167 a fifteen percent disability.

168 The loss of ring and little finger shall be considered a
169 ten percent disability.

170 The loss of thumb, index and middle finger shall be
171 considered a forty percent disability.

172 The loss of index, middle and ring finger shall be
173 considered a thirty percent disability.

174 The loss of middle, ring and little finger shall be con-
175 sidered a twenty percent disability.

176 The loss of four fingers shall be considered a
177 thirty-two percent disability.

178 The loss of hand shall be considered a fifty percent
179 disability.

180 The loss of forearm shall be considered a fifty-five
181 percent disability.

182 The loss of arm shall be considered a sixty percent
183 disability.

184 The total and irrecoverable loss of the sight of one eye
185 shall be considered a thirty-three percent disability. For
186 the partial loss of vision in one, or both eyes, the percent-
187 ages of disability shall be determined by the division,
188 using as a basis the total loss of one eye.

189 The total and irrecoverable loss of the hearing of one
190 ear shall be considered a twenty-two and one-half percent
191 disability. The total and irrecoverable loss of hearing of
192 both ears shall be considered a fifty-five percent disability.

193 For the partial loss of hearing in one, or both ears, the
194 percentage of disability shall be determined by the divi-
195 sion, using as a basis the total loss of hearing in both ears.

196 Should a claimant sustain a compensable injury which
197 results in the total loss by severance of any of the bodily
198 members named in this subdivision, die from sickness or
199 noncompensable injury before the division makes the
200 proper award for such injury, the division shall make such
201 award to claimant's dependents as defined in this chapter,
202 if any; such payment to be made in the same installments
203 that would have been paid to claimant if living: *Provided*,
204 That no payment shall be made to any surviving spouse of
205 such claimant after his or her remarriage, and that this
206 liability shall not accrue to the estate of such claimant and
207 shall not be subject to any debts of, or charges against,
208 such estate.

209 (g) Should a claimant to whom has been made a per-
210 manent partial award die from sickness or noncompensa-
211 ble injury, the unpaid balance of such award shall be paid
212 to claimant's dependents as defined in this chapter, if any;
213 such payment to be made in the same installments that
214 would have been paid to claimant if living: *Provided*, That
215 no payment shall be made to any surviving spouse of such
216 claimant after his or her remarriage, and that this liability
217 shall not accrue to the estate of such claimant and shall not
218 be subject to any debts of, or charges against, such estate.

219 (h) For the purposes of this chapter, a finding of the
220 occupational pneumoconiosis board shall have the force
221 and effect of an award.

222 (i) For the purposes of this chapter, with the exception
223 of those injuries provided for in subdivision (f) of this
224 section and in section six-b of this article, the degree of
225 permanent disability other than permanent total disability
226 shall be determined exclusively by the degree of whole
227 body medical impairment that a claimant has suffered.
228 For those injuries provided for in subdivision (f) of this
229 section and section six-b of this article, the degree of dis-
230 ability shall be determined exclusively by the provisions
231 of said subdivision and said section. The occupational
232 pneumoconiosis board created pursuant to section eight-a
233 of this article shall premise its decisions on the degree of
234 pulmonary function impairment that claimants suffer
235 solely upon whole body medical impairment. The work-

236 ers' compensation division shall adopt standards for the
237 evaluation of claimants and the determination of a claim-
238 ant's degree of whole body medical impairment. Once the
239 degree of medical impairment has been determined, that
240 degree of impairment shall be the degree of permanent
241 partial disability that shall be awarded to the claimant. This
242 subdivision shall be applicable to all injuries incurred and
243 diseases with a date of last exposure on or after the second
244 day of February, one thousand nine hundred ninety-five,
245 to all applications for an award of permanent partial dis-
246 ability made on and after such date, and to all applications
247 for an award of permanent partial disability that were
248 pending before the division or pending in litigation but
249 not yet submitted for decision on and after such date. The
250 prior provisions of this subdivision shall remain in effect
251 for all other claims.

252 (j) From a list of names of seven persons submitted to
253 the commissioner by the health care advisory panel, the
254 commissioner shall appoint an interdisciplinary examining
255 board consisting of five members to evaluate claimants,
256 including by examination if the board so elects. The
257 board shall be composed of three qualified physicians
258 with specialties and expertise qualifying them to evaluate
259 medical impairment and two vocational rehabilitation
260 specialists who are qualified to evaluate the ability of a
261 claimant to perform gainful employment with or without
262 retraining. One member of the board shall be designated
263 annually as chairperson by the commissioner. The term
264 of office of each member of the board shall be six years
265 and until his or her successor has been appointed and has
266 qualified: *Provided*, That two of the persons initially ap-
267 pointed shall serve a term of six years, two of the remain-
268 ing persons shall serve a term of four years and the re-
269 maining member shall serve a term of two years. Any
270 member of the board may be appointed to any number of
271 terms. Any two physician members and one vocational
272 rehabilitation specialist member shall constitute a quorum
273 for the transaction of business. The commissioner, from
274 time to time, shall fix the per diem salary, computed on
275 the basis of actual time devoted to the discharge of their
276 duties, to be paid to each member of the board, and the

277 members shall also be entitled to reasonable and necessary
278 traveling and other expenses incurred while actually en-
279 gaged in the performance of their duties.

280 (1) Prior to the referral of any issue to the interdisci-
281 plinary examining board, the division shall conduct such
282 examinations of the claimant as it finds necessary and
283 obtain all pertinent records concerning the claimant's
284 medical history and reports of examinations and forward
285 them to the board at the time of the referral. The division
286 shall provide adequate notice to the employer of the filing
287 of the request for a permanent total disability award and
288 the employer shall be granted an appropriate period in
289 which to respond to the request. The claimant and the
290 employer may furnish all pertinent information to the
291 board and shall furnish to the board any information
292 requested by the board. The claimant and the employer
293 may each submit no more than one report and opinion
294 regarding each issue present in a given claim. The em-
295 ployer shall be entitled to have the claimant examined by
296 medical specialists and vocational rehabilitation specialists:
297 *Provided*, That the employer is entitled to only one such
298 examination on each issue present in a given claim. Any
299 additional examinations must be approved by the division
300 and shall be granted only upon a showing of good cause.
301 The reports from all employer-conducted examinations
302 must be filed with the board and served upon the claimant.
303 The board may request that those persons who have fur-
304 nished reports and opinions regarding a claimant provide
305 it with such additional information as the board may deem
306 necessary. Both the claimant and the employer, as well as
307 the division, may submit reports from experts challenging
308 or supporting the other reports in the record regardless of
309 whether or not such an expert examined the claimant or
310 relied solely upon the evidence of record.

311 (2) If the board or a quorum thereof elects to examine
312 a claimant, the individual members shall conduct such
313 examinations as are pertinent to each of their specialties.
314 If a claim presents an issue beyond the expertise of the
315 board, the board may obtain advice or evaluations by
316 other specialists. In addition, if the compensation pro-
317 grams performance council determines that the number of

318 applications pending before the board has exceeded the
319 level at which the board can review and make recommen-
320 dations within a reasonable time, then the council may
321 authorize the commissioner to appoint such additional
322 members to the board as may be necessary to reduce the
323 backlog of applications. Such additional members shall
324 be recommended by the health care advisory panel and
325 the commissioner may make such appointments as he or
326 she chooses from the recommendations. The additional
327 board members shall not serve a set term but shall serve
328 until the council determines that the number of pending
329 applications has been reduced to an acceptable level.

330 (3) Referrals to the board shall be limited to matters
331 related to the determination of permanent total disability
332 under the provisions of subdivision (n) of this section and
333 to questions related to medical cost containment, decisions
334 utilization review decisions and managed care decisions
335 arising under section three of this article.

336 (4) In the event the board members elect to examine a
337 claimant, the board shall prepare a report stating the tests,
338 examinations, procedures and other observations that were
339 made, the manner in which each was conducted, and the
340 results of each. The report shall state the findings made
341 by the board and the reasons therefor. Copies of the re-
342 ports of all such examinations shall be served upon the
343 parties and the division and each shall be given an oppor-
344 tunity to respond in writing to the findings and conclu-
345 sions stated in the reports.

346 (5) The board shall state its initial recommendations to
347 the division in writing with an explanation for each such
348 recommendation setting forth the reasons for each. The
349 recommendations shall be served upon the parties and the
350 division and each shall be afforded a thirty-day opportu-
351 nity to respond in writing to the board regarding the
352 board's recommendations. The board shall then review
353 any such responses and issue its final recommendations.
354 The final recommendations shall then be effectuated by
355 the entry of an appropriate order by the division.

356 (6) Except as noted below, objections pursuant to
357 section one, article five of this chapter to any such order

358 shall be limited in scope to matters within the record de-
359 veloped before the workers' compensation division and the
360 board and shall further be limited to the issue of whether
361 the board properly applied the standards for determining
362 medical impairment, if applicable, and the issue of whether
363 the board's findings are clearly wrong in view of the reli-
364 able, probative and substantial evidence on the whole re-
365 cord. Should either party contend that the claimant's
366 condition has changed significantly since the review con-
367 ducted by the board, the party may file a motion with the
368 administrative law judge, together with a report supporting
369 that assertion. Upon the filing of such motion, the admin-
370 istrative law judge shall cause a copy of the report to be
371 sent to the examining board asking, the board to review
372 the report and provide such comments as the board choos-
373 es within sixty days of the board's receipt of the report.
374 The board may then either supply such comments or, at
375 the board's discretion, request that the claim be remanded
376 to the board for further review by the board. If remanded,
377 the claimant is not required to submit to further examina-
378 tion by the employer's medical specialists or vocational
379 rehabilitation specialists. Following any such remand, the
380 board shall file its recommendations with the administra-
381 tive law judge for his or her review. If the board elects to
382 respond with comments, such comments shall be filed with
383 the administrative law judge for his or her review. Follow-
384 ing the receipt of either the board's recommendations or
385 comment, the administrative law judge shall then issue a
386 written decision ruling upon the asserted change in the
387 claimant's condition. No additional evidence may be
388 introduced during the review of the objection before the
389 office of judges or elsewhere on appeal: *Provided*, That
390 each party and the division may submit one written opin-
391 ion on each issue pertinent to a given claim based upon a
392 review of the evidence of record either challenging or
393 defending the board's findings and conclusions. Thereaf-
394 ter, based upon the evidence then of record, the adminis-
395 trative law judge shall issue a written decision containing
396 his or her findings of fact and conclusions of law regard-
397 ing each issue involved in the objection.

398 (k) Compensation payable under any subdivision of

399 this section shall not exceed the maximum nor be less than
400 the weekly benefits specified in subdivision (b) of this
401 section.

402 (l) Except as otherwise specifically provided in this
403 chapter, temporary total disability benefits payable under
404 subdivision (b) of this section shall not be deductible from
405 permanent partial disability awards payable under subdivi-
406 sion (e) or (f) of this section. Compensation, either tem-
407 porary total or permanent partial, under this section shall
408 be payable only to the injured employee and the right
409 thereto shall not vest in his or her estate, except that any
410 unpaid compensation which would have been paid or
411 payable to the employee up to the time of his or her death,
412 if he or she had lived, shall be paid to the dependents of
413 such injured employee if there be such dependents at the
414 time of death.

415 (m) The following permanent disabilities shall be
416 conclusively presumed to be total in character:

417 Loss of both eyes or the sight thereof.

418 Loss of both hands or the use thereof.

419 Loss of both feet or the use thereof.

420 Loss of one hand and one foot or the use thereof.

421 (n) (1) Other than for those injuries specified in subdivi-
422 sion (m) of this section, in order to be eligible to apply
423 for an award of permanent total disability benefits for all
424 injuries incurred and all diseases, including occupational
425 pneumoconiosis, with a date of last exposure on and after
426 the second day of February, one thousand nine hundred
427 ninety-five, and for all requests for such an award pending
428 before the division on and after the second day of Febru-
429 ary, one thousand nine hundred ninety-five, a claimant
430 must have been awarded the sum of fifty percent in prior
431 permanent partial disability awards or have suffered an
432 occupational injury or disease which results in a finding
433 that the claimant has suffered a medical impairment of
434 fifty percent. Upon filing such an application, the claim
435 will be reevaluated by the examining board pursuant to
436 subdivision (j) of this section to determine if he or she has

437 suffered a whole body medical impairment of fifty per-
438 cent or more resulting from either a single occupational
439 injury or occupational disease or a combination of occu-
440 pational injuries and occupational diseases. A claimant
441 whose prior permanent partial disability awards total
442 eighty-five percent or more shall also be examined by the
443 board and must be found to have suffered a whole body
444 medical impairment of fifty percent in order for his or her
445 request to be eligible for further review. The examining
446 board shall review the claim as provided for in subdivision
447 (j) of this section. If the claimant has not suffered whole
448 body medical impairment of at least fifty percent, then the
449 request shall be denied. Upon a finding that the claimant
450 does have a fifty percent whole body medical impairment,
451 then the review of the application shall continue as provid-
452 ed for in the following paragraph of this subdivision.
453 Those claimants whose prior permanent partial disability
454 awards total eighty-five percent or more and who have
455 been found to have a whole body medical impairment of
456 at least fifty percent shall then be entitled to the rebuttable
457 presumption created pursuant to subdivision (d) for the
458 remaining issues in the request. For the purposes of deter-
459 mining whether the claimant should be awarded perma-
460 nent total disability benefits under the second injury pro-
461 visions of subsection (d), section one, article three of this
462 chapter, only a combination of occupational injuries and
463 occupational diseases, including occupational pneumoco-
464 niosis, shall be considered.

465 (2) A disability which renders the injured employee
466 unable to engage in substantial gainful activity requiring
467 skills or abilities comparable to those of any gainful activi-
468 ty in which he or she has previously engaged with some
469 regularity and over a substantial period of time shall be
470 considered in determining the issue of total disability. In
471 addition, the vocational standards adopted pursuant to
472 subsection (m), section seven, article three, chapter
473 twenty-one-a of this code shall be considered once they
474 are effective.

475 (3) In the event that a claimant, who has been found to
476 have at least a fifty percent whole body medical impair-
477 ment, is denied an award of permanent total disability

478 benefits pursuant to this subdivision and then accepts and
479 continues to work at a lesser paying job than he or she
480 previously held, then such a claimant shall be eligible,
481 notwithstanding the provisions of section nine of this arti-
482 cle, to receive temporary partial rehabilitation benefits for
483 a period of four years. Such benefits shall be paid at the
484 level necessary to ensure the claimant's receipt of the fol-
485 lowing percentages of the average weekly wage earnings
486 of the claimant at the time of injury calculated as provided
487 in this section and sections six-d and fourteen of this arti-
488 cle:

- 489 (A) Eighty percent for the first year;
- 490 (B) Seventy percent for the second year;
- 491 (C) Sixty percent for the third year; and
- 492 (D) Fifty percent for the fourth year:

493 *Provided*, That in no event shall such benefits exceed one
494 hundred percent of the average weekly wage in West Vir-
495 ginia. In no event shall such benefits be subject to the
496 minimum benefit amounts required by the provisions of
497 subdivision (b) of this section.

§23-4-6a. Benefits and mode of payment to employees and dependents for occupational pneumoconiosis; further adjustment of claim for occupational pneumoconiosis.

1 If an employee is found to be permanently disabled
2 due to occupational pneumoconiosis, as defined in section
3 one of this article, the percentage of permanent disability
4 shall be determined by the degree of medical impairment
5 that is found by the occupational pneumoconiosis board.
6 The division shall enter an order setting forth the findings
7 of the occupational pneumoconiosis board with regard to
8 whether the claimant has occupational pneumoconiosis
9 and the degree of medical impairment, if any, resulting
10 therefrom. That order shall be the final decision of the
11 division for purposes of section one, article five of this
12 chapter. If such a decision is objected to, the office of
13 judges shall affirm the decision of the occupational pneu-
14 moconiosis board made following hearing unless the deci-

15 sion is clearly wrong in view of the reliable, probative and
16 substantial evidence on the whole record. Compensation
17 shall be paid therefor in the same manner and at the same
18 rate as is provided for permanent disability under the
19 provisions of subdivisions (d), (e), (g), (h), (i), (j), (k), (m)
20 and (n), section six of this article: *Provided*, That if it shall
21 be determined by the division in accordance with the facts
22 in the case and with the advice and recommendation of the
23 occupational pneumoconiosis board that an employee has
24 occupational pneumoconiosis, but without measurable
25 pulmonary impairment therefrom, such employee shall be
26 awarded and paid twenty weeks of benefits at the same
27 benefit rate as hereinabove provided.

28 If the employee dies from occupational pneumoconi-
29 osis, the benefits shall be as provided for in section ten of
30 this article; as to such benefits sections eleven to fourteen,
31 inclusive, of this article shall apply.

32 In cases of permanent disability or death due to occu-
33 pational pneumoconiosis, as defined in section one of this
34 article, accompanied by active tuberculosis of the lungs,
35 compensation shall be payable as for disability or death
36 due to occupational pneumoconiosis alone.

37 The provisions of section sixteen, article four and
38 sections two, three, four and five, article five of this chapter
39 providing for the further adjustment of claims shall be
40 applicable to the claim of any claimant who receives a
41 permanent partial disability award for occupational pneu-
42 moconiosis.

**§23-4-6c. Benefits payable to certain sheltered workshop em-
ployees; limitations.**

1 Notwithstanding the provisions of section six, six-a or
2 six-b of this article or any other provision of this chapter,
3 the minimum weekly benefit payments under subsection
4 (b), section six of this article shall not apply to employees
5 who work at nonprofit "workshops" as defined in section
6 one, article one, chapter five-a of this code. When com-
7 pensation is due any such employee, the weekly benefits
8 payable hereunder to such employee may not exceed
9 seventy percent of that employee's actual weekly wages,

10 and in no event may the average weekly wage in West
11 Virginia be the basis upon which to compute the benefits
12 of temporary total disability to employees working for less
13 than the minimum wage.

§23-4-7. Release of medical information to employer; legislative findings; effect of application for benefits; duty of employer.

1 (a) The Legislature hereby finds and declares that two
2 of the primary objectives of the workers' compensation
3 system established by this chapter are to provide benefits
4 to an injured claimant promptly and to effectuate his or
5 her return to work at the earliest possible time; that the
6 prompt dissemination of medical information to the divi-
7 sion and employer as to diagnosis, treatment and recovery
8 is essential if these two objectives are to be achieved; that
9 claimants are increasingly burdened with the task of con-
10 tacting their treating physicians to request the furnishing
11 of detailed medical information to the division and their
12 employers; that the division is increasingly burdened with
13 the administrative responsibility of providing copies of
14 medical reports to the employer involved, whereas in other
15 states the employer can obtain the necessary medical in-
16 formation direct from the treating physician; that much
17 litigation is occasioned in this state because of a lack of
18 medical information having been received by the employ-
19 er as to the continuing disability of a claimant; and that
20 detailed narrative reports from the treating physician are
21 often necessary in order for the division, the claimant's
22 representatives and the employer to evaluate a claim and
23 determine whether additional or different treatment is
24 indicated.

25 (b) In view of the foregoing findings, a claimant irre-
26 vocably agrees by the filing of his or her application for
27 benefits that any physician may release to and orally dis-
28 cuss with the claimant's employer, or its representative, or
29 with a representative of the division from time to time the
30 claimant's medical history and any medical reports per-
31 taining to the occupational injury or disease and to any
32 prior injury or disease of the portion of the claimant's
33 body to which a medical impairment is alleged containing

34 detailed information as to the claimant's condition, treat-
35 ment, prognosis and anticipated period of disability and
36 dates as to when the claimant will reach or has reached his
37 maximum degree of improvement or will be or was re-
38 leased to return to work. For the exclusive purposes of
39 this chapter, the patient-physician privilege of confidenti-
40 ality is waived with regard to the physician's providing this
41 medical information to the division, the employer or to the
42 employer's representative. Whenever a copy of any such
43 medical report is obtained by the employer or its repre-
44 sentative and the physician has not also forwarded a copy
45 of the same to the division, the employer shall forward a
46 copy of such medical report to the division within ten days
47 from the date such employer received the same from such
48 physician.

**§23-4-7a. Monitoring of injury claims; legislative findings;
review of medical evidence; recommendation of
authorized treating physician; independent
medical evaluations; temporary total disability
benefits and the termination thereof; mandatory
action; additional authority.**

1 (a) The Legislature hereby finds and declares that
2 injured claimants should receive the type of treatment
3 needed as promptly as possible; that overpayments of
4 temporary total disability benefits with the resultant hard-
5 ship created by the requirement of repayment should be
6 minimized; and that to achieve these two objectives, it is
7 essential that the division establish and operate a systemat-
8 ic program for the monitoring of injury claims where the
9 disability continues longer than might ordinarily be ex-
10 pected.

11 (b) In view of the foregoing findings, the division, in
12 consultation with the health care advisory panel, shall
13 establish guidelines as to the anticipated period of disabili-
14 ty for the various types of injuries. Each injury claim in
15 which temporary total disability continues beyond the
16 anticipated period of disability so established for the inju-
17 ry involved shall be reviewed by the division. If satisfied,
18 after reviewing the medical evidence, that the claimant
19 would not benefit by an independent medical evaluation,

20 the division shall mark the claim file accordingly and shall
21 diary such claim file as to the next date for required re-
22 view which shall not exceed sixty days. If the division
23 concludes that the claimant might benefit by an independ-
24 ent medical evaluation, the division shall proceed as spec-
25 ified in subsections (d) and (e) of this section.

26 (c) When the authorized treating physician concludes
27 that the claimant has either reached his or her maximum
28 degree of improvement or is ready for disability evalua-
29 tion, or when the claimant has returned to work, such au-
30 thorized treating physician may recommend a permanent
31 partial disability award for residual impairment relating to
32 and resulting from the compensable injury, and the fol-
33 lowing provisions shall govern and control:

34 (1) If the authorized treating physician recommends a
35 permanent partial disability award of fifteen percent or
36 less, the division shall enter an award of permanent partial
37 disability benefits based upon such recommendation and
38 all other available information, and the claimant's entitle-
39 ment to temporary total disability benefits shall cease
40 upon the entry of such award unless previously terminated
41 under the provisions of subsection (e) of this section.

42 (2) If, however, the authorized treating physician rec-
43 ommends a permanent partial disability award in excess of
44 fifteen percent, or recommends a permanent total disabili-
45 ty award, the claimant's entitlement to temporary total
46 disability benefits shall cease upon the receipt by the divi-
47 sion of such report and the division shall refer the claim-
48 ant to a physician or physicians of the division's selection
49 for independent evaluation prior to the entry of a perma-
50 nent disability award: *Provided*, That unless the claimant
51 has returned to work, the claimant shall thereupon receive
52 benefits which shall then be at the permanent partial dis-
53 ability rate as provided in subdivision (e), section six of
54 this article until the entry of a permanent disability award
55 or until the claimant returns to work, and which amount of
56 such benefits paid prior to the receipt of such report shall
57 be considered and deemed to be payment of the perma-
58 nent disability award then granted, if any. In the event
59 that benefits actually paid exceed the amount granted by

60 the permanent partial disability award, claimant shall be
61 entitled to no further benefits by such award but shall not
62 be liable by offset or otherwise for the excess paid.

63 (d) When the division concludes that an independent
64 medical evaluation is indicated, or that a claimant may be
65 ready for disability evaluation in accordance with other
66 provisions of this chapter, the division shall refer the
67 claimant to a physician or physicians of the division's
68 selection for examination and evaluation. If the physician
69 or physicians so selected recommend continued, addition-
70 al or different treatment, the recommendation shall be
71 relayed to the claimant and the claimant's then treating
72 physician and the recommended treatment may be autho-
73 rized by the division.

74 (e) Notwithstanding any provision in subsection (c) of
75 this section, the division shall enter a notice suspending the
76 payment of temporary total disability benefits but provid-
77 ing a reasonable period of time during which the claimant
78 may submit evidence justifying the continued payment of
79 temporary total disability benefits when:

80 (1) The physician or physicians selected by the divi-
81 sion conclude that the claimant has reached his or her
82 maximum degree of improvement; or

83 (2) When the authorized treating physician shall advise
84 the division that the claimant has reached his or her maxi-
85 mum degree of improvement or that he or she is ready for
86 disability evaluation and when the authorized treating
87 physician has not made any recommendation with respect
88 to a permanent disability award as provided in subsection
89 (c) of this section; or

90 (3) When other evidence submitted to the division
91 justifies a finding that the claimant has reached his or her
92 maximum degree of improvement: *Provided*, That in all
93 cases a finding by the division that the claimant has
94 reached his or her maximum degree of improvement shall
95 terminate the claimant's entitlement to temporary total
96 disability benefits regardless of whether the claimant has
97 been released to return to work: *Provided, however*, That
98 under no circumstances shall a claimant be entitled to

99 receive temporary total disability benefits either beyond
100 the date the claimant is released to return to work or be-
101 yond the date he or she actually returns to work.

102 In the event that the medical or other evidence indi-
103 cates that claimant has a permanent disability, unless he or
104 she has returned to work, the claimant shall thereupon
105 receive benefits which shall then be at the permanent par-
106 tial disability rate as provided in subdivision (e), section
107 six of this article until entry of a permanent disability
108 award, pursuant to an evaluation by a physician or physi-
109 cians selected by the division, or until the claimant returns
110 to work and which amount of benefits shall be considered
111 and deemed to be payment of the permanent disability
112 award then granted, if any. In the event that benefits actu-
113 ally exceed the amount granted under the permanent
114 disability award, claimant shall be entitled to no further
115 benefits by such order but shall not be liable by offset or
116 otherwise for the excess paid.

117 (f) Notwithstanding the anticipated period of disability
118 established pursuant to the provisions of subsection (b) of
119 this section, whenever in any claim temporary total disabil-
120 ity shall continue longer than one hundred twenty days
121 from the date of injury (or from the date of the last pre-
122 ceding examination and evaluation pursuant to the provi-
123 sions of this subsection or pursuant to the directions of the
124 division under other provisions of this chapter), the divi-
125 sion shall refer the claimant to a physician or physicians
126 of the division's selection for examination and evaluation
127 in accordance with the provisions of subsection (d) of this
128 section and the provisions of subsection (e) of this section
129 shall be fully applicable: *Provided*, That the requirement
130 of mandatory examinations and evaluations pursuant to
131 the provisions of this subsection shall not apply to any
132 claimant who sustained a brain stem or spinal cord injury
133 with resultant paralysis or an injury which resulted in an
134 amputation necessitating a prosthetic appliance.

135 (g) The provisions of this section are in addition to
136 and in no way in derogation of the power and authority
137 vested in the division by other provisions of this chapter or
138 vested in the employer to have a claimant examined by a

139 physician or physicians of the employer's selection and at
140 the employer's expense, or vested in the claimant or em-
141 ployer to file a protest, under other provisions of this
142 chapter.

143 (h) All evaluations and examinations performed by
144 physicians shall be performed in accordance with the
145 protocols and procedures established by the health care
146 advisory panel pursuant to section three-b of this article:
147 *Provided*, That the physician may exceed these protocols
148 when additional evaluation is medically necessary.

§23-4-10. Classification of death benefits; "dependent" defined.

1 In case a personal injury, other than occupational
2 pneumoconiosis or other occupational disease, suffered by
3 an employee in the course of and resulting from his or her
4 employment, causes death, and disability is continuous
5 from date of such injury until date of death, or if death
6 results from occupational pneumoconiosis or from any
7 other occupational disease, the benefits shall be in the
8 amounts and to the persons as follows:

9 (a) If there be no dependents, the disbursements shall
10 be limited to the expense provided for in sections three
11 and four of this article.

12 (b) If there be dependents as defined in subdivision
13 (d) of this section, such dependents shall be paid for as
14 long as their dependency shall continue in the same
15 amount as was paid or would have been paid the deceased
16 employee for total disability had he or she lived. The
17 order of preference of payment and length of dependence
18 shall be as follows:

19 (1) A dependent widow or widower until death or
20 remarriage of such widow or widower, and any child or
21 children dependent upon the decedent until each such
22 child shall reach eighteen years of age or where such child
23 after reaching eighteen years of age continues as a
24 full-time student in an accredited high school, college,
25 university, business or trade school, until such child reach-
26 es the age of twenty-five years or if an invalid child to
27 continue as long as such child remains an invalid. All

28 such persons shall be jointly entitled to the amount of
29 benefits payable as a result of employee's death.

30 (2) A wholly dependent father or mother until death.

31 (3) Any other wholly dependent person for a period
32 of six years after the death of the deceased employee.

33 (c) If the deceased employee leaves no wholly depen-
34 dent person, but there are partially dependent persons at
35 the time of death, the payment shall be fifty dollars a
36 month, to continue for such portion of the period of six
37 years after the death, as the division may determine, but no
38 such partially dependent person shall receive compensa-
39 tion payments as a result of the death of more than one
40 employee.

41 Compensation under subdivisions (b) and (c) hereof
42 shall, except as may be specifically provided to the con-
43 trary therein, cease upon the death of the dependent, and
44 the right thereto shall not vest in his or her estate.

45 (d) "Dependent", as used in this chapter, shall mean a
46 widow, widower, child under eighteen years of age, or
47 under twenty-five years of age when a full-time student as
48 provided herein, invalid child or posthumous child, who, at
49 the time of the injury causing death, is dependent in whole
50 or part for his or her support upon the earnings of the
51 employee, stepchild under eighteen years of age, or under
52 twenty-five years of age when a full-time student as pro-
53 vided herein, child under eighteen years of age legally
54 adopted prior to the injury causing death, or under
55 twenty-five years of age when a full-time student as pro-
56 vided herein, father, mother, grandfather or grandmother,
57 who at the time of the injury causing death, is dependent
58 in whole or in part for his or her support upon the earn-
59 ings of the employee; and invalid brother or sister wholly
60 dependent for his or her support upon the earnings of the
61 employee at the time of the injury causing death.

62 (e) (1) If a person receiving permanent total disability
63 benefits which were awarded prior to the second day of
64 February, one thousand nine hundred ninety-five, dies
65 from a cause other than a disabling injury leaving any

66 dependents as defined in subdivision (d) of this section, an
67 award shall be made to such dependents in an amount
68 equal to one hundred four times the weekly benefit the
69 worker was receiving at the time of his or her death. The
70 award shall be paid to the dependents in the same interval
71 at which the decedent had been receiving benefits prior to
72 his or her death.

73 (2) On and after the second day of February, one
74 thousand nine hundred ninety-five, when an award of
75 permanent total disability benefits is made, a claimant shall
76 make a one-time election of whether to receive the full
77 amount of payments for the award or to receive a reduced
78 payment in order to provide an annuity payment to his or
79 her dependents. The sum of twenty thousand dollars shall
80 be the initial amount of the annuity. Thereafter, the com-
81 pensation programs performance council shall review the
82 annuity amount at least every three years. The council
83 shall also from time to time determine the amount of the
84 reduction in benefits that will be used to contribute to-
85 wards the full amount necessary to purchase the annuity.
86 The council may, from time to time as it deems appropri-
87 ate, fix an amount which the fund will contribute toward
88 the purchase of annuities. The commissioner and the
89 council are authorized to either fund such annuities
90 through the investments of the workers' compensation
91 fund or through the use of a private provider of annuities.
92 The selection of such a private provider of annuities shall
93 be through competitive bids. If at the time of the claim-
94 ant's death he or she has no dependents, then the proceeds
95 of the annuity shall remain with the fund. Should such a
96 claimant's entitlement to receive the permanent total dis-
97 ability award terminate due to his or her attaining the
98 necessary retirement age provided for by subdivision (d),
99 section six of this article or for any other reason other
100 than the death of the claimant, then the annuity shall be
101 cancelled and the proceeds thereof shall remain with the
102 fund.

§23-4-15. Application for benefits.

- 1 (a) To entitle any employee or dependent of a de-
- 2 ceased employee to compensation under this chapter,

3 other than for occupational pneumoconiosis or other
4 occupational disease, the application therefor must be
5 made on the form or forms prescribed by the division and
6 filed with the division within six months from and after the
7 injury or death, as the case may be, and unless so filed
8 within such six-month period, the right to compensation
9 under this chapter shall be forever barred, such time limi-
10 tation being hereby declared to be a condition of the right
11 and hence jurisdictional, and all proofs of dependency in
12 fatal cases must likewise be filed with the division within
13 six months from and after the death. In case the employee
14 is mentally or physically incapable of filing such applica-
15 tion, it may be filed by his or her attorney or by a member
16 of his or her family.

17 (b) To entitle any employee to compensation for oc-
18 cupational pneumoconiosis under the provisions hereof,
19 the application therefor must be made on the form or
20 forms prescribed by the division and filed with the divi-
21 sion within three years from and after the last day of the
22 last continuous period of sixty days or more during which
23 the employee was exposed to the hazards of occupational
24 pneumoconiosis or within three years from and after the
25 employee's occupational pneumoconiosis was made
26 known to him or her by a physician or which he or she
27 should reasonably have known, whichever shall last occur,
28 and unless so filed within such three-year period, the right
29 to compensation under this chapter shall be forever
30 barred, such time limitation being hereby declared to be a
31 condition of the right and hence jurisdictional, or, in the
32 case of death, the application shall be filed as aforesaid by
33 the dependent of such employee within one year from and
34 after such employee's death, and such time limitation is a
35 condition of the right and hence jurisdictional.

36 (c) To entitle any employee to compensation for oc-
37 cupational disease other than occupational pneumoconio-
38 sis under the provisions hereof, the application therefor
39 must be made on the form or forms prescribed by the
40 division and filed with the division within three years from
41 and after the day on which the employee was last exposed
42 to the particular occupational hazard involved or within
43 three years from and after the employee's occupational

44 disease was made known to him or her by a physician or
45 which he or she should reasonably have known, whichever
46 shall last occur, and unless so filed within such three-year
47 period, the right to compensation under this chapter shall
48 be forever barred, such time limitation being hereby de-
49 clared to be a condition of the right and hence jurisdic-
50 tional, or, in case of death, the application shall be filed as
51 aforesaid by the dependent of such employee within one
52 year from and after such employee's death, and such time
53 limitation is a condition of the right and hence jurisdic-
54 tional.

**§23-4-15b. Determination of nonmedical questions by divi-
sion; claims for occupational pneumoconiosis;
hearing.**

1 If a claim for occupational pneumoconiosis benefits
2 be filed by an employee within three years from and after
3 the last day of the last continuous period of sixty days
4 exposure to the hazards of occupational pneumoconiosis,
5 the division shall determine whether the claimant was ex-
6 posed to the hazards of occupational pneumoconiosis for
7 a continuous period of not less than sixty days while in the
8 employ of the employer within three years prior to the
9 filing of his or her claim, whether in the state of West Vir-
10 ginia the claimant was exposed to such hazard over a con-
11 tinuous period of not less than two years during the ten
12 years immediately preceding the date of his or her last
13 exposure thereto and whether the claimant was exposed to
14 such hazard over a period of not less than ten years during
15 the fifteen years immediately preceding the date of his or
16 her last exposure thereto. If a claim for occupational
17 pneumoconiosis benefits be filed by an employee within
18 three years from and after the employee's occupational
19 pneumoconiosis was made known to the employee by a
20 physician or otherwise should have reasonably been
21 known to the employee, the division shall determine
22 whether the claimant filed his or her application within
23 said period and whether in the state of West Virginia the
24 claimant was exposed to such hazard over a continuous
25 period of not less than two years during the ten years
26 immediately preceding the date of last exposure thereto
27 and whether the claimant was exposed to such hazard over

28 a period of not less than ten years during the fifteen years
29 immediately preceding the date of last exposure thereto.
30 If a claim for occupational pneumoconiosis benefits be
31 filed by a dependent of a deceased employee, the division
32 shall determine whether the deceased employee was ex-
33 posed to the hazards of occupational pneumoconiosis for
34 a continuous period of not less than sixty days while in the
35 employ of the employer within ten years prior to the filing
36 of the claim, whether in the state of West Virginia the de-
37 ceased employee was exposed to such hazard over a con-
38 tinuous period of not less than two years during the ten
39 years immediately preceding the date of his or her last
40 exposure thereto and whether the claimant was exposed to
41 such hazard over a period of not less than ten years during
42 the fifteen years immediately preceding the date of his or
43 her last exposure thereto. The division shall also deter-
44 mine such other nonmedical facts as may in the division's
45 opinion be pertinent to a decision on the validity of the
46 claim.

47 The division shall enter an order with respect to such
48 nonmedical findings within ninety days following receipt
49 by the division of both the claimant's application for occu-
50 pational pneumoconiosis benefits and the physician's
51 report filed in connection therewith, and shall give each
52 interested party notice in writing of these findings with
53 respect to all such nonmedical facts and such findings and
54 such actions of the division shall be final unless the em-
55 ployer, employee, claimant or dependent shall, within
56 thirty days after receipt of such notice, object to such
57 findings, and unless an objection is filed within such
58 thirty-day period, such findings shall be forever final, such
59 time limitation being hereby declared to be a condition of
60 the right to litigate such findings and hence jurisdictional.
61 Upon receipt of such objection, the chief administrative
62 law judge shall set a hearing as provided in section nine,
63 article five of this chapter. In the event of an objection to
64 such findings by the employer, the claim shall, notwith-
65 standing the fact that one or more hearings may be held
66 with respect to such objection, mature for reference to the
67 occupational pneumoconiosis board with like effect as if
68 the objection had not been filed. If the administrative law

69 judge concludes after the protest hearings that the claim
70 should be dismissed, a final order of dismissal shall be
71 entered, which final order shall be subject to appeal in
72 accordance with the provisions of sections ten and twelve,
73 article five of this chapter. If the administrative law judge
74 concludes after such protest hearings that the claim should
75 be referred to the occupational pneumoconiosis board for
76 its review, the order entered shall be interlocutory only
77 and may be appealed only in conjunction with an appeal
78 from a final order with respect to the findings of the occu-
79 pational pneumoconiosis board.

**§23-4-16. Division's jurisdiction over case continuous; modifi-
cation of finding or order; time limitation on
awards; reimbursement of claimant for expenses;
reopening cases involving permanent total dis-
ability; promulgation of rules.**

1 (a) The power and jurisdiction of the division over
2 each case shall be continuing and the division may, in
3 accordance with the following provisions and after due
4 notice to the employer, make such modifications or
5 changes with respect to former findings or orders as may
6 be justified. Upon and after the second day of February,
7 one thousand nine hundred ninety-five, the period in
8 which a claimant may request a modification, change or
9 reopening of a prior award that was entered either prior to
10 or after such date shall be determined by the following
11 paragraphs of this subsection. Any such request that is
12 made beyond such period shall be refused.

13 (1) Except as provided in section twenty-two of this
14 article, in any claim which was closed without the entry of
15 an order regarding the degree, if any, of permanent dis-
16 ability that a claimant has suffered, or in any case in which
17 no award has been made, any such request must be made
18 within five years of the closure. During that time period,
19 only two such requests may be filed.

20 (2) Except as stated below, in any claim in which an
21 award of permanent disability was made, any such request
22 must be made within five years of the date of the initial
23 award. During that time period, only two such requests
24 may be filed. With regard to those occupational diseases,

25 including occupational pneumoconiosis, which are medi-
26 cally recognized as progressive in nature, if any such re-
27 quest is granted by the division, then a new five-year peri-
28 od shall begin upon the date of the subsequent award.
29 With the advice of the health care advisory panel, the com-
30 missioner and the compensation programs performance
31 council shall by rule designate those progressive diseases
32 which are customarily the subject of claims.

33 (3) No further award may be made in fatal cases ex-
34 cept within two years after the death of the employee.

35 (4) With the exception of the items set forth in subsec-
36 tion (d), section three of this article, in any claim wherein
37 medical or any type of rehabilitation service has not been
38 rendered or durable medical goods or other supplies have
39 not been received for a period of five years, then no re-
40 quest for additional medical or any type of rehabilitation
41 benefits shall be granted nor shall any such medical or
42 any type of rehabilitation benefits or any type of goods or
43 supplies be paid for by the division if such were provided
44 without a prior request. For the exclusive purposes of this
45 paragraph, medical services and rehabilitation services
46 shall not include any encounter in which significant treat-
47 ment was not performed.

48 (b) In any claim in which an injured employee shall
49 make application for a further period of temporary total
50 disability, if such application be in writing and filed within
51 the applicable time limit stated above, then the division
52 shall pass upon the request within thirty days of the receipt
53 of the request. If the decision is to grant the request, then
54 the order shall provide for the receipt of temporary total
55 disability benefits. In any case in which an injured em-
56 ployee shall make application for a further award of per-
57 manent partial disability benefits or for an award of per-
58 manent total disability benefits, if such application be in
59 writing and filed within the applicable time limit as stated
60 above, the division shall pass upon the request within thirty
61 days of its receipt and, if the division determines that the
62 claimant may be entitled to an award, the division will then
63 refer the claimant for such further examinations as may be
64 necessary.

65 (c) If such application is based on a report of any
66 medical examination made of the claimant and submitted
67 by the claimant to the division in support of his or her
68 application, and the claim is opened for further consider-
69 ation and additional award is later made, the claimant shall
70 be reimbursed for the expenses of such examination.
71 Such reimbursement shall be made by the division to the
72 claimant, in addition to all other benefits awarded, upon
73 due proof of the amount thereof being furnished the divi-
74 sion by the claimant, but shall in no case exceed the sum
75 fixed pursuant to the division's schedule of maximum
76 reasonable fees established under the provisions of section
77 three of this article.

78 (d) The division shall have continuing power and
79 jurisdiction over claims in which permanent total disability
80 awards have been made after the eighth day of April, one
81 thousand nine hundred ninety-three.

82 (1) The division shall continuously monitor perma-
83 nent total disability awards and may from time to time,
84 after due notice to the claimant, reopen a claim for reeval-
85 uation of the continuing nature of the disability and possi-
86 ble modification of the award: *Provided*, That such re-
87 openings shall not be done sooner than every two years:
88 *Provided, however*, That any individual claimant shall
89 only be reevaluated a total of two times after which he or
90 she may not be again reevaluated under the provisions of
91 this subsection. The division may reopen a claim for
92 reevaluation when, in the division's sole discretion, it con-
93 cludes that there exists good cause to believe that the
94 claimant no longer meets the eligibility requirements un-
95 der subdivision (n), section six of this article. The eligibil-
96 ity requirements, including any vocational standards, shall
97 be applied as those requirements are stated at the time of a
98 claim's reopening: *Provided further*, That if a permanent
99 total disability award was made on or after the eighth day
100 of April, one thousand nine hundred ninety-three, and on
101 or before the second day of February, one thousand nine
102 hundred ninety-five, the eligibility requirements for the
103 claimant upon a reopening shall be the eligibility require-
104 ments which applied to his or her claim at the time the
105 award was made. This section shall not be applicable to

106 any claim in which the final decision on the eligibility of
107 the claimant to a permanent total disability award was
108 made more than ten years prior to the date of proposed
109 reevaluation.

110 (2) Upon reopening a claim under this subsection, the
111 division may take evidence, have the claimant evaluated,
112 make findings of fact and conclusions of law and shall
113 vacate, modify or affirm the original permanent total dis-
114 ability award as the record requires. The claimant's for-
115 mer employer shall not be a party to the reevaluation, but
116 shall be notified of the reevaluation and may submit such
117 information to the division as the employer may elect. In
118 the event the claimant retains his or her award following
119 the reevaluation, then the claimant's reasonable attorneys'
120 fees incurred in defending the award shall be paid by the
121 workers' compensation division from the supersedeas
122 reserve of the surplus fund. In addition, the workers' com-
123 pensation division shall reimburse a prevailing claimant
124 for his or her costs in obtaining one evaluation on each
125 issue during the course of the reevaluation with such reim-
126 bursement being made from the supersedeas reserve of the
127 surplus fund. The compensation programs performance
128 council shall adopt criteria for the determination of rea-
129 sonable attorneys' fees.

130 (3) This subsection shall not be applied to awards
131 made under the provisions of subdivision (m), section six
132 of this article. The claimant may seek review of the divi-
133 sion's final order as otherwise provided for in article five
134 of this chapter for review of orders granting or denying
135 permanent disability awards.

136 (e) A claimant may have only one active request for a
137 permanent disability award pending in a claim at any one
138 time. Any new such request that is made while another is
139 pending shall be consolidated into the former request.

§23-4-18. Mode of paying benefits generally; exemptions of compensation from legal process.

1 Except as provided by this section, compensation shall
2 be paid only to such employees or their dependents, and
3 shall be exempt from all claims of creditors and from any

4 attachment, execution or assignment other than compensa-
5 tion to counsel for legal services, under the provisions of,
6 and subject to the limitations contained in section sixteen,
7 article five of this chapter, and other than for the enforce-
8 ment of orders for child or spousal support entered pursu-
9 ant to the provisions of chapters forty-eight and
10 forty-eight-a of this code. Payments may be made in such
11 periodic installments as determined by the division in each
12 case, but in no event less frequently than semimonthly for
13 any temporary award and monthly for any permanent
14 award. Payments for permanent disability shall be paid on
15 or before the third day of the month in which they are
16 due. In all cases where compensation is awarded or in-
17 creased, the amount thereof shall be calculated and paid
18 from the date of disability.

§23-4-24. Permanent total disability awards; retirement age; limitations on eligibility and the introduction of evidence; effects of other types of awards; procedures; requests for awards; jurisdiction.

1 (a) Notwithstanding any provision of this chapter to
2 the contrary, except as stated below, no claimant shall be
3 awarded permanent total disability benefits arising under
4 subdivision (d) or (n), section six or of section eight-c of
5 this article who terminates active employment and is re-
6 ceiving full old-age retirement benefits under the Social
7 Security Act, 42 U.S.C. 401 and 402. Any such claimant
8 shall be evaluated only for the purposes of receiving a
9 permanent partial disability award premised solely upon
10 the claimant's impairments. This subsection shall not be
11 applicable in any claim in which the claimant has complet-
12 ed the submission of his or her evidence on the issue of
13 permanent total disability prior to the later of the follow-
14 ing: Termination of active employment or the initial re-
15 ceipt of full old-age retirement benefits under the Social
16 Security Act. Once the claimant has terminated active
17 employment and has begun to receive full old-age social
18 security retirement benefits, the claimant shall not be per-
19 mitted to produce additional evidence of permanent total
20 disability before the division or the office of judges nor
21 shall such a claim be remanded for the production of such
22 evidence.

23 (b) For the purposes of subdivisions (d) and (n), sec-
24 tion six of this article, the award of permanent partial dis-
25 ability benefits under the provisions of section six-b of
26 this article or under that portion of section six-a of this
27 article which awards twenty weeks of benefits to a claimant
28 who has occupational pneumoconiosis but without mea-
29 surable pulmonary impairment therefrom shall not be
30 counted towards the eighty-five percent needed to gain the
31 rebuttable presumption of permanent total disability or
32 towards the fifty percent threshold of paragraph (1), sub-
33 division (n), section six of this article when such claimant
34 has terminated active employment and is receiving federal
35 nondisability pension or retirement benefits, including
36 old-age benefits under the Social Security Act. This sub-
37 section shall not affect any other awards of permanent
38 partial disability benefits and their use in achieving the
39 rebuttable eighty-five percent presumption or the fifty
40 percent threshold.

41 (c) The workers' compensation division shall have the
42 sole and exclusive jurisdiction to initially hear and decide
43 any claim or request pertaining in whole or in part to
44 subdivision (d) or (n), section six of this article. Any
45 claim or request for permanent total disability benefits
46 arising under said subdivisions shall first be presented to
47 the division as part of the initial claim filing or by way of
48 an application for modification or adjustment pursuant to
49 section sixteen of this article. The office of judges may
50 consider such a claim only after the division has entered
51 an appropriate order.

**§23-4-25. Permanent total disability benefits; reduction of
disability benefits for wages earned by claimant.**

1 (a) After the eighth day of April, one thousand nine
2 hundred ninety-three, a reduction in the amount of bene-
3 fits as specified in subsection (b) of this section shall be
4 made whenever benefits are being paid for a permanent
5 total disability award regardless of when such benefits
6 were awarded. This section is not applicable to the receipt
7 of medical benefits or the payment therefor, the receipt of
8 permanent partial disability benefits, the receipt of benefits
9 by partially or wholly dependent persons, or to the receipt

10 of benefits pursuant to the provisions of subsection (e),
11 section ten of this article. Prior to the application of this
12 section to any claimant, the division shall give the claimant
13 notice of the effect of this section upon a claimant's award
14 if and when such claimant later earns wages.

15 (b) Whenever applicable benefits are paid to a claim-
16 ant with respect to the same time period in which the
17 claimant has earned wages as a result of his or her em-
18 ployment, the following reduction in applicable benefits
19 shall be made. The claimant's applicable monthly benefits
20 and monthly net wages received from the current employ-
21 ment shall be added together. If such total exceeds by
22 more than one hundred twenty percent of the amount of
23 the claimant's monthly net wages earned during his or her
24 last employment prior to the award of permanent total
25 disability benefits, then such excess shall be reduced by
26 one dollar for each two dollars that the claimant's monthly
27 benefits and monthly net wages exceed the one hundred
28 twenty percent level: *Provided*, That in no event shall
29 applicable benefits be reduced below the minimum weekly
30 benefits as provided for in subdivisions (b) and (d), sec-
31 tion six of this article.

ARTICLE 4C. EMPLOYERS' EXCESS LIABILITY FUND.

§23-4C-1. Purpose.

§23-4C-2. Employers' excess liability fund established.

§23-4C-1. Purpose.

1 The purpose of this article is to permit the establish-
2 ment of a system to provide insurance coverage for em-
3 ployers subject to this chapter who may be subjected to
4 liability under section two, article four of this chapter, for
5 any excess of damages over the amount received or re-
6 ceivable under this chapter.

§23-4C-2. Employers' excess liability fund established.

1 (a) To provide insurance coverage for employers
2 subject to this chapter who may be subjected to liability
3 for any excess of damages over the amount received or
4 receivable under this chapter, the division may continue
5 the fund known as the employers' excess liability fund,

6 which fund shall be separate from the workers' compensa-
7 tion fund. The employers' excess liability fund shall con-
8 sist of premiums paid thereto by employers who may
9 voluntarily elect to subscribe to the fund for coverage of
10 potential liability to any person who may be entitled to
11 any excess of damages over the amount received or re-
12 ceivable under this chapter.

13 (b) The commissioner and the compensation pro-
14 grams performance council are authorized to provide for,
15 by the promulgation of a rule pursuant to subdivisions (b)
16 and (c), section seven, article three, chapter twenty-one-a
17 of this code, the continuance, abolition or sale of the em-
18 ployers' excess liability fund established by section one of
19 this article. In the event that fund is to be sold, the sale
20 shall be conducted through the solicitation of competitive
21 bids. Any funds that may remain after the sale or aboli-
22 tion of the employers' excess liability fund shall be paid
23 into and become a part of the workers' compensation fund
24 to be used for the purposes of that fund. In the event that
25 the employers' excess liability fund program is abolished
26 and the remaining liabilities of that program exceed the
27 amount retained in the employers' excess liability fund,
28 such excess liability including the costs of administration
29 shall be paid for from the workers' compensation fund.

ARTICLE 5. REVIEW.

- §23-5-1. Notice by division of decision; procedures on claims; objections and hearing; mediation.
- §23-5-2. Application by employee for further adjustment of claim — Objection to modification; hearing.
- §23-5-3. Refusal to reopen claim; notice; objection.
- §23-5-4. Application by employer for modification of award — Objection to modification; hearing.
- §23-5-5. Refusal of modification; notice; objection.
- §23-5-6. Time periods for objections and appeals; extensions.
- §23-5-7. Compromise and settlement.
- §23-5-8. Continuation of office of administrative law judges; powers of chief administrative law judge and said office.
- §23-5-9. Hearings on objections to division decisions by office of administrative law judges.
- §23-5-10. Appeal from administrative law judge decision to appeal board.
- §23-5-11. Workers' compensation appeal board — Generally.
- §23-5-12. Appeal to board; procedure; remand and supplemental hearing.

- §23-5-13. Continuances and supplemental hearings; claims not to be denied on technicalities.
- §23-5-14. Disqualification of board members.
- §23-5-15. Appeals from final decisions of board to supreme court of appeals; procedure; costs.
- §23-5-16. Fees of attorney for claimant; unlawful charging or receiving of attorney fees.

§23-5-1. Notice by division of decision; procedures on claims; objections and hearing; mediation.

1 (a) The workers' compensation division shall have full
2 power and authority to hear and determine all questions
3 within its jurisdiction. In matters arising under articles
4 three and four of this chapter, the division shall promptly
5 review and investigate all claims. The parties to a claim
6 shall file such information in support of their respective
7 positions as they deem proper. In addition, the division is
8 authorized to develop such additional information as it
9 deems to be necessary in the interests of fairness to the
10 parties and in keeping with the fiduciary obligations owed
11 to the fund. With regard to any issue which is ready for a
12 decision, the division shall explain the basis of its deci-
13 sions.

14 (b) Except with regard to interlocutory matters, upon
15 making any decision, upon the making or refusing to
16 make any award, or upon the making of any modification
17 or change with respect to former findings or orders, as
18 provided by section sixteen, article four of this chapter, the
19 division shall give notice, in writing, to the employer, em-
20 ployee, claimant, as the case may be, of its action, which
21 notice shall state the time allowed for filing an objection to
22 such finding, and such action of the division shall be final
23 unless the employer, employee, claimant or dependant
24 shall, within thirty days after the receipt of such notice,
25 object in writing, to such finding, and unless an objection
26 is filed within such thirty-day period, such finding or
27 action shall be forever final, such time limitation being
28 hereby declared to be a condition of the right to litigate
29 such finding or action and hence jurisdictional. Any such
30 objection shall be filed with the office of judges with a
31 copy served upon the division and other parties in accor-
32 dance with the procedures set forth in sections eight and
33 nine of this article.

34 (c) Where a finding or determination of the division is
35 protested only by the employer, and the employer does
36 not prevail in its protest and, in the event the claimant is
37 required to attend a hearing by subpoena or agreement of
38 counsel or at the express direction of the division or office
39 of judges, then such claimant in addition to reasonable
40 traveling and other expenses shall be reimbursed for loss
41 of wages incurred by the claimant in attending such hear-
42 ing.

43 (d) Once an objection has been filed with the office of
44 judges, the parties to the objection shall be offered an
45 opportunity for mediation of the disputed issue by the
46 division. If all of the parties to the objection agree to
47 mediation, the division shall designate a deputy who was
48 not involved in the original decision to act as mediator:
49 *Provided*, That on issues related solely to the medical
50 necessity of proposed medical treatment or diagnostic
51 services, the division shall offer the parties to the objection
52 a selection of names of medical providers in the appropri-
53 ate specialty. The parties shall then either agree upon a
54 medical provider who shall act as mediator or, in the ab-
55 sence of an agreement, the division shall select a medical
56 provider who shall act as mediator. In cases where issues
57 of medical necessity are intertwined with nonmedical treat-
58 ment or nondiagnostic issues, both a medical provider and
59 a designated deputy shall act as comediators and shall
60 consider their respective issues. Neither shall be empow-
61 ered to overturn the decision of the other.

62 Upon entering into mediation, the parties shall inform
63 the office of judges of that action and the office of judges
64 shall stay further action on the objection.

65 The mediator shall solicit the positions of the parties
66 and shall review such additional information as the parties
67 or the division shall furnish. The mediator shall then issue
68 a decision in writing with the necessary findings of fact
69 and conclusions of law to support that decision. If any
70 party disagrees with the decision, that party may note its
71 objection to the office of judges, the division and the other
72 parties, and the office of judges shall lift the stay on the
73 original protest. The decision and any information intro-

74 duced during the attempted mediation shall be subject to
75 consideration by the office of judges in making its deci-
76 sion on the objection. Upon acceptance by the parties of
77 the result of the mediation, the office of judges shall dis-
78 miss the objection with prejudice.

79 The mediator shall conduct the mediation in an infor-
80 mal manner and without regard to the formal rules of
81 evidence and procedure. Once the parties agree to media-
82 tion, then the agreement cannot be withdrawn.

83 (e) The panel of medical providers who shall serve as
84 mediators shall be selected and approved by the compen-
85 sation programs performance council. A medical provid-
86 er serving as a mediator shall have the same protections
87 from liability as does the division's employees with regard
88 to their decisions including coverage by the board of risk
89 management which shall be provided by the workers'
90 compensation division.

91 (f) The division is expressly authorized to amend,
92 correct, or set aside any order on any issue entered by it
93 which is on its face defective or clearly erroneous or the
94 result of mistake, clerical error or fraud. Jurisdiction to
95 take this action shall continue until the expiration of one
96 hundred eighty days from the date of entry of an order
97 unless the order is sooner affected by appellate action:
98 *Provided*, That corrective actions in the case of fraud may
99 be taken at any time.

100 (g) All objections to orders of the division shall be
101 styled in the name of the workers' compensation division.
102 All appeals prosecuted from the office of judges or from
103 the appeal board shall either be in the name of the work-
104 ers' compensation division or shall be against the workers'
105 compensation division. In all such matters, the workers'
106 compensation division shall be the party in interest.

**§23-5-2. Application by employee for further adjustment of
claim — Objection to modification; hearing.**

1 In any case where an injured employee makes applica-
2 tion in writing for a further adjustment of his or her claim
3 under the provisions of section sixteen, article four of this

4 chapter, and such application discloses cause for a further
5 adjustment thereof, the division shall, after due notice to
6 the employer, make such modifications, or changes with
7 respect to former findings or orders in such claim as may
8 be justified, and any party dissatisfied with any such modi-
9 fication or change so made by the division shall, upon
10 proper and timely objection, be entitled to a hearing, as
11 provided in section nine of this article.

§23-5-3. Refusal to reopen claim; notice; objection.

1 If, however, in any case in which application for fur-
2 ther adjustment of a claim is filed under the preceding
3 section, it shall appear to the division that such application
4 fails to disclose a progression or aggravation in the claim-
5 ant's condition, or some other fact or facts which were not
6 theretofore considered by the division in its former find-
7 ings, and which would entitle such claimant to greater
8 benefits than the claimant has already received, the divi-
9 sion shall, within a reasonable time, notify the claimant
10 and the employer that such application fails to establish a
11 prima facie cause for reopening the claim. Such notice
12 shall be in writing stating the reasons for denial and the
13 time allowed for objection to such decision of the division.
14 The claimant may, within thirty days after receipt of such
15 notice, object in writing to such finding and unless the
16 objection is filed within such thirty-day period, no such
17 objection shall be allowed, such time limitation being
18 hereby declared to be a condition of the right to such
19 objection and hence jurisdictional. Upon receipt of an
20 objection, the office of judges shall afford the claimant an
21 evidentiary hearing as provided in section nine of this
22 article.

**§23-5-4. Application by employer for modification of award
— Objection to modification; hearing.**

1 In any case wherein an employer makes application in
2 writing for a modification of any award previously made
3 to an employee of said employer, and such application
4 discloses cause for a further adjustment thereof, the divi-
5 sion shall, after due notice to the employee, make such
6 modifications or changes with respect to former findings
7 or orders in such form as may be justified, and any party

8 dissatisfied with any such modification or change so made
9 by the division, shall upon proper and timely objection, be
10 entitled to a hearing as provided in section nine of this
11 article.

§23-5-5. Refusal of modification; notice; objection.

1 If in any such case it shall appear to the division that
2 the application filed pursuant to section four of this article
3 fails to disclose some fact or facts which were not thereto-
4 fore considered by the division in its former findings, and
5 which would entitle such employer to any modification of
6 said previous award, the division shall, within sixty days
7 from the receipt of such application, notify the claimant
8 and employer that such application fails to establish a just
9 cause for modification of said award. Such notice shall be
10 in writing stating the reasons for denial and the time al-
11 lowed for objection to such decision of the division. The
12 employer may, within thirty days after receipt of said
13 notice, object in writing to such decision, and unless the
14 objection is filed within such thirty-day period, no such
15 objection shall be allowed, such time limitation being
16 hereby declared to be a condition of the right to such
17 objection and hence jurisdictional. Upon receipt of such
18 objection, the office of judges shall afford the employer
19 an evidentiary hearing as provided in section nine of this
20 article.

§23-5-6. Time periods for objections and appeals; extensions.

1 Notwithstanding the fact that the time periods set forth
2 for objections, protests and appeals to or from the workers'
3 compensation appeal board, are jurisdictional, such peri-
4 ods may be extended or excused upon application of
5 either party within a period of time equal to the applicable
6 period by requesting an extension of such time period
7 showing good cause or excusable neglect, accompanied
8 by the objection or appeal petition. In exercising such
9 discretion the administrative law judge, appeal board or
10 court, as the case may be, shall consider whether the appli-
11 cant was represented by counsel and whether timely and
12 proper notice was actually received by the applicant or the
13 applicant's representative.

§23-5-7. Compromise and settlement.

1 With the exception of medical benefits, the claimant
2 and the employer, with the consent and approval of the
3 workers' compensation division, may negotiate a final
4 settlement of any and all issues in a claim wherever the
5 claim may then be in the review or appellate processes.
6 The parties seeking to settle and compromise an objection
7 to a division decision shall file the written and executed
8 agreement with the division. The division shall review the
9 proposed agreement to determine if it is fair and reason-
10 able to the parties and shall ensure that each of the parties
11 are fully aware of the effects of the agreement including
12 what each party is giving up in exchange for the agree-
13 ment. If the division concludes that the agreement is not
14 fair or is not reasonable or that one of the parties is not
15 fully informed, then the division shall reject the agree-
16 ment. If the employer is not active in the claim, then the
17 division may negotiate a final settlement of any and all
18 issues in a claim except for medical benefits with the
19 claimant: *Provided*, That the agreement must then be
20 submitted to the office of judges whereupon an adminis-
21 trative law judge shall undertake the review and make the
22 assurances provided for above as in the case of an em-
23 ployer and claimant agreement. Upon the approval of
24 either type of agreement, the agreement shall be filed with
25 the division's records, and the filing constitutes a dismissal
26 of any objection or appeal on the issues agreed to. The
27 division will give notice of the settlement and dismissal, if
28 necessary, to the office of judges, the appeal board, or the
29 supreme court of appeals. Once any such agreement is
30 accepted by the parties and the division, any issue that is
31 the subject of the agreement shall not be reopened by
32 either party or by the division. Any such agreement may
33 provide for a lump sum payment which shall not exceed a
34 percentage of the entire settlement to be determined from
35 time to time by the compensation programs performance
36 council in keeping with the necessity to protect the claim-
37 ant, the employer, and the solvency of the workers' com-
38 pensation fund. The remainder of any such settlement
39 shall be paid out over time as would have been the case
40 had an award been made. If a settlement provides for

41 future rehabilitation costs and a degree of permanent
42 partial disability, then the agreed upon degree of perma-
43 nent partial disability shall be stated in the agreement.
44 That degree of permanent partial disability shall then be
45 entered upon the records of the division as the award in
46 the claim. In the event that an employer agrees to settle an
47 issue which settlement is to be paid directly by the em-
48 ployer, then the amount so paid or to be paid shall be a
49 portion of the employer's premium tax as that term is used
50 in article two of this chapter. If such employer later fails
51 to make the agreed upon payment, the division shall as-
52 sume the obligation to make the payments and shall be
53 entitled to recover the amounts paid or to be paid from the
54 employer as provided for in sections five and five-a, article
55 two of this chapter.

**§23-5-8. Continuation of office of administrative law judges;
powers of chief administrative law judge and said
office.**

1 (a) The workers' compensation office of administrative
2 law judges previously created pursuant to chapter twelve,
3 acts of the Legislature, one thousand nine hundred ninety,
4 second extraordinary session, is hereby continued and
5 designated to be an integral part of the workers' compen-
6 sation system of this state. The office of judges shall be
7 under the supervision of a chief administrative law judge
8 who shall be appointed by the governor, with the advice
9 and consent of the Senate. The previously appointed
10 incumbent of that position who was serving on the second
11 day of February, one thousand nine hundred ninety-five,
12 shall continue to serve in that capacity unless subsequently
13 removed as provided for in subsection (b) of this section.

14 (b) The chief administrative law judge shall be a per-
15 son who has been admitted to the practice of law in this
16 state and shall also have had at least four years of experi-
17 ence as an attorney. The chief administrative law judge's
18 salary shall be set by the compensation programs perfor-
19 mance council created in section one, article three, chapter
20 twenty-one-a of this code. Said salary shall be within the
21 salary range for comparable chief administrative law judg-
22 es as determined by the state personnel board created by

23 section six, article six, chapter twenty-nine of this code.
24 The chief administrative law judge may only be removed
25 by a vote of two thirds of the members of the compensa-
26 tion programs performance council and shall not be re-
27 moved except for official misconduct, incompetence,
28 neglect of duty, gross immorality or malfeasance and then
29 only after he or she has been presented in writing with the
30 reasons for his or her removal and is given opportunity to
31 respond and to present evidence. No other provision of
32 this code purporting to limit the term of office of any
33 appointed official or employee or affecting the removal of
34 any appointed official or employee shall be applicable to
35 the chief administrative law judge.

36 (c) By and with the consent of the commissioner, the
37 chief administrative law judge shall employ administrative
38 law judges and other personnel as are necessary for the
39 proper conduct of a system of administrative review of
40 orders issued by the workers' compensation division which
41 orders have been objected to by a party, and all such em-
42 ployees shall be in the classified service of the state. Qual-
43 ifications, compensation and personnel practice relating to
44 the employees of the office of judges, other than the chief
45 administrative law judge, shall be governed by the provi-
46 sions of the statutes, rules and regulations of the classified
47 service pursuant to article six, chapter twenty-nine of this
48 code. All such additional administrative law judges shall
49 be persons who have been admitted to the practice of law
50 in this state and shall also have had at least two years of
51 experience as an attorney. The chief administrative law
52 judge shall supervise the other administrative law judges
53 and other personnel which collectively shall be referred to
54 in this chapter as the office of judges.

55 (d) The administrative expense of the office of judges
56 shall be included within the annual budget of the workers'
57 compensation division.

58 (e) Subject to the approval of the compensation pro-
59 grams performance council pursuant to subdivisions (b)
60 and (c), section seven, article three, chapter twenty-one-a
61 of this code, the office of judges shall from time to time
62 promulgate rules of practice and procedure for the hear-

63 ing and determination of all objections to findings or
64 orders of the workers' compensation division pursuant to
65 section one of this article. The office of judges shall not
66 have the power to initiate or to promulgate legislative rules
67 as that phrase is defined in article three, chapter
68 twenty-nine-a of this code.

69 (f) The chief administrative law judge shall continue to
70 have the power to hear and determine all disputed claims
71 in accordance with the provisions of this article, establish a
72 procedure for the hearing of disputed claims, take oaths,
73 examine witnesses, issue subpoenas, establish the amount
74 of witness fees, keep such records and make such reports
75 as are necessary for disputed claims, and exercise such
76 additional powers, including the delegation of such powers
77 to administrative law judges or hearing examiners as may
78 be necessary for the proper conduct of a system of admin-
79 istrative review of disputed claims. The chief administra-
80 tive law judge shall make such reports as may be requested
81 of him or her by the compensation programs performance
82 council.

83 (g) Pursuant to the provisions of chapter four, article
84 ten of this code, the office of judges shall continue to exist
85 until the first day of July, one thousand nine hundred
86 ninety-six, to allow for the completion of a preliminary
87 performance review by the joint committee on govern-
88 ment operations.

**§23-5-9. Hearings on objections to division decisions by office
of administrative law judges.**

1 Objections to a workers' compensation division deci-
2 sion made pursuant to the provisions of section one of this
3 article shall be filed with the office of judges. Upon re-
4 ceipt of an objection, the office of judges shall, within
5 fifteen days from receipt thereof, set a time and place for
6 the hearing of evidence and shall notify the division of the
7 filing of the objection. Hearings may be conducted at the
8 county seat of the county wherein the injury occurred, or
9 at any other place which may be agreed upon by the inter-
10 ested parties, and in the event the interested parties cannot
11 agree, and it appears in the opinion of the chief adminis-
12 trative law judge or the chief administrative law judge's

13 authorized representative that the ends of justice require
14 the taking of evidence elsewhere, then at such place as the
15 chief administrative law judge or such authorized repre-
16 sentative may direct, having due regard for the conve-
17 nience of witnesses. The employer, the claimant and the
18 division shall be notified of such hearing at least ten days
19 in advance, and the hearing shall be held within thirty days
20 after the filing of the objection unless such hearing be
21 postponed by agreement of the parties or by the chief
22 administrative law judge or such authorized representative
23 for good cause. The division shall be a party to any pro-
24 ceeding under this article.

25 The office of judges shall keep full and complete
26 records of all proceedings concerning a disputed claim.
27 All testimony upon a disputed claim shall be recorded but
28 need not be transcribed unless the claim is appealed or in
29 such other circumstances as, in the opinion of the chief
30 administrative law judge, may require such transcription.
31 Upon receipt of notice of the filing of an objection, the
32 division shall forthwith forward to the chief administrative
33 law judge all records or copies of such records, which
34 relate to the matter objected to. All such records or copies
35 thereof and any evidence taken at hearings conducted by
36 the office of judges shall constitute the record upon which
37 the matter shall be decided. The office of judges shall not
38 be bound by the usual common law or statutory rules of
39 evidence. At any time within thirty days after hearing, if
40 the chief administrative law judge or the chief administra-
41 tive law judge's authorized representative is of the opinion
42 that the facts have not been adequately developed at such
43 hearing, he or she may order supplemental hearings or
44 obtain such additional evidence as he or she deems war-
45 ranted upon due notice to the parties.

46 All hearings shall be conducted as determined by the
47 chief administrative law judge pursuant to the rules of
48 practice and procedure promulgated pursuant to section
49 eight of this article. Upon consideration of the entire
50 record, the chief administrative law judge or an adminis-
51 trative law judge within the office of judges shall, within
52 thirty days after final hearing, render a decision affirming,
53 reversing or modifying the division's action. Said decision

54 shall contain findings of fact and conclusions of law and
55 shall be mailed to all interested parties.

§23-5-10. Appeal from administrative law judge decision to appeal board.

1 The employer, claimant or workers' compensation
2 division may appeal to the appeal board created in section
3 eleven of this article for a review of a decision by an ad-
4 ministrative law judge. No appeal or review shall lie unless
5 application therefor be made within thirty days of receipt
6 of notice of the administrative law judge's final action or
7 in any event within sixty days of the date of such final
8 action, regardless of notice and, unless the application for
9 appeal or review is filed within the time specified, no such
10 appeal or review shall be allowed, such time limitation
11 being hereby declared to be a condition of the right of
12 such appeal or review and hence jurisdictional.

§23-5-11. Workers' compensation appeal board — Generally.

1 There shall be a board to be known as the "Workers'
2 Compensation Appeal Board", which shall be referred to
3 in this article as the "board", to be composed of three
4 members. The board shall perform the duties and respon-
5 sibilities assigned to it by this code consistent with the
6 administrative policies developed by the governor and the
7 commissioner with the assistance of the compensation
8 programs performance council.

9 Two members of such board shall be of opposite poli-
10 tics to the third, and all three shall be citizens of this state
11 who have resided therein for a period of at least five years.
12 All members of the board shall be appointed by the gov-
13 ernor and shall receive an annual salary in accordance
14 with the provisions of section two-a, article seven, chapter
15 six of this code. The salaries shall be payable in monthly
16 installments, and the members shall also be entitled to all
17 reasonable and necessary traveling and other expenses
18 actually incurred while engaged in the performance of
19 their duties. The governor shall designate one of the
20 members of the board as chairman thereof, and the board
21 shall meet at the capitol or at such other places throughout

22 the state as it may consider proper at regular sessions des-
23 ignated as "Appeal Board Hearing Days" commencing on
24 the first Tuesday of every month or the next regular busi-
25 ness day, for a period of at least three days, for the pur-
26 pose of conducting hearings on appeals, and continuing as
27 long as may be necessary for the proper and expeditious
28 transaction of the hearings, decisions and other business
29 before it. All clerical services required by the board shall
30 be paid for by the commissioner from any funds at his or
31 her disposal. The board shall, from time to time, compile
32 and promulgate such rules of practice and procedure as to
33 it shall appear proper for the prompt and efficient dis-
34 charge of its business and such rules shall be submitted
35 first to the compensation programs performance council
36 for its approval pursuant to subdivisions (b) and (c), sec-
37 tion seven, article three, chapter twenty-one-a of this code
38 and, if so approved, then to the supreme court of appeals
39 for approval, and if approved by such court shall have the
40 same force and effect as the approved rules of procedure
41 of circuit courts. By and with the consent of the commis-
42 sioner, the board shall employ such clerical staff as may
43 be necessary for the efficient conduct of its business.
44 Salaries of the board, and its employees, and all of its
45 necessary operating expenses shall be paid from the work-
46 ers' compensation fund. The board shall submit its annual
47 budget to the commissioner for inclusion as a separate
48 item in the budget estimates prepared by him or her annu-
49 ally and within the limits of such budget, all expenses of
50 the board shall be by the requisition of the commissioner.
51 Salaries of the employees of the board shall be governed
52 by the provisions of article six, chapter twenty-nine of this
53 code.

54 The board shall report monthly to the compensation
55 programs performance council on the status of all claims
56 on appeal.

**§23-5-12. Appeal to board; procedure; remand and supple-
mental hearing.**

1 (a) Any employer, employee, claimant or dependent,

2 who shall feel aggrieved at any final action of the adminis-
3 trative law judge taken after a hearing held in accordance
4 with the provisions of section nine of this article, shall have
5 the right to appeal to the board created in section eleven
6 of this article for a review of such action. The workers'
7 compensation division shall likewise have the right to
8 appeal to the appeal board any final action taken by the
9 administrative law judge. The aggrieved party shall file a
10 written notice of appeal with the office of judges directed
11 to such board, within thirty days after receipt of notice of
12 the action complained of, or in any event, regardless of
13 notice, within sixty days after the date of the action com-
14 plained of, and unless the notice of appeal is filed within
15 the time specified, no such appeal shall be allowed, such
16 time limitation being hereby declared to be a condition of
17 the right to such appeal and hence jurisdictional; and the
18 office of judges shall notify the other parties immediately
19 upon the filing of a notice of appeal. The office of judges
20 shall forthwith make up a transcript of the proceedings
21 before the office of judges and certify and transmit the
22 same to the board. Such certificate shall incorporate a
23 brief recital of the proceedings therein had and recite each
24 order entered and the date thereof.

25 (b) The board shall review the action of the adminis-
26 trative law judge complained of at its next meeting after
27 the filing of notice of appeal, provided such notice of
28 appeal shall have been filed thirty days before such meet-
29 ing of the board, unless such review be postponed by
30 agreement of parties or by the board for good cause. The
31 board shall set a time and place for the hearing of argu-
32 ments on each claim and shall notify the interested parties
33 thereof, and briefs may be filed by the interested parties in
34 accordance with the rules of procedure prescribed by the
35 board. The board may affirm the order or decision of the
36 administrative law judge or remand the case for further
37 proceedings. It shall reverse, vacate or modify the order
38 or decision of the administrative law judge if the substan-
39 tial rights of the petitioner or petitioners have been preju-
40 diced because the administrative law judge's findings are:

- 41 (1) In violation of statutory provisions; or
42 (2) In excess of the statutory authority or jurisdiction
43 of the administrative law judge; or
44 (3) Made upon unlawful procedures; or
45 (4) Affected by other error of law; or
46 (5) Clearly wrong in view of the reliable, probative and
47 substantial evidence on the whole record; or
48 (6) Arbitrary or capricious or characterized by abuse
49 of discretion or clearly unwarranted exercise of discretion.
- 50 (c) After a review of the case, the board shall sustain
51 the finding of the administrative law judge, in which case it
52 need not make findings of fact or conclusions of law, or
53 enter such order or make such award as the administrative
54 law judge should have made, stating in writing its reasons
55 therefor, and shall thereupon certify the same to the work-
56 ers' compensation division and chief administrative law
57 judge, who shall proceed in accordance therewith.
- 58 (d) Instead of affirming, reversing or modifying the
59 decision of the administrative law judge as aforesaid, the
60 board may, upon motion of any party or upon its own
61 motion, for good cause shown, to be set forth in the order
62 of the board, remand the case to the chief administrative
63 law judge for the taking of such new, additional or further
64 evidence as in the opinion of the board may be necessary
65 for a full and complete development of the facts of the
66 case. In the event the board shall remand the case to the
67 chief administrative law judge for the taking of further
68 evidence therein, the administrative law judge shall pro-
69 ceed to take such new, additional or further evidence in
70 accordance with any instruction given by the board, and
71 shall take the same within thirty days after receipt of the
72 order remanding the case, giving to the interested parties
73 at least ten days' written notice of such supplemental hear-
74 ing, unless the taking of evidence shall be postponed by
75 agreement of parties, or by the administrative law judge
76 for good cause. After the completion of such supplemen-

77 tal hearing, the administrative law judge shall, within sixty
78 days, render his or her decision affirming, reversing or
79 modifying the former action of the administrative law
80 judge, which decision shall be appealable to, and proceed-
81 ed with by the appeal board in like manner as in the first
82 instance. In addition, upon a finding of good cause, the
83 board may remand the case to the workers' compensation
84 division for further development. Any decision made by
85 the division following such a remand shall be subject to
86 objection to the office of judges and not to the board.
87 The board may remand any case as often as in its opinion
88 is necessary for a full development and just decision of the
89 case. All appeals from the action of the administrative law
90 judge shall be decided by the board at the same session at
91 which they are heard, unless good cause for delay thereof
92 be shown and entered of record. In all proceedings be-
93 fore the board, any party may be represented by counsel.

§23-5-13. Continuances and supplemental hearings; claims not to be denied on technicalities.

1 It is the policy of this chapter that the rights of claim-
2 ants for workers' compensation be determined as speedily
3 and expeditiously as possible to the end that those inca-
4 pacitated by injuries and the dependents of deceased
5 workers may receive benefits as quickly as possible in view
6 of the severe economic hardships which immediately be-
7 fall the families of injured or deceased workers. There-
8 fore, the criteria for continuances and supplemental hear-
9 ings "for good cause shown" are to be strictly construed
10 by the chief administrative law judge and his or her autho-
11 rized representatives to prevent delay when granting or
12 denying continuances and supplemental hearings. It is
13 also the policy of this chapter to prohibit the denial of just
14 claims of injured or deceased workers or their dependents
15 on technicalities.

§23-5-14. Disqualification of board members.

1 In any appeal wherein a board member is a party, or is
2 interested in the results thereof otherwise than as a general

3 subscriber to the compensation fund, or he or she is con-
4 nected with a contributor therein, or is a beneficiary there-
5 in, or is connected with a beneficiary therein, he or she
6 shall be disqualified from participating in the hearing and
7 determination of such appeal.

§23-5-15. Appeals from final decisions of board to supreme court of appeals; procedure; costs.

1 From any final decision of the board, including any
2 order of remand, an application for review may be prose-
3 cuted by either party or by the workers' compensation
4 division to the supreme court of appeals within thirty days
5 from the date thereof by the filing of a petition therefor to
6 such court against the board and the adverse party or
7 parties as respondents, and unless the petition for review is
8 filed within such thirty-day period, no such appeal or
9 review shall be allowed, such time limitation being hereby
10 declared to be a condition of the right to such appeal or
11 review and hence jurisdictional; and the clerk of such
12 court shall notify each of the respondents and the workers'
13 compensation division of the filing of such petition. The
14 board shall, within ten days after receipt of such notice,
15 file with the clerk of the court the record of the proceed-
16 ings had before it, including all the evidence. The court
17 or any judge thereof in vacation may thereupon determine
18 whether or not a review shall be granted. And if granted
19 to a nonresident of this state, he or she shall be required to
20 execute and file with the clerk before such order or review
21 shall become effective, a bond, with security to be ap-
22 proved by the clerk, conditioned to perform any judgment
23 which may be awarded against him or her thereon. The
24 board may certify to the court and request its decision of
25 any question of law arising upon the record, and withhold
26 its further proceeding in the case, pending the decision of
27 court on the certified question, or until notice that the
28 court has declined to docket the same. If a review be
29 granted or the certified question be docketed for hearing,
30 the clerk shall notify the board and the parties litigant or
31 their attorneys and the workers' compensation division, of
32 that fact by mail. If a review be granted or the certified

33 question docketed, the case shall be heard by the court in
34 the same manner as in other cases, except that neither the
35 record nor briefs need be printed. Every such review
36 granted or certified question docketed prior to thirty days
37 before the beginning of the term, shall be placed upon the
38 docket for such term. The attorney general shall, without
39 extra compensation, represent the board in such cases.
40 The court shall determine the matter so brought before it
41 and certify its decision to the board and to the division.
42 The cost of such proceedings on petition, including a
43 reasonable attorney's fee, not exceeding thirty dollars to
44 the claimant's attorney, shall be fixed by the court and
45 taxed against the employer if the latter be unsuccessful,
46 and if the claimant, or the division (in case the latter be the
47 applicant for review) be unsuccessful, such costs, not in-
48 cluding attorney's fees, shall be taxed against the division,
49 payable out of the workers' compensation fund, or shall be
50 taxed against the claimant, in the discretion of the court.
51 But there shall be no cost taxed upon a certified question.

§23-5-16. Fees of attorney for claimant; unlawful charging or receiving of attorney fees.

1 No attorney's fee in excess of twenty percent of any
2 award granted shall be charged or received by an attorney
3 for a claimant or dependent. In no case shall the fee re-
4 ceived by the attorney of such claimant or dependent be
5 in excess of twenty percent of the benefits to be paid dur-
6 ing a period of two hundred eight weeks. The interest on
7 disability or dependent benefits as provided for in this
8 chapter shall not be considered as part of the award in
9 determining any such attorney's fee. However, any con-
10 tract entered into in excess of twenty percent of the bene-
11 fits to be paid during a period of two hundred eight weeks,
12 as herein provided, shall be unlawful and unenforceable as
13 contrary to the public policy of this state and any fee
14 charged or received by an attorney in violation thereof
15 shall be deemed an unlawful practice and render the attor-
16 ney subject to disciplinary action.

CHAPTER 254

(S. B. 306—By Senators Wooton and Bailey)

[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to authorize the creation of conditional zoning for the city of Beckley

Be it enacted by the Legislature of West Virginia:

CONDITIONAL ZONING IN BECKLEY.

§1. Conditional zoning districts in Beckley.

1 The city of Beckley is hereby empowered to create
 2 conditional zoning areas with rules that provide that an
 3 area shall be used only for a designated purpose in a spe-
 4 cific location or building, subject to the condition of re-
 5 verting to the prior zoning classification if the approved
 6 use is ceased in that location or building.

CHAPTER 255

(S. B. 527—By Senators Tomblin, Mr. President, Chafin,
 Wagner and Jackson)

[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to establish the corridor G regional development authority; provide for its functions; definitions; purposes; management and control of authority vested in board; appointment and terms of members; vacancies and removals; qualifications of members; powers generally; compensation of members; expenses; authority to be a public corporation; findings respecting necessity for exercise of right of eminent domain; incurring indebtedness; rights of creditors; agreements in connection with obtaining funds; property, bonds

and obligations of authority exempt from taxation; participation and appropriations authorized; transfers and conveyances of property; contributions by member counties, local entity and others; funds and accounts; reports; audit and examination of books, records and accounts; sale or lease of property; reversion of assets upon dissolution; liberal construction; and severability of provisions.

Be it enacted by the Legislature of West Virginia:

CORRIDOR G REGIONAL DEVELOPMENT AUTHORITY.

§1. Corridor G regional development authority created; functions.

1 There is hereby created the Corridor G regional devel-
2 opment authority.

§2. Definitions.

1 For purposes of this article the following terms shall
2 have the following meanings:

3 (1) "Authority" shall mean the Corridor G regional
4 development authority;

5 (2) "Member counties" shall mean the counties of
6 Boone, Lincoln, Logan and Mingo;

7 (3) "Local entity" shall mean any county, municipality,
8 board of education, political subdivision or other govern-
9 mental agency or body;

10 (4) "Corridor G" shall mean that part of United States
11 route 119 which passes through the West Virginia counties
12 of Boone, Lincoln, Logan and Mingo.

§3. Purposes.

1 The purposes for which the authority is created are to
2 promote, develop and advance the business prosperity and
3 economic welfare of the member counties, including, but
4 not limited to, the area adjacent to Corridor G, their citi-
5 zens and their industrial complex; to encourage and assist
6 through loans, investments or other business transactions

7 in the locating of new business and industry within the
8 member counties and to rehabilitate and assist existing
9 businesses and industries therein; to stimulate and promote
10 the expansion of all kinds of business and industrial activi-
11 ty which will tend to advance business and industrial de-
12 velopment and maintain the economic stability of the
13 member counties, provide maximum opportunities for
14 employment, encourage thrift and improve the standard of
15 living of the citizens of the member counties; to cooperate
16 and act in conjunction with other organizations, federal,
17 state or local, in the promotion and advancement of indus-
18 trial, commercial, agricultural and recreational develop-
19 ments within the member counties; and to furnish money
20 and credit, land and industrial sites, technical assistance
21 and such other aid as may be deemed requisite to ap-
22 proved and deserving applicants for the promotion, devel-
23 opment and conduct of all kinds of business activity with-
24 in the member counties.

§4. Management and control of county authority vested in board; appointment and terms of members; vacancies; removal of members.

1 (a) The management and control of the authority, its
2 property, operations, business and affairs shall be lodged
3 in a board of sixteen voting members and five nonvoting
4 ex officio members to be appointed as follows: Each of
5 the county commissions of the counties of Boone, Lin-
6 coln, Logan and Mingo shall appoint four voting mem-
7 bers to the authority, one of whom shall be a member of
8 the county commission; the member of the county com-
9 mission shall serve at the will and pleasure of the county
10 commission; the initial terms of the other voting members
11 appointed by a county commission are as follows: One
12 member shall be appointed for a term of one year; one
13 member shall be appointed for a term of two years; and
14 one member shall be appointed for a term of three years;
15 all successive appointments shall be for a term of three
16 years. A member may be reappointed for such additional
17 term or terms as the appointing agency may deem proper.

18 If a member resigns, is removed or for any other reason
19 his or her membership terminates during his or her term
20 of office, a successor shall be appointed by the appointing
21 county to fill out the remainder of the term. Members in
22 office at the expiration of their respective terms shall con-
23 tinue to serve until their successors have been appointed
24 and have qualified.

25 (b) The directors of the county development authori-
26 ties of each of the member counties and the president of
27 southern West Virginia community college, or his or her
28 designee, shall be ex officio nonvoting members.

29 (c) Should a vacancy occur, the person appointed to
30 fill the vacancy shall serve only for the unexpired portion
31 thereof.

32 (d) Any voting member appointed to the authority by
33 a county commission may be removed by the appointing
34 county commission for such causes and reasons as a mem-
35 ber of such county commission may be removed from
36 office.

37 (e) All initial members shall be appointed on or before
38 the first day of July, one thousand nine hundred
39 ninety-five.

§5. Qualifications of members.

1 All members of the board of the authority shall be
2 citizens of the county in which the authority is intended to
3 operate and bona fide residents of the county by which
4 they are appointed.

§6. Authority to be a public corporation.

1 The authority and the members thereof shall constitute
2 and be a public corporation under the name provided for
3 in section one of this article, and as such shall have perpet-
4 ual succession, may contract and be contracted with, sue
5 and be sued, plead and be pleaded and have and use a
6 common seal.

§7. Powers generally.

1 The authority is hereby given power and authority as
2 follows: (1) To make and adopt all necessary bylaws,
3 rules for its organization and operations not inconsistent
4 with laws; (2) to elect its own officers, to appoint commit-
5 tees and to employ and fix compensation for personnel
6 necessary for its operation; (3) to enter into contracts with
7 any person, agency, governmental department, firm or
8 corporation, including both public and private corpora-
9 tions, and generally to do any and all things necessary or
10 convenient for the purpose of promoting, developing and
11 advancing the business prosperity and economic welfare
12 of the member counties, their citizens and industrial com-
13 plex, including, without limiting any of the foregoing, the
14 construction of any building or structure for lease to the
15 federal government or any of its agencies or departments,
16 and in connection therewith to prepare and submit bids
17 and negotiate with the federal government or such agen-
18 cies or departments in accordance with plans and specifi-
19 cations and in the manner and on the terms and conditions
20 and subject to any requirements, regulations, rules and
21 laws of the United States of America for the construction
22 of said buildings or structures and the leasing thereof to
23 the federal government or such agencies or departments;
24 (4) to amend or supplement any contracts or leases or to
25 enter into new, additional or further contracts or leases
26 upon such terms and conditions, for such consideration
27 and for such term of duration, with or without option of
28 renewal, as may be agreed upon by the authority and such
29 person, agency, governmental department, firm or corpo-
30 ration; (5) unless otherwise provided for in, and subject to
31 the provisions of, such contracts, or leases, to operate,
32 repair, manage and maintain such buildings and structures
33 and provide adequate insurance of all types, and in con-
34 nection with the primary use thereof and incidental thereto
35 to provide such services or other authorizations to any
36 person or persons, upon such terms and conditions, for
37 such consideration and for such term of duration as may
38 be agreed upon by the authority and such person, agency,

39 governmental department, firm or corporation; (6) to
40 delegate any authority given to it by law to any of its offi-
41 cers, committees, agents or employees; (7) to apply for,
42 receive and use grants-in-aid, donations and contributions
43 from any source or sources, and to accept and use be-
44 quests, devises, gifts and donations from any person, firm
45 or corporation; (8) to acquire lands and other real proper-
46 ty by gift, purchase or construction or in any other lawful
47 manner, and hold title thereto in its own name; (9) to pur-
48 chase or otherwise acquire, own, hold, sell and dispose of
49 personal property and real estate, and to own, hold, sell,
50 lease or otherwise dispose of all or part of such personal
51 property and any real property which it may own; (10)
52 pursuant to a determination by the board that there exists
53 a continuing need for programs to alleviate and prevent
54 unemployment within any or all of the member counties
55 in which the authority is intended to operate or aid in the
56 rehabilitation of areas in said county or counties which are
57 underdeveloped, decaying or otherwise economically
58 depressed, and that moneys or funds of the authority are
59 necessary therefor, to borrow money and execute and
60 deliver the authority's negotiable notes, mortgage bonds,
61 other bonds, debentures and other evidences of indebted-
62 ness therefor, on such terms as the authority shall deter-
63 mine, and give such security therefor as shall be requisite,
64 including giving a mortgage or deed of trust on its real or
65 personal property and facilities in connection with the
66 issuance of mortgage bonds; (11) to raise funds by the
67 issuance and sale of revenue bonds in the manner provid-
68 ed by the applicable provisions of article sixteen, chapter
69 eight of the code, it being hereby expressly provided that
70 a development authority created under this bill is a "gov-
71 erning body" within the definition of that term as used in
72 article sixteen, chapter eight of this code; and (12) to ex-
73 pend its funds in the execution of the powers and authori-
74 ty herein given, which expenditures, by the means autho-
75 rized herein, are hereby determined and declared as a
76 matter of legislative finding to be for a public purpose and
77 use, in the public interest, and for the general welfare of
78 the people of West Virginia, to alleviate and prevent eco-

79 nomic deterioration and to relieve the existing critical
80 condition of unemployment existing within the state.

§8. Compensation of members; expenses; excusal of member from voting where conflict of interest involved.

1 (a) No member of the authority shall receive any com-
2 pensation, whether in formal salary, per diem allowance or
3 otherwise, in connection with his or her services as such
4 member. Each member shall, however, be entitled to reim-
5 bursement by the authority for any necessary expendi-
6 tures in connection with the performance of his or her
7 general duties as such member, but only insofar as the
8 authority shall authorize.

9 (b) Each member present during any meeting of the
10 authority when any question is put shall vote unless he or
11 she is immediately and particularly interested therein.
12 Before such a question is put, any member having direct
13 personal or pecuniary interest therein shall announce this
14 fact and request to be excused from voting. The presiding
15 officer of the meeting or a majority of the members pres-
16 ent may then excuse the member from voting upon the
17 question. The disqualifying interest must be such as af-
18 fects the members directly, and not as one of a class.

§9. Findings respecting necessity for exercise of right of eminent domain; authorization to exercise right of eminent domain.

1 (a) It is hereby found and determined by the Legisla-
2 ture that in fulfilling its prescribed purposes and exercis-
3 ing its powers, including the purpose of promoting, devel-
4 oping and advancing the business prosperity and econom-
5 ic welfare of the member counties for which created by
6 acquiring lands and other real property to be furnished by
7 lease, sale or other disposition as industrial sites, the au-
8 thority is performing essential public purposes; that the
9 performance of such essential public purposes are fre-
10 quently impeded, unduly delayed, or wholly frustrated by
11 the refusal of the owner or owners of property to convey
12 title thereto, by imperfections in the title to essential land

13 and other real properties, by lost heirs or widely scattered
14 owners of undivided interests in essential lands and other
15 real properties and by owners of relatively small but essen-
16 tial parcels of a proposed land development site who re-
17 fuse to sell their land or other real property to the county;
18 and, that the exercise by the authority of the right of emi-
19 nent domain within the limitations herein provided is
20 therefore necessary and appropriate to achieve the said
21 public purposes of the authority.

22 (b) The authority is hereby authorized and empow-
23 ered to exercise the right of eminent domain if an order of
24 the county commission in which the property to be ac-
25 quired by eminent domain authorizes exercise of the right
26 of eminent domain as to any proposed acquisition: *Pro-*
27 *vided*, That prior to the issuance of the order by the coun-
28 ty commission, it shall hold a public hearing on the public
29 necessity of the exercise of eminent domain and shall
30 cause a Class II legal advertisement to be published in
31 accordance with the provisions of section two, article three,
32 chapter fifty-nine of the code of West Virginia, one thou-
33 sand nine hundred thirty-one, as amended, prior to the
34 hearing: *Provided, however*, That a separate hearing must
35 be held and a separate order promulgated for each parcel
36 over which the authority wishes to exercise the power of
37 eminent domain.

§10. Incurring indebtedness; rights of creditors.

1 The authority may incur any proper indebtedness and
2 issue any obligations and give any security therefor which
3 it may deem necessary or advisable in connection with
4 carrying out its purposes as hereinbefore mentioned. No
5 statutory limitation with respect to the nature, or amount,
6 interest rate or duration of indebtedness which may be
7 incurred by municipalities or other public bodies shall
8 apply to indebtedness of the authority. No indebtedness
9 of any nature of the authority shall constitute an indebted-
10 ness of the governing body of the member counties, or a
11 charge against any property of said county commissions
12 or other appointing agencies. The rights of creditors of

13 the authority shall be solely against the authority as a
14 corporate body and shall be satisfied only out of property
15 held by it in its corporate capacity.

§11. Agreements in connection with obtaining funds.

1 The authority may, in connection with obtaining funds
2 for its purposes, enter into any agreement with any person,
3 firm or corporation, including the federal government; or
4 any agency or subdivision thereof, containing such provi-
5 sions, covenants, terms and conditions as the authority
6 may deem advisable.

§12. Property, bonds and obligations of authority exempt from taxation.

1 The authority shall be exempt from the payment of
2 any taxes or fees to the state or any subdivision thereof or
3 to any officer or employee of the state or other subdivi-
4 sion thereof. The property of the authority shall be ex-
5 empt from all local and municipal taxes. Bonds, notes,
6 debentures and other evidence of indebtedness of the
7 authority are declared to be issued for a public purpose
8 and to be public instrumentalities and shall be exempt
9 from taxes.

§13. Participation and appropriations authorized; transfers and conveyances of property.

1 The member counties, or any one or more of them,
2 jointly and severally, are hereby authorized and empow-
3 ered to contribute by appropriation from their respective
4 general funds not otherwise appropriated to the cost of the
5 operation and projects of the authority.

6 The member counties and any local entity are hereby
7 authorized and empowered to transfer and convey to the
8 authority property of any kind acquired by said county or
9 local entity for or adaptable to use in industrial, economic
10 and recreational development, such transfers or convey-
11 ances to be without consideration or for such price and
12 upon such terms and conditions as the said county or local
13 entity deems proper.

§14. Contributions by member counties, local entity and others; funds and accounts; reports; audit and examination of books, records and accounts.

1 Contributions may be made to the authority from time
2 to time by the member counties or local entities, and by
3 any persons, firms or corporations which shall desire to do
4 so. All such funds and all other funds received by the
5 authority shall be deposited in such bank or banks as the
6 authority may direct and shall be withdrawn therefrom in
7 such manner as the authority may direct. The authority
8 shall keep strict account of all its receipts and expenditures
9 and within sixty days after the end of each fiscal year, the
10 authority shall make an annual report containing an item-
11 ized statement of its receipts and disbursements for the
12 preceding year, and such annual report shall be delivered
13 to the county commission of each member county and
14 shall be published as a Class I legal advertisement in com-
15 pliance with the provisions of section two, article three,
16 chapter fifty-nine of the code of West Virginia, and the
17 publication area for such publication shall be the member
18 counties. The books, records and accounts of the authori-
19 ty shall be subject to audit and examination by the office
20 of the state tax commissioner of West Virginia and by any
21 other proper public official or body in the manner provid-
22 ed by law.

§15. Sale or lease of property; reversion of assets upon dissolution.

1 In the event the board of the authority shall so deter-
2 mine, the authority may lease or sell all of its property and
3 equipment on such terms and conditions as the authority
4 may fix and determine. Upon the dissolution of the au-
5 thority, all of its assets and property shall revert to and
6 become the property of the member counties, unless oth-
7 erwise agreed to in writing by the board.

§16. Liberal construction.

1 It is the purpose of this bill to provide for promotion,
2 development and advancement of the business prosperity

3 and economic welfare of the member counties, their
4 citizens and their industrial complex, and this bill shall be
5 liberally construed as giving to the authority full and
6 complete power reasonably required to give effect to the
7 purposes hereof.

§17. Provisions severable.

1 The several sections and provisions of this bill are
2 severable, and if any section or provisions hereof shall be
3 held unconstitutional, all the remaining sections and
4 provisions of this bill shall nevertheless remain valid.

CHAPTER 256

(Com. Sub. for H. B. 2608—By Delegates Rowe, Wallace and Compton)

[Passed March 11, 1995; in effect ninety days 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 Carnegie
Hall Inc.; and reserving certain reversionary rights.

Be it enacted by the Legislature of West Virginia:

GREENBRIER COUNTY.

**§1. County commission authorized to convey land to Carnegie
Hall Inc., a corporation.**

1 The Legislature hereby recognizes that Carnegie Hall
2 Inc., a corporation, has operated Carnegie Hall since
3 February 1, 1983, as a public cultural center for the
4 advancement of the arts while making significant
5 improvements to the historical structure known as
6 Carnegie Hall providing faithful stewardship over this
7 valuable historical and educational community asset. The
8 Legislature further recognizes that ownership of Carnegie

9 Hall and the adjacent real estate by Carnegie Hall Inc. will
10 enable Carnegie Hall Inc. to attract more private sector
11 financial support to enable an expansion of its physical
12 structure as well as its arts and educational programming
13 therefore benefiting children and adults who visit Carnegie
14 Hall and utilize the facility and programs.

15 Accordingly, the Legislature hereby finds and
16 declares that transfers of any property, real or personal,
17 made by county commissions to any person, organization
18 or corporation for the furtherance of such activities
19 promotes the cultural and educational welfare of the
20 public and, therefore, is a public purpose.

21 The county commission of Greenbrier County is
22 hereby authorized and empowered to transfer and convey
23 unto Carnegie Hall Inc., a corporation, all that certain
24 parcel of land situated within Lewisburg, Lewisburg
25 municipal tax district, in central magisterial district of
26 Greenbrier County, West Virginia, more particularly
27 bounded and described as:

28 **DESCRIPTION OF PARCEL**
29 **FOR CARNEGIE HALL INC.**

30 A certain tract or parcel of land situated in Lewisburg
31 Corporation, Greenbrier County, West Virginia, and
32 located on the west side of Church Street, and more
33 particularly described as follows:

34 Beginning at PK nail set on the western right-of-way
35 of Church Street and on the northern edge of a private
36 drive on the property of State of West Virginia,
37 Department of Mental Health; thence leaving right-of-way
38 of Church Street and through the property of State of
39 West Virginia N 48 02 54 W 121.14 to a PK nail set in
40 said private drive; thence N 18 15 28 W 23.60 to a PK nail
41 set in said private drive; thence N 09 55 12 E 29.30 to a
42 rebar set on the edge of said private drive; thence N 27 16
43 23 E 133.86 to a rebar set; thence S 67 13 58 E passing a
44 rebar set at 206.10, in all 208.11 to a point on face of a

45 rock wall, on the western right-of-way of Church Street,
46 said point is located S 41 39 30 W 397.87 from a West
47 Virginia Department of Highways Concrete Monument at
48 the intersection of Washington Street and Church Street;
49 thence with right-of-way of Church Street S 43 17 19 W
50 234.50 to the beginning and containing 0.80 acre more or
51 less as surveyed by Brackenrich and Associates, Incor-
52 porated in June, 1991.

53 Any proper conveyance made by the county
54 commission of Greenbrier county transferring ownership
55 of the above-described parcel to Carnegie Hall Inc. shall
56 contain a provision that ownership of such property shall
57 revert to the county commission should the land cease to
58 be used for the purposes heretofore stated.

RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 2

(By Mr. Speaker, Mr. Chambers, and Delegates Anderson,
Ashley, Azinger, Beane, Border and Kime)

[Adopted January 12, 1995]

Commemorating the passing of Robert William Burk, Jr.,
Republican Leader of the West Virginia House of Delegates.

On Sunday the 20th day of November, 1994, the City of Parkersburg, the County of Wood, the State of West Virginia and the West Virginia Legislature suffered the untimely loss of an outstanding public servant with the passing of the Honorable Robert William Burk, Jr.

Robert W. Burk, Jr., was born on December 16, 1939, in Parkersburg, West Virginia, the son of Robert W. and Evelyn Simonton Burk. Bob grew up in Parkersburg and was a graduate of Parkersburg High School. He was also a graduate of Duke University and the West Virginia University College of Law. After graduating from law school, Bob returned to Parkersburg and joined his father in a successful law practice.

Bob Burk was a special individual who had a great desire to help others. His compassion and concern for the welfare of the citizens of Wood County and West Virginia inspired him to run for public office in 1966. That year, at the ripe old age of 26, he was elected to the House of Delegates. He was reelected in 1968 and in 1969 he was appointed to the West Virginia Senate. After the unexpected death of his father in 1970, Bob put his political career on hold and devoted his time and energy to the practice of law.

Bob's willingness to serve and his dedication to the people of his district and his state never waned and he was more than happy to answer the call when he was appointed to the House of Delegates in January, 1986. He was then elected to the House in 1986 and reelected to four consecutive terms. In 1988, Bob was

elected as the House Republican Leader. Affectionately known to his Republican colleagues as "Boss Burk", he was reelected to that position in 1990 and 1992.

Bob Burk truly loved the Legislature and the legislative process. He never chastised or criticized a legislator for an opposing position, and he was willing to work with any member regardless of political affiliation to find solutions to the problems confronting our state. A "statesman" is defined as "one who exercises political leadership wisely without narrow partisanship". Bob Burk was a statesman. Always considerate, often sentimental and ever mindful of the needs of others, Bob Burk was respected and liked by everyone.

In addition to his public service, Bob was an active member of the First Presbyterian Church. He also dedicated much time to various causes and was a member of numerous civic, social and public service organizations, including the Parkersburg Rotary Club, the Chamber of Commerce of the Mid-Ohio Valley, the Wood County Recreation Commission and the Wood County Bar Association. He was a member of BPOE 198 and served on the Advisory Board of SW Resources, the board of directors of Commercial Bank, as chairman of the Parkersburg Community Foundation and on the board of the Parkersburg Boys Club.

While Bob Burk accomplished much in his life, he was most proud of his three sons, Dr. Robert W. "Robin" Burk, III of Birmingham, Alabama, Christopher Barrett Burk of Orlando, Florida, and Eric Leighton Burk of Morgantown, West Virginia. Perhaps his greatest regret would have been that he died just a few weeks before the birth of his first grandchild, Robert William Burk, IV.

Through his years of public service Bob Burk touched and enriched many lives, and those who had the opportunity to know and work with him were truly fortunate. He devoted many hours to serving his constituents, his district, his state and its citizens and it is most fitting that we honor his memory; therefore, be it

Resolved by the Legislature of West Virginia:

That deepest regret and sorrow are hereby expressed by the members of this body at the passing of Robert W. Burk, Jr., leader, statesman and friend; and, be it

Further Resolved, That the Clerk of the House of Delegates be hereby directed to forward copies of this resolution to the members of his family.

HOUSE CONCURRENT RESOLUTION 8

(By Mr. Speaker, Mr. Chambers, and Delegates Ball, Osborne, Frederick and Talbott)

[Adopted January 24, 1995]

Commemorating the passing of Odell H. Huffman, former member of the West Virginia House of Delegates, from the County of Mercer.

On the third day of October, one thousand nine hundred ninety-four, the City of Princeton, the County of Mercer and the citizens of West Virginia suffered a great loss at the death of an outstanding public servant and esteemed member of the West Virginia House of Delegates, the Honorable Odell H. Huffman.

Odell H. Huffman was born February 18, 1923, in Wyoming County, West Virginia. The son of Mitchell O. and Callie Whittington Huffman, he graduated from Mullens High School, attended Concord College and graduated from the West Virginia College of Law.

Odell married Geraldine Cline in 1950, and they were the parents of four children: Catherine Folk, David, Bill and John. Odell was a loving father and justifiably proud of his family. He reveled in his delight over his grandchildren: Benjamin, Christine, John, Sarah, Mitchel, Rebecca, Jamie, Mark and Allison. They were a great joy in his life.

Odell was an active member of the First Methodist Church in Princeton, where he and his family regularly worshipped.

A strong advocate for the business community, his desire to serve the people of Mercer County led him into the political arena where he served with distinction.

First elected to the House of Delegates in 1968, he was reelected in 1970. He was elected to the West Virginia State Senate in 1972 and served three four-year terms there before running for Judge of the Circuit Court.

Following a six-year hiatus, he was again elected to the House of Delegates in 1990 and in 1992. Odell served the House as Chairman of the Committee on Constitutional Revision, Vice Chairman of the Committee on the Judiciary during the 60th Legislature, Vice Chairman of the Committee on Local Government during the 61st and 62nd Legislatures and as Chairman of the Committee on Health during the 61st and 62nd Legislatures.

Odell was a staunch conservative and was an organizer of the Conservative Caucus in the House of Delegates, serving as Chairman of that Caucus.

Odell H. Huffman served the citizens of Mercer County in many public service projects. He was a member of the Mercer County Airport Authority, former mayor of the City of Princeton, an organizer of the Princeton Community Hospital Association, Inc., an organizer of Princeton Publishing Company and held membership in the Mercer County and West Virginia State Bar Associations.

Odell served his country during the Second World War in the Army Air Force.

A man of great integrity, Odell H. Huffman was honest and sincere in his dealings with others. He was a warm and friendly man who enjoyed conversing with others. He would attentively listen to an opposing position or view and diplomatically explain his own without causing offense.

His fascination with the legislative process and his subsequent study thereof caused him to be known as one of the most able of legislators.

Odell H. Huffman was an upright citizen of the State he loved and he will be missed not only in the Legislature but also by his host of friends in Mercer County and throughout the State of West Virginia; therefore, be it

Resolved by the Legislature of West Virginia:

That regret and deep sorrow are hereby expressed at the passing of Odell H. Huffman, legislator, public servant and

friend and heartfelt condolences are hereby extended to his family; and, be it

Further Resolved, That the Clerk of the House of Delegates forward copies of this resolution to the family of Odell H. Huffman.

HOUSE CONCURRENT RESOLUTION 46

(By Delegates Douglas, Manuel, Hunt and Compton)

[Adopted March 11, 1995]

Requesting the Joint Committee on Government and Finance to study drug pricing practices in the State of West Virginia and the effect of such practices on independent and retail pharmacists and on the elderly, uninsured and working poor; and the impact of drug equalization legislation on consumers, pharmacies, health care providers and the insurance market.

WHEREAS, Many West Virginia residents are consumers of pharmaceutical drugs prescribed by health care providers and purchased in this State from various sources, including independent pharmacies, retailers, wholesalers and mail-order companies; and

WHEREAS, The Legislature is concerned that the pricing of pharmaceutical drugs sold and marketed to various entities is not being done on an equal basis, resulting in cost-shifting of the price of such drugs which is ultimately borne by the consumers; and

WHEREAS, The Legislature is concerned that independent pharmacies may ultimately suffer from inequalities in drug pricing to the extent that such pharmacies may not be able to continue in business; and

WHEREAS, The cost of pharmaceutical drugs directly affects the cost of health care and insurance in this State; and

WHEREAS, Legislation proposing mandated equalization of drug prices has been presented to the Legislature in this State and in other states; 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 pharmaceutical drug pricing practices in this State and the specific criteria used as a basis for establishing such prices; to study the impact of discount practices in this State upon independent pharmacies, retail pharmacies and consumers; to determine the need for legislation requiring equalization of drug prices and the impact of such legislation on independent pharmacies, retailers, the elderly, the uninsured, the working poor, health care providers, insurers, Medicaid and the Public Employees Insurance Agency; to determine the impact of equalization of drug prices upon manufacturers, wholesalers, retailers and any other entity affected by the manufacture, marketing or distribution of such drugs; and to make recommendations to the Legislature regarding the same; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 1996, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION 28

(By Senators Helmick, Ross, Anderson and Sharpe)

[Adopted March 8, 1995]

Approving the purpose and amount of certain projects of the West Virginia regional jail and correctional facility authority.

WHEREAS, The West Virginia Legislature, by Senate Concurrent Resolution No. 30, dated the first day of March, one thousand nine hundred ninety, has approved certain projects for funding by the authority from the proceeds of the issuance of certain special revenue bonds; and

WHEREAS, The West Virginia division of corrections has obtained the title to the property previously known as Denmar

hospital and has converted that property to a correctional facility; and

WHEREAS, The regional jail and correctional facility authority board has, by proper resolution, amended the master plan for correctional facilities and regional jails to include the Denmark correctional center; and

WHEREAS, The regional jail and correctional facility authority has received bids for the renovation of certain portions of the Denmark correctional center; and

WHEREAS, The further progress toward completion of the renovation of the Denmark correctional center awaits the approval of the Legislature as required by section five-m, article twenty, chapter thirty-one of the code of West Virginia for the inclusion of the Denmark correctional center within the projects authorized to be funded by bond proceeds; therefore, be it

Resolved by the Legislature of West Virginia:

That the inclusion of the Denmark correctional center as a project within the series 1990A revenue bonds issued by the state building commission is hereby approved in the sum certain of \$400,000 which sum shall include both construction costs and architectural fees for the project. It is the specific intent of the Legislature that the authority and its bond counsel may use this resolution and sufficient authority to amend necessary documents including the bond indenture agreement to permit the expenditure of bond revenue for this renovation project; and, be it

Further Resolved, That the Clerk of the Senate is hereby requested to forward a copy of this resolution to the governor, the chief justice of the West Virginia supreme court of appeals, the secretary of the department of military affairs and public safety and the chairman of the regional jail and correctional facility authority.

SENATE CONCURRENT RESOLUTION 32

(By Senators Love, Schoonover, Sharpe, Deem

Minear and Ross)

[Adopted March 6, 1995]

Memorializing the life and public service of the late Howard W. Carson, former presiding officer and clerk of the West Virginia Senate and distinguished West Virginian.

WHEREAS, Howard W. Carson died in Charlottesville, Virginia, on August 9, 1994, at age 84 after a distinguished life and a long bout with rheumatoid arthritis. Charlottesville had been his home since his retirement from public life more than twenty years ago; and

WHEREAS, Howard W. Carson was born in Montgomery, Fayette County, West Virginia, on April 30, 1910, attended the Montgomery public schools and entered Washington and Lee University, Lexington, Virginia, where he was awarded an A.B. Degree in 1931 and an L.L.B. Degree in 1933; and

WHEREAS, Howard W. Carson practiced law throughout his professional life in Fayetteville, West Virginia, and was elected to three terms as prosecuting attorney of Fayette County. He was an active democrat and served as chairman of the Fayette County Democratic Executive Committee. The United Methodist Church and many professional and civic groups benefited from his active membership; and

WHEREAS, Howard W. Carson was first elected to the West Virginia Senate in 1956, and upon reelection, served two more terms through 1968, representing the eleventh senatorial district comprised of Fayette and Greenbrier counties; and

WHEREAS, A wide range of legislation was sponsored by Howard W. Carson during his twelve years as a member of the Senate and many of his proposals were enacted into law, including bills in such areas as education, coal mining, highway development and airports; and

WHEREAS, Preservation of the Senate as an important institution of state government was a main focus of his service as a senator and he had equal dedication to the rights of each individual member to have full opportunity to be heard and to be treated with respect, all within a fair application of the rules; and

WHEREAS, In 1968, Howard W. Carson decided not to run for a fourth Senate term, but, instead, was a candidate for the office of attorney general of West Virginia in the democratic primary election. He returned to the Senate on January 12, 1972, when he was elected clerk of the Senate to fill an unexpired term. He was reelected in 1973 and served a full two-year term through 1974; and

WHEREAS, Howard W. Carson was dedicated to professionalism as a practicing attorney, to the West Virginia Senate and, more personally, to his family: his wife, Sunny, whom he married in 1939, his son, John Carson of Morgantown, West Virginia, and his daughter, Linda Carson Hunt, of Charlottesville, Virginia; therefore, be it

Resolved by the Legislature of West Virginia:

That this memorial is hereby adopted to express and to record the high esteem in which the late Howard W. Carson is held and to extend to his wife and family the Legislature's sympathy and assurance that many share in the great loss suffered upon his death; and, be it

Further Resolved, That the Clerk of the Senate is hereby requested to forward a copy of this resolution to the wife and children of Howard W. Carson.

SENATE CONCURRENT RESOLUTION 51

(By Senator Craig)

[Adopted March 11, 1995]

Directing the joint committee on government and finance to make a study of the West Virginia parkways, economic development and tourism authority and its broad powers to develop and maintain tourism and economic development projects.

WHEREAS, The West Virginia parkways, economic development and tourism authority has been given broad authority to promote and enhance the tourism industry, to develop and improve tourist facilities in the state and to promote agricultural, economic and industrial development of the state; and

WHEREAS, The West Virginia parkways, economic development and tourism authority spent twenty-eight million four hundred ninety thousand dollars to construct the Beckley, Morton and Bluestone travel plazas, receives nine hundred fifty thousand dollars annually from concession revenues from those plazas and spends approximately three hundred fifty-one thousand six hundred dollars to maintain those plazas; and

WHEREAS, The West Virginia parkways, economic development and tourism authority is currently spending thirty million dollars to construct Tamarack Craft Center at Beckley; and

WHEREAS, The West Virginia parkways, economic development and tourism authority has the authority to issue revenue bonds in addition to collecting tolls, fees, rents and other revenues; and

WHEREAS, The West Virginia parkways, economic development and tourism authority is entering into projects to develop and maintain tourist facilities and economic development projects with very little oversight and is entering into concession contracts without following normal state procedures, including competitive bidding; and

WHEREAS, The citizens of this state who are paying the costs of the parkway projects may not be receiving the best return on their investment; therefore, be it

Resolved by the Legislature of West Virginia:

That the joint committee on government and finance is hereby directed to appoint an interim committee to study the West Virginia parkways, economic development and tourism authority; the broad authority it has to spend the state's revenues; whether the citizens of this state are getting a reasonable return on their money; and to make recommendations to the Legislature regarding the same; and, be it

Further Resolved, That the interim committee appointed by the joint committee on government and finance shall consist of twelve members, six of whom shall be members of the Senate and six of whom shall be members of the House of Delegates; and, be it

Further Resolved, That the joint committee on government and finance report to the regular session of the Legislature, 1996,

on its findings, conclusions and recommendations, together with any drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the joint committee on government and finance.

HOUSE JOINT RESOLUTION 2

(By Delegates Love, Pettit, Givens, Ennis, J. Martin,
Michael and Mezzatesta)

[Adopted March 2, 1995]

Proposing an amendment to the Constitution of the State of West Virginia, amending article six thereof, by adding thereto a new section, designated section fifty-five, relating to revenues accruing from the sales of all permits and licenses to hunt, trap, fish or otherwise hold or capture fish and wildlife resources and money reimbursed and granted by the federal government for fish and wildlife conservation; providing that said revenues and properties are to be used solely for the conservation, restoration, management, educational benefit, recreational use and scientific study of the state's fish and wildlife resources; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such 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-six, which proposed amendment is that article six thereof be amended by adding thereto a new section, designated section fifty-five, to read as follows:

ARTICLE VI. THE LEGISLATURE.

55. Revenues and properties applicable to fish and wildlife conservation.

Fees, moneys, interest or funds arising from the sales of all permits and licenses to hunt, trap, fish or otherwise hold or capture fish and wildlife resources and money reimbursed and granted by the federal government for fish and wildlife conservation shall be expended solely for the conservation, restoration, management, educational benefit, recreational use and scientific study of the state's fish and wildlife, including the purchases or other acquisition of property for said purposes and for the administration of the laws pertaining thereto and for no other purposes. In the event that any such properties or facilities are converted to uses other than those specified in this section and the conversion jeopardizes the availability of the receipt of federal funds by the state, the agency of the state responsible for the conservation of its fish and wildlife resources shall receive fair market compensation for the converted properties or facilities. Such compensation shall be expended only for the purposes specified in this section. All moneys shall be deposited within the state treasurer in the "license fund" and other specific funds created especially for fish and wildlife conservation and the public's use of fish and wildlife. Nothing in this section shall prevent the Legislature from reducing or increasing the amount of any permit or license to hunt, trap, fish or otherwise hold or capture fish or wildlife or to repeal or enact additional fees or requirements for the privilege of hunting, trapping, fishing or to otherwise hold or capture fish or wildlife.

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. 1" and designated as the "Fish and Wildlife Conservation Revenue Amendment" and the purpose of the proposed amendment is summarized as follows: "To require that all revenues arising from the sales of all permits and licenses to hunt, trap, fish or otherwise hold or capture fish and wildlife resources shall be expended for the control, management, restoration, conservation, regulation of the fish and wildlife of the state, including the acquisitions of property for fish and wildlife management and for the administration of the laws pertaining thereto and for no other purposes."

SENATE JOINT RESOLUTION 8

(By Senators Craigo, Manchin, Blatnik, Love,
Jackson, Sharpe, Kimble, Minear, Chafin, Boley,
Bailey, Helmick, Whitlow, Walker,
Plymale and Macnaughtan)

[Adopted March 11, 1995]

Proposing an amendment to the Constitution of the State of West Virginia, amending article six thereof, by adding thereto a new section, designated section fifty-five, relating to revenues accruing from the sales of all specialized nongame wildlife motor vehicle registration plates; providing that revenues collected in excess of those dedicated to the road fund are to be used solely for the conservation, restoration, management, educational benefit, recreational use and scientific use of the state's nongame wildlife resources; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such 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-six, which proposed amendment is that article six thereof be amended by adding thereto a new section, designated section fifty-five, to read as follows:

ARTICLE VI. THE LEGISLATURE.**55. Revenues applicable to nongame wildlife resources in the state.**

Notwithstanding any provision of section fifty-two of article six of this Constitution, the Legislature may, by general law, provide funding for conservation, restoration, management, educational benefit and recreational and scientific use of nongame wildlife resources in this state by providing a specialized nongame wildlife motor vehicle registration plate for motor vehicles registered in this state. The registration plate shall be issued on a voluntary basis pursuant to terms and conditions

provided by general law for an additional fee above the basic registration and license fees and costs otherwise dedicated to the road fund. Any moneys collected from the issuance of these specialized registration plates in excess of those revenues otherwise dedicated to the road fund shall be deposited in a special revenue account in the state treasury and expended only in accordance with appropriations made by the Legislature as provided by general law for the conservation, restoration, management, educational benefit and recreational and scientific use of nongame wildlife resources in this state. All moneys collected which are in excess of the revenues otherwise dedicated to the road fund shall be deposited by the state treasurer in the "nongame wildlife fund" created especially for nongame wildlife resources in this state.

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. 1" and designated as the "Nongame Wildlife and Natural Heritage Revenue Amendment" and the purpose of the proposed amendment is summarized as follows: "To require that revenue funds accruing from the sales of all specialized nongame wildlife motor vehicle registration plates which are in excess of revenues otherwise dedicated to the road fund shall be expended solely for the management, restoration, conservation, educational benefit, and recreational and scientific use of nongame wildlife resources of the state and for no other purposes."

HOUSE RESOLUTION 11

(By Mr. Speaker, Mr. Chambers, and Delegate Rowe)

[Adopted February 12, 1995]

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 24th day of February, 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-fifth 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-fifth 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 10

(By Senators Miller, Love, Dittmar, Oliverio, Plymale,
Schoonover, Whitlow, Buckalew and Dugan)

[Adopted February 8, 1995]

Directing the division of motor vehicles, division of public safety, insurance commissioner and all insurance companies issuing vehicle insurance in this state to develop a plan for a system to ensure that every vehicle in this state has insurance.

WHEREAS, There is no system in place to ensure that every vehicle in this state has insurance; and

WHEREAS, A computer network or any other means deemed necessary is needed to ensure that state residents are complying with the law of required vehicle insurance; and

WHEREAS, A plan should be developed whereby the division of motor vehicles and all insurance companies issuing vehicle insurance in this state are linked by computer; and

WHEREAS, This plan should include recommendations from the division of public safety and the insurance commissioner and the cost to implement a new system; therefore, be it

Resolved by the Senate:

That a plan for computerizing the linkage between the division of motor vehicles, the division of public safety, the insurance commissioner and all insurance companies issuing vehicle insurance in this state showing what persons have vehicle insurance be developed by the division of motor vehicles, the division of public safety, the insurance commissioner and all insurance companies issuing vehicle insurance in this state, and be presented to the joint committee on government and finance by January, one thousand nine hundred ninety-six; and, be it

Further Resolved, That this plan for computerization include the cost of the project and any other means needed to ensure compliance with the insurance coverage law.

SENATE RESOLUTION 17

(By Senators Helmick, Ross, Minear, Miller, Anderson, Blatnik, Dittmar, Plymale, Love, Schoonover, Sharpe, Dugan, Yoder, Scott, Kimble, Whitlow, Manchin, Jackson, Bowman, Wagner, Bailey and Buckalew)

[Adopted February 23, 1995]

Supporting the completion of Corridor H connecting Elkins, West Virginia, to Strasburg, Virginia.

WHEREAS, There is a long-term need in north central West Virginia for world class transportation infrastructure and the completion of Corridor H connecting Elkins, West Virginia, to Strasburg, Virginia; and

WHEREAS, From Elkins to I-81, the number of accidents will be reduced by thirty-six percent and fatal accidents by fifty percent and business and services to the county will increase due to the traffic flow; and

WHEREAS, More areas identified as growth potentials will be reached and the vast productive capacity of the northeast will be reached by West Virginia's timber and extractive industries. Other West Virginia industries will be served by allowing economical access to the wealthy markets as close as one hundred fifty miles away and tourism will be served by the influx of visitors from those markets; therefore, be it

Resolved by the Senate:

That the completion of Corridor H connecting Elkins, West Virginia, to Strasburg, Virginia, is hereby supported; and, be it

Further Resolved, That the Clerk is hereby requested to forward a copy of this resolution to the governor and to members of West Virginia's congressional delegation.

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 1995

HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
2001	143	2276	223	2559	95
2004	8	2277	236	2560	120
2013	144	2278	235	2569	206
2020	93	2279	234	2574	49
2023	53	2298	82	2575	13
2026	123	2322	125	2576	15
2027	165	2325	224	2577	10
2033	167	2328	110	2578	166
2034	79	2331	81	2580	74
2037	130	2338	2	2585	59
2042	186	2339	83	2586	72
2045	252	2348	196	2599	84
2046	218	2350	148	2600	92
2050	97	2365	201	2608	256
2051	210	2375	199	2619	140
2059	46	2376	89	2632	129
2071	116	2397	141	2648	174
2073	90	2402	56	2654	44
2080	179	2413	135	2655	18
2085	94	2418	169	2656	33
2096	47	2425	5	2657	32
2097	208	2429	109	2658	14
2099	173	2451	193	2659	229
2130	112	2471	4	2660	230
2134	151	2427	204	2700	98
2216	181	2434	238	2702	80
2219	17	2476	121	2722	122
2220	11	2482	233	2732	119
2221	7	2491	131	2743	57
2222	19	2492	65	2793	20
2226	250	2501	150	2794	9
2230	185	2505	132	2795	45
2233	87	2506	21	2796	161
2241	69	2507	12	2808	215
2242	117	2508	16	2820	251
2263	86	2515	207	2823	156
2264	134	2518	62	2824	225
2265	137	2519	114	2829	243
2266	136	2523	103	2830	245
2267	241	2548	100	2832	183
2270	240	2557	128	2833	147
2272	180	2558	220	2835	78

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 1995

SENATE BILLS

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13	191	238	159	441	249
14	58	241	51	442	75
16	176	248	163	443	48
22	63	250	253	447	190
24	108	252	85	458	107
25	197	254	50	465	184
27	55	255	160	467	202
33	192	258	213	482	115
38	228	259	146	499	66
39	231	260	73	524	239
53	96	261	77	527	255
64	157	262	211	547	99
88	154	272	212	550	70
105	153	274	172	556	25
112	158	277	244	557	26
131	155	281	113	558	29
133	152	287	105	559	37
141	3	306	254	560	35
145	111	309	133	561	24
148	118	310	170	562	27
158	200	313	104	563	126
160	54	323	198	564	247
161	127	340	162	565	68
172	246	341	222	567	88
173	248	343	205	573	101
185	149	349	216	574	76
187	168	351	1	576	209
188	175	354	61	578	221
192	227	359	214	579	219
193	226	364	194	584	39
194	232	366	60	585	38
195	195	371	52	586	31
196	142	377	138	587	23
202	217	379	67	588	30
207	242	399	203	589	41
209	171	402	64	590	28
211	182	414	145	591	34
212	187	416	6	592	36
216	102	419	106	593	22
223	189	430	124	594	43
224	177	431	164	595	42
226	139	432	71	596	40
		433	237		

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Regular Session, 1995

House Bills = 4 Digits

Senate Bills = 3 Digits

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
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2	2338	50	254	98	2700
3	141	51	241	99	547
4	2471	52	371	100	2548
5	2425	53	2023	101	573
6	416	54	160	102	216
7	2221	55	27	103	2523
8	2004	56	2402	104	313
9	2794	57	2743	105	287
10	2577	58	14	106	419
11	2220	59	2585	107	458
12	2507	60	366	108	24
13	2575	61	354	109	2429
14	2658	62	2518	110	2328
15	2576	63	22	111	145
16	2508	64	402	112	2130
17	2219	65	2492	113	281
18	2655	66	499	114	2519
19	2222	67	379	115	482
20	2793	68	565	116	2071
21	2506	69	2241	117	2242
22	593	70	550	118	148
23	587	71	432	119	2732
24	561	72	2586	120	2560
25	556	73	260	121	2476
26	557	74	2580	122	2722
27	562	75	442	123	2026
28	590	76	574	124	430
29	558	77	261	125	2322
30	588	78	2835	126	563
31	586	79	2034	127	161
32	2657	80	2702	128	2557
33	2656	81	2331	129	2632
34	591	82	2298	130	2037
35	560	83	2339	131	2491
36	592	84	2599	132	2505
37	559	85	252	133	309
38	585	86	2263	134	2264
39	584	87	2233	135	2413
40	596	88	567	136	2266
41	589	89	2376	137	2265
42	595	90	2073	138	377
43	594	91	237	139	226
44	2654	92	2600	140	2619
45	2795	93	2020	141	2397
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147	2833	185	2230	222	341
148	2350	186	2042	223	2276
149	185	187	212	224	2325
150	2501	188	434	225	2824
151	2134	189	223	226	193
152	133	190	447	227	192
153	105	191	13	228	38
154	88	192	33	229	2659
155	131	193	2451	230	2660
156	2823	194	364	231	39
157	64	195	195	232	194
158	112	196	2348	233	2482
159	238	197	25	234	2279
160	255	198	323	235	2278
161	2796	199	2375	236	2277
162	340	200	158	237	433
163	248	201	2365	238	2434
164	431	202	467	239	524
165	2027	203	399	240	2270
166	2578	204	2427	241	2267
167	2033	205	343	242	207
168	187	206	2569	243	2829
169	2418	207	2515	244	277
170	310	208	2097	245	2830
171	209	209	576	246	172
172	274	210	2051	247	564
173	2099	211	262	248	173
174	2648	212	272	249	441
175	188	213	258	250	2226
176	16	214	359	251	2820
177	224	215	2808	252	2045
178	8	216	349	253	250
179	2080	217	202	254	306
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