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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.

(a) No policy or contract of bodily injury liability insurance, or of property damage liability insurance, covering liability arising from the ownership, maintenance or use of any motor vehicle, shall be issued or delivered in this state to the owner of such vehicle, or shall be issued or delivered by any insurer licensed in this state upon any motor vehicle for which a certificate of title has been issued by the division of motor vehicles of this state, unless it shall contain a provision insuring the named insured and any other person, except a bailee for hire and any persons specifically excluded by any restrictive endorsement attached to the policy, responsible for the use of or using the motor vehicle with the consent, expressed or implied, of the named insured or his spouse against liability for death or bodily injury sustained or loss or damage occasioned within the coverage of the policy or contract as a result of negligence in the operation or use of such vehicle by the named insured or by such person: Provided, That
in any such automobile liability insurance policy or contract, or endorsement thereto, if coverage resulting from the use of a nonowned automobile is conditioned upon the consent of the owner of such motor vehicle, the word "owner" shall be construed to include the custodian of such nonowned motor vehicles. Notwithstanding any other provision of this code, if the owner of a policy receives a notice of cancellation pursuant to article six-a of this chapter and the reason for the cancellation is a violation of law by a person insured under the policy, said owner may by restrictive endorsement specifically exclude the person who violated the law and the restrictive endorsement shall be effective in regard to the total liability coverage provided under the policy, including coverage provided pursuant to the mandatory liability requirements of section two, article four, chapter seventeen-d of this code, but nothing in such restrictive endorsement shall be construed to abrogate the "family purpose doctrine".

(b) Nor shall any such policy or contract be so issued or delivered unless it shall contain an endorsement or provisions undertaking to pay the insured all sums which he shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, within limits which shall be no less than the requirements of section two, article four, chapter seventeen-d of this code, as amended from time to time: Provided, That such policy or contract shall provide an option to the insured with appropriately adjusted premiums to pay the insured all sums which he shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle up to an amount of one hundred thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, in the amount of three hundred thousand dollars because of bodily injury to or death of two or more persons in any one accident and in the amount of fifty thousand dollars because of injury to or destruction of property of others in any one accident: Provided, however, That such endorsement or provisions may exclude the first three hundred dollars of property damage resulting from the negligence of an uninsured motorist: Provided further, That
such policy or contract shall provide an option to the
insured with appropriately adjusted premiums to pay the
insured all sums which he shall legally be entitled to re-
cover as damages from the owner or operator of an unin-
sured or underinsured motor vehicle up to an amount not
less than limits of bodily injury liability insurance and
property damage liability insurance purchased by the
insured without setoff against the insured's policy or any
other policy. Regardless of whether motor vehicle cover-
age is offered and provided to an insured through a multi-
ple vehicle insurance policy or contract, or in separate
single vehicle insurance policies or contracts, no insurer or
insurance company providing a bargained for discount
for multiple motor vehicles with respect to underinsured
motor vehicle coverage shall be treated differently from
any other insurer or insurance company utilizing a single
insurance policy or contract for multiple covered vehicles
for purposes of determining the total amount of coverage
available to an insured. "Underinsured motor vehicle"
means a motor vehicle with respect to the ownership, oper-
ation, or use of which there is liability insurance applicable
at the time of the accident, but the limits of that insurance
are either: (i) Less than limits the insured carried for un-
derinsured motorists' coverage; or (ii) has been reduced
by payments to others injured in the accident to limits less
than limits the insured carried for underinsured motorists'
coverage. No sums payable as a result of underinsured
motorists' coverage shall be reduced by payments made
under the insured's policy or any other policy.

(c) As used in this section, the term "bodily injury"
shall include death resulting therefrom and the term
"named insured" shall mean the person named as such in
the declarations of the policy or contract and shall also
include such person's spouse if a resident of the same
household and the term "insured" shall mean the named
insured and, while resident of the same household, the
spouse of any such named insured and relatives of either,
while in a motor vehicle or otherwise, and any person,
except a bailee for hire, who uses, with the consent, ex-
pressed or implied, of the named insured, the motor vehi-
cle to which the policy applies or the personal representa-
tive of any of the above; and the term "uninsured motor
vehicle" shall mean a motor vehicle as to which there is no:
(i) Bodily injury liability insurance and property damage
liability insurance both in the amounts specified by sec-
tion two, article four, chapter seventeen-d of this code, as
amended from time to time; or (ii) there is such insurance,
but the insurance company writing the same denies cover-
age thereunder; or (iii) there is no certificate of
self-insurance issued in accordance with the provisions of
said section. A motor vehicle shall be deemed to be unin-
insured if the owner or operator thereof be unknown: Pro-
vided, That recovery under the endorsement or provisions
shall be subject to the conditions hereinafter set forth.

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

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

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

(i) Within twenty-four hours after the insured discover,
and being physically able to report the occurrence of such
accident, the insured, or someone in his behalf, shall report
the accident to a police, peace or judicial officer, or to the
commissioner of motor vehicles, unless the accident shall
already have been investigated by a police officer;
(ii) Notify the insurance company, within sixty days after such accident, that the insured or his legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unknown and setting forth the facts in support thereof; and, upon written request of the insurance company communicated to the insured not later than five days after receipt of such statement, shall make available for inspection the motor vehicle which the insured was occupying at the time of the accident; and

(iii) Upon trial establish that the motor vehicle, which caused the bodily injury or property damage, whose operator is unknown, was a "hit and run" motor vehicle, meaning a motor vehicle which causes damage to the property of the insured arising out of physical contact of such motor vehicle therewith, or which causes bodily injury to the insured arising out of physical contact of such motor vehicle with the insured or with a motor vehicle which the insured was occupying at the time of the accident. If the owner or operator of any motor vehicle causing bodily injury or property damage be unknown, an action may be instituted against the unknown defendant as "John Doe", in the county in which the accident took place or in any other county in which such action would be proper under the provisions of article one, chapter fifty-six of this code; service of process may be made by delivery of a copy of the complaint and summons or other pleadings to the clerk of the court in which the action is brought, and service upon the insurance company issuing the policy shall be made as prescribed by law as though such insurance company were a party defendant. The insurance company shall have the right to file pleadings and take other action allowable by law in the name of John Doe.

(f) An insurer paying a claim under the endorsement or provisions required by subsection (b) of this section shall be subrogated to the rights of the insured to whom such claim was paid against the person causing such injury, death or damage to the extent that payment was made. The bringing of an action against the unknown owner or operator as John Doe or the conclusion of such an action shall not constitute a bar to the insured, if the identity of
the owner or operator who caused the injury or damages
complained of, becomes known, from bringing an action
against the owner or operator theretofore proceeded
against as John Doe. Any recovery against such owner or
operator shall be paid to the insurance company to the
extent that such insurance company shall have paid the
insured in the action brought against such owner or opera-
tor as John Doe, except that such insurance company shall
pay its proportionate part of any reasonable costs and
expenses incurred in connection therewith, including rea-
sonable attorney's fees. Nothing in an endorsement or
 provision made under this subsection, nor any other provi-
sion of law, shall operate to prevent the joining, in an ac-
tion against John Doe, of the owner or operator of the
motor vehicle causing injury as a party defendant, and
such joinder is hereby specifically authorized.

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

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

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

(j) A motor vehicle shall be deemed to be uninsured
within the meaning of this section, if there has been a valid
bodily injury or property damage liability policy issued
upon such vehicle, but which policy is uncollectible in
whole or in part, by reason of the insurance company
issuing such policy upon such vehicle being insolvent or
having been placed in receivership. The right of subroga-
tion granted insurers under the provisions of subsection
(f) of this section shall not apply as against any person or persons who is or becomes an uninsured motorist for the reasons set forth in this subsection.

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

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

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

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

(A) Record of traffic accidents;
(B) Record of traffic law violations;
(C) Undesirable occupational circumstances;
(D) Any other valid underwriting consideration.

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

(b) Every application for a motor vehicle insurance policy to be issued in this state and written on the basis of a substandard risk rate schedule shall have printed thereon, in bold-faced type in a contrasting color or in reverse print, a statement reading substantially as follows: THE POLICY FOR WHICH YOU ARE APPLYING HAS BEEN RATED IN ACCORDANCE WITH A SPECIAL RATING SCHEDULE FILED WITH THE COMMISSIONER OF INSURANCE PROVIDING FOR HIGHER PREMIUM CHARGES THAN THOSE GENERALLY APPLICABLE FOR AVERAGE RISKS. IF THE COVERAGE OR PREMIUM IS NOT SATISFACTORY, YOU MAY BE ELIGIBLE FOR OTHER INSURANCE. IF THIS COVERAGE OR PREMIUM IS SATISFACTORY, YOU
MAY BE ELIGIBLE FOR COVERAGE UNDER A STANDARD OR PREFERRED POLICY IF DURING THE NEXT THREE YEARS YOU HAVE NO TRAFFIC VIOLATIONS OR ACCIDENTS AND YOU MAINTAIN CONTINUOUS INSURANCE COVERAGE.

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

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

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

(f) The commissioner shall promulgate rules in
accordance with the provisions of chapter twenty-nine-a of this code regarding the format, style, design and approval of substandard risk insurance applications, notices and policies and such other procedures as may be required by this section.

(g) The effective date of this section shall be the first 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.

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

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

(1) Life insurance, annuity contracts, variable annuity contracts and variable life insurance;
(2) Sickness, accident and health insurance;
(3) All lines of property and casualty insurance; and
(4) All other lines of insurance for which an examination is required for licensing.

(b) This section does not apply to:

(1) Persons holding resident licenses for any kind or kinds of insurance offered in connection with loans or other credit transactions or insurance for which an examination is not required by the commissioner, nor does it apply to any such limited or restricted license as the commissioner may exempt;
(2) Individuals selling credit life or credit accident and health insurance.

(c) (1) The board of insurance agent education as established by section two of this article shall develop a program of continuing insurance education and submit the proposal for the approval of the commissioner on or before the thirty-first day of December of each year.
Each year after the first day of July, one thousand nine hundred ninety-seven, the program shall contain a requirement that any person appointed to be an agent on behalf of a licensed health maintenance organization at any time during the relevant biennium must, as a component of his or her mandatory continuing insurance education, complete a minimum of six hours of continuing insurance education during the biennium which is on topics specific to health maintenance organizations.

No program shall be approved by the commissioner that includes a requirement that any agent complete more than thirty hours of continuing insurance education biennially. No program shall be approved by the commissioner that includes a requirement that any of the following individuals complete more than six hours of continuing insurance education biennially:

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

(B) Insurance agents who engage solely in telemarketing insurance products by a scripted presentation which scripted presentation has been filed with and approved by the commissioner.

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

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

(e) Every person, subject to the continuing education requirements shall furnish, at intervals and on forms as may be prescribed by the commissioner, written certifi-
ication listing the courses, programs or seminars of instruction successfully completed by the person. The certification shall be executed by, or on behalf of, the organization sponsoring the courses, programs or seminars of instruction.

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

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

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

CHAPTER 136

(H. B. 2266—By Delegates Gallagher, Douglas, Walters, Hutchins, Loulsos 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 hundred ninety-six, and on or before the first day of March thereafter, each excess line broker shall file, on a form prescribed by the commissioner, a report under oath, setting forth facts from which it may be determined whether the requirements of section ten of this article have been met with respect to each excess line policy procured by the excess line broker during the preceding calendar year. Such report shall include, but not be limited to, the 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 insurer;
16 (e) Premium, and premium rate if applicable;
17 (f) Other information reasonably required by the commissioner.

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

ARTICLE 13. LIFE INSURANCE.

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

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

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

(c) Subsection (a) of this section does not require, and
shall not be construed as requiring, the payment of interest
unless the insured was a resident of this state on the date of
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.

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

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

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

(a) "Limited benefits policy or certificate" means any individual or group accident and sickness insurance policy that is not required to offer or provide all benefits mandated by any other applicable provision of this chapter. Such policies include, but are not limited to, accident only, sickness only disability, sickness only, accident only disability, hospital indemnity, specified disease and travel accident insurance policies: Provided, That the following types of policies and certificates are excluded from the definition of "limited benefits policy or certificate" for purposes of this article:

1. Credit accident and sickness insurance;
2. Long-term care insurance;
3. Medicare supplement insurance; and
4. Minimum benefits accident and sickness insurance issued pursuant to section fifteen, article fifteen of this chapter or article sixteen-c of this chapter;
5. Accident and sickness policies which provide benefits for loss of income due to disability;
6. Major medical policies;
7. Dental policies; and
8. Vision policies.

(b) "Experience period" means the period beginning on the first day of the calendar year during which a premium rate first takes effect and ending on the last day of the calendar year during which the insurer earns five hundred thousand dollars in premiums on the form in West Virginia or, if the annual premium earned on the form in West Virginia is less than five hundred thousand dollars, earns nationally.

(c) "Successive experience period" means the experience period beginning on the first day following the end
(d) "Annual loss ratio" is the ratio of earned premium received by the insurer on a given form during the experience period compared to the incurred losses paid out by the insurer on the same form during the same experience period and expressed in percentage of earned premiums paid out.

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

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

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

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

(b) To be eligible to make a premium rate increase request after the first day of July, one thousand nine hundred ninety-three, any insurer renewing a limited benefits policy form or certificate form which was in force in West Virginia on the effective date of this article, shall be expected to return to policyholders and certificate holders in the form of annual loss ratios under the policy or certificate a percentage of the earned premium which is equal to the anticipated loss ratio originally filed with the insurance commissioner.

(c) With respect to a policy form or certificate form which has been offered by an insurer in West Virginia or nationally for five years or less the insurer may use the anticipated loss ratio filed with and approved by the com-
missioner for that form to determine compliance with the requirements of this section.

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

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

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

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

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

(b) Any insurer offering a limited benefits policy or certificate which was in force in West Virginia on the effective date of this article shall make premium refunds to policyholders and certificate holders if it fails to return to such policyholders and certificate holders in the form of annual loss ratios under the policy or certificate a percentage of the earned premium which is the anticipated loss ratio originally filed by the insurer with the insurance commissioner less five percent.

(c) With respect to a policy form or certificate form which has been in force or offered by an insurer either in West Virginia or nationally for more than five years, refunds to West Virginia policyholders or certificate holders made pursuant to the requirements of this section and based upon annual earned premium volume in West Vir-
ginia shall be calculated by multiplying the anticipated loss ratio by the applicable earned premium during the experience period and subtracting from that result the actual incurred claims during the experience period.

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

(1) Multiplying the mandated loss ratio by the applicable earned premium during the experience period and subtracting from that result the actual incurred claims during the experience period; and

(2) Multiplying the results of subdivision (1) of this subsection by the total earned premium during the experience period from all West Virginia policyholders or certificate holders eligible for refunds; and

(3) Dividing the results of subdivision (2) of this subsection by the total earned premium during that period in all states on the policy form.

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

(f) Refunds shall be made to all West Virginia policyholders and certificate holders who are insured under the applicable policy form or certificate as of the last day of the experience period. Such refund shall include interest, at the current accident and health reserve interest rate established by the national association of insurance commissioners, from the end of the experience period until the date of payment. Payment shall be made during the third
quarter of the year following the experience period for which a refund is determined to be due.

(g) Refunds of less than ten dollars shall be aggregated and held by the insurer in a policyholders' and certificate holders' liability fund and shall be used to offset 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 structure located in this state, insurance companies must notify the insured of any coverage in the insurance policy providing cleanup, removal of any refuse, debris, remnants or remains of the dwelling and appurtenances and securing the structure. The notification shall be by letter to the insured, mailed within ten days of the notification of the claim, and shall include, but not be limited to:
9 (a) The terms and limits of coverage designated by the insurance policy for securing, cleanup and removal; and
11 (b) Any time limitations imposed on the insured for 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-3a. Conditions precedent to issuance or maintenance of a certificate of authority; effect of bankruptcy proceedings.
§33-25A-7. Fiduciary responsibilities of officers; approval of contracts by commissioner.
§33-25A-7a. Provider contracts.
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1 "Basic health care services" means physician, hospital, out-of-area, podiatric, laboratory, X ray, emergency, short-term mental health services not exceeding twenty
outpatient visits in any twelve-month period, and
cost-effective preventive services including immunizations,
well-child care, periodic health evaluations for adults,
voluntary family planning services, infertility services and
children's eye and ear examinations conducted to deter-
mine the need for vision and hearing corrections.

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

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

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

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

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

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

(8) "Enrollee", "subscriber," or "member" means an
individual who has been voluntarily enrolled in a health
maintenance organization, including individuals on whose
behalf a contractual arrangement has been entered into
with a health maintenance organization to receive health
care services.
(9) "Evidence of coverage" means any certificate, agreement or contract issued to an enrollee setting out the coverage and other rights to which the enrollee is entitled.

(10) "Health care services" means any services or goods included in the furnishing to any individual of medical, mental or dental care, or hospitalization or incident to the furnishing of the care or hospitalization, osteopathic services, home health, health education, or rehabilitation, as well as the furnishing to any person of any and all other services or goods for the purpose of preventing, alleviating, curing or healing human illness or injury.

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

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

(b) Provides physicians' services primarily (i) directly through physicians who are either employees or partners of the organization, or (ii) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice arrangement, or (iii) through some combination of paragraphs (i) and (ii) of this subdivision;

(c) Assures the availability, accessibility and quality, including effective utilization, of the health care services which it provides or makes available through clearly identifiable focal points of legal and administrative responsibility; and

(d) Offers services through an organized delivery system, in which a primary care physician is designated for each subscriber upon enrollment. The primary care physician is responsible for coordinating the health care of the subscriber and is responsible for referring the subscriber to other providers when necessary: Provided, That when dental care is provided by the health maintenance organization the dentist selected by the subscriber from
the list provided by the health maintenance organization shall coordinate the covered dental care of the subscriber, as approved by the primary care physician or the health maintenance organization.

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

(13) "Individual practice arrangement" means any agreement or arrangement to provide medical services on behalf of a health maintenance organization among or between physicians or between a health maintenance organization and individual physicians or groups of physicians, where the physicians are not employees or partners of the health maintenance organization and are not members of or affiliated with a medical group.

(14) "Insolvent" or "insolvency" means a financial situation in which, based upon the financial information which would be required by this chapter for the preparation of the health maintenance organization's annual statement, the assets of the health maintenance organization are less than the sum of all of its liabilities and required reserves.

(15) "Medical group" or "group practice" means a professional corporation, partnership, association, or other organization composed solely of health professionals licensed to practice medicine or osteopathy and of such other licensed health professionals, including podiatrists, dentists and optometrists, as are necessary for the provision of health services for which the group is responsible: (a) A majority of the members of which are licensed to practice medicine or osteopathy; (b) who as their principal professional activity engage in the coordinated practice of their profession; (c) who pool their income for practice as
members of the group and distribute it among themselves according to a prearranged salary, drawing account or other plan; and (d) who share medical and other records and substantial portions of major equipment and professional, technical and administrative staff.

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

(17) "Primary care physician" means the general practitioner, family practitioner, obstetrician/gynecologist, pediatrician, or specialist in general internal medicine who is chosen or designated for each subscriber who will be responsible for coordinating the health care of the subscriber, including necessary referrals to other providers.

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

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

(20) "Service area" means the county or counties approved by the commissioner within which the health maintenance organization may provide or arrange for health care services to be available to its subscribers.

(21) "Statutory surplus" means the minimum amount of unencumbered surplus which a corporation must maintain pursuant to the requirements of this article.

(22) "Surplus" means the amount by which a corporation's assets exceeds its liabilities and required reserves based upon the financial information which would be required by this chapter for the preparation of the corporation's annual statement except that assets pledged to secure debts not reflected on the books of the health maintenance organization shall not be included in surplus.
(23) "Surplus notes" means debt which has been subordinated to all claims of subscribers and general creditors of the organization.

(24) "Qualified independent actuary" means an actuary who is a member of the American academy of actuaries or the society of actuaries and has experience in establishing rates for health maintenance organizations and who has no financial or employment interest in the health maintenance organization.


(1) Notwithstanding any law of this state to the contrary, any person may apply to the commissioner for and obtain a certificate of authority to establish or operate a health maintenance organization in compliance with this article. No person shall sell health maintenance organization enrollee contracts, nor shall any health maintenance organization commence services, prior to receipt of a certificate of authority. Any person may, however, establish the feasibility of a health maintenance organization prior to receipt of a certificate of authority through funding drives and by receiving loans and grants.

(2) Every health maintenance organization in operation as of the effective date of this article shall submit an application for a certificate of authority under this section within thirty days of the effective date of this article. Each applicant may continue to operate until the commissioner acts upon the application. In the event that an application is denied pursuant to section four of this article, the applicant shall be treated as a health maintenance organization whose certificate of authority has been revoked: Provided, That all health maintenance organizations in operation for at least five years are exempt from filing applications for a new certificate of authority.

(3) The commissioner may require any organization providing or arranging for health care services on a prepaid per capita or prepaid aggregate fixed sum basis to apply for a certificate of authority under this article. The commissioner shall promulgate rules to facilitate the enforcement of this subsection: Provided, That any provider
who is assuming risk by virtue of a contract or other arrangement with an HMO or entity which has a certificate, may not be required to file for a certificate: Provided, however, That the commissioner may require such exempted entities to file complete financial data for a determination as to their solvency. Any organization directed to apply for a certificate of authority is subject to the provisions of subsection (2) of this section.

(4) Each application for a certificate of authority shall be verified by an officer or authorized representative of the applicant, shall be in a form prescribed by the commissioner and shall set forth or be accompanied by any and all information required by the commissioner, including:

(a) The basic organizational document;

(b) The bylaws or rules;

(c) A list of the names, addresses and official positions of each member of the governing body, which shall contain a full disclosure in the application of any financial interest by the officer or member of the governing body or any provider or any organization or corporation owned or controlled by that person and the health maintenance organization and the extent and nature of any contract or financial arrangements between that person and the health maintenance organization;

(d) A description of the health maintenance organization;

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

(f) Financial statements which include the assets, liabilities and sources of financial support of the applicant and any corporation or organization owned or controlled by the applicant;

(g) (i) A description of the proposed method of marketing the plan; (ii) a schedule of proposed charges; and (iii) a financial plan which includes a three-year projection of the expenses and income and other sources of future
(h) A power of attorney duly executed by the applicant, if not domiciled in this state, appointing the commissioner and his or her successors in office, and duly authorized deputies, as the true and lawful attorney of the applicant in and for this state upon whom all lawful process in any legal action or proceeding against the health maintenance organization on a cause of action arising in this state may be served;

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

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

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

(l) A complete biographical statement on forms prescribed by the commissioner and an independent investigation report on all of the individuals referred to in subdivision (c) of this section and all officers, directors and persons holding five percent or more of the common stock of the organization;

(m) A comprehensive feasibility study, performed by a qualified independent actuary in conjunction with a certified public accountant which shall contain a certification by the qualified actuary and an opinion by the certified public accountant as to the feasibility of the proposed organization. The study shall be for the greater of three years or until the health maintenance organization has been projected to be profitable for twelve consecutive months. The study must show that the health maintenance organization would not, at the end of any month of the projection period, have less than the minimum capital and surplus as required by subparagraph (ii), subdivision (c), subsection (2), section four of this article. The qualified independent actuary shall certify that: The rates are nei-
ther inadequate nor excessive nor unfairly discriminatory; the rates are appropriate for the classes of risks for which they have been computed; the rating methodology is appropriate: Provided, That the certification shall include an adequate description of the rating methodology showing that the methodology follows consistent and equitable actuarial principles; the health maintenance organization is actuarially sound: Provided, however, That the certification shall consider the rates, benefits, and expenses of, and any other funds available for the payment of obligations of, the organization; the rates being charged or to be charged are actuarially adequate to the end of the period for which rates have been guaranteed; and incurred but not reported claims and claims reported but not fully paid have been adequately provided for; and

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

(5) A health maintenance organization shall, unless otherwise provided for by rules promulgated by the commissioner, file notice prior to any modification of the operations or documents filed pursuant to this section or as the commissioner may require by rule. If the commissioner does not disapprove of the filing within ninety days of filing, it shall be considered approved and may be implemented by the health maintenance organization.

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

(1) As a condition precedent to the issuance or maintenance of a certificate of authority, a health maintenance organization must file or have on file with the commissioner:

(a) An acknowledgment that a delinquency proceeding pursuant to article ten of this chapter or supervision by the commissioner pursuant to article thirty-four of this chapter constitutes the sole and exclusive method for the liquidation, rehabilitation, reorganization, or conservation of a health maintenance organization; and
(b) A waiver of any right to file or be subject to a bankruptcy proceeding.

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

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

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

(b) Vest in the commissioner for the use and benefit of the subscribers of the health maintenance organization the title to any deposits of the HMO held by the commissioner.

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


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

(a) The willingness and potential ability of the organization to assure that basic health services will be provided in such a manner as to enhance and assure both the availability and accessibility of adequate personnel and facilities;

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

(c) That the organization has a procedure to develop, compile, evaluate and report statistics relating to the cost
of its operations, the pattern of utilization of its services, the quality, availability and accessibility of its services, and such other matters as may be reasonably required by rule.

(2) The commissioner shall issue or deny a certificate of authority to any person filing an application within one hundred twenty days after receipt of the application. Issuance of a certificate of authority shall be granted upon payment of the application fee prescribed, if the commissioner is satisfied that the following conditions are met:

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

(b) The health maintenance organization will effectively provide or arrange for the provision of at least basic health care services on a prepaid basis except for copayments: Provided, That nothing in this section shall be construed to relieve a health maintenance organization from the obligations to provide health care services because of the nonpayment of copayments unless the enrollee fails to make payment in at least three instances over any twelve-month period: Provided, however, That nothing in this section shall permit a health maintenance organization to charge copayments to medicare beneficiaries or medicaid recipients in excess of the copayments permitted under those programs, nor shall a health maintenance organization be required to provide services to the medicare beneficiaries or medicaid recipients in excess of the benefits compensated under those programs;

(c) The health maintenance organization is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner may consider:

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

(ii) That the health maintenance organization has and maintains fully paid in capital stock, if a for profit stock
corporation, or statutory surplus funds, if a nonprofit corporation, at least one million dollars. In addition, each health maintenance organization shall have and maintain additional surplus funds of at least one million dollars;

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

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

(d) Reasonable provisions have been made for emergency and out-of-area health care services;

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

(f) The health maintenance organization has demonstrated that it will assume full financial risk on a prospective basis for the provision of health care services, including hospital care: Provided, That the requirement of this subdivision shall not prohibit a health maintenance organization from obtaining insurance or making other arrangements:

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

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

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

(g) The ownership, control and management of the organization is competent and trustworthy and possesses
managerial experience that would make the proposed health maintenance organization operation beneficial to the subscribers. The commissioner may, at his or her discretion, refuse to grant or continue authority to transact the business of a health maintenance organization in this state at any time during which the commissioner has probable cause to believe that the ownership, control or management of the organization includes any person whose business operations are or have been marked by business practices or conduct that is to the detriment of the public, stockholders, investors or creditors;

(h) The health maintenance organization has deposited and maintained in trust with the state treasurer, for the protection of its subscribers or its subscribers and creditors, cash or government securities eligible for the investment of capital funds of domestic insurers as described in section seven, article eight of this chapter in the amount of one hundred thousand dollars.

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

(4) No person who has not been issued a certificate of authority shall use the words "health maintenance organization" or the initials "HMO" in its name, contracts or literature: Provided, That persons who are operating under a contract with, operating in association with, enrolling enrollees for, or otherwise authorized by a health maintenance organization licensed under this article to act on its behalf may use the terms "health maintenance organization" or "HMO" for the limited purpose of denoting or explaining their association or relationship with the authorized health maintenance organization. No health maintenance organization which has a minority of board members who are consumers shall use the words "consumer controlled" in its name or in any way represent to the public that it is controlled by consumers.

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

(a) Any director, officer or partner of a health mainte-
nance organization who receives, collects, disburses or invests funds in connection with the activities of the organization is responsible for the funds in a fiduciary relationship to the enrollees.

(b) Any contracts made with providers of health care services enabling a health maintenance organization to provide health care services authorized under this article shall be filed with the commissioner. The commissioner has the power to require immediate cancellation of the contracts or the immediate renegotiation of the contract by the parties whenever he or she determines that they provide for excessive payments, or that they fail to include reasonable incentives for cost control, or that they otherwise substantially and unreasonably contribute to escalation of the costs of providing health care services to enrollees.

§33-25A-7a. Provider contracts.

(1) Whenever a contract exists between a health maintenance organization and a provider and the organization fails to meet its obligations to pay fees for services already rendered to a subscriber, the health maintenance organization is liable for the fee or fees rather than the subscriber; and the contract shall state that liability.

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

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

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

(5) The provisions of this section shall not be construed to apply to the amount of any deductible or copayment which is not covered by the contract of the HMO.

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

(a) The contracts must provide that the provider shall provide sixty days advance written notice to the health maintenance organization and the commissioner before canceling the contract with the health maintenance organization for any reason; and

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

(7) Upon receipt by the health maintenance organization of a sixty day cancellation notice, the health maintenance organization may, if requested by the provider, terminate the contract in less than sixty days if the health maintenance organization is not financially impaired or insolvent.

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

(1) (a) Every enrollee is entitled to evidence of coverage in accordance with this section. The health maintenance organization or its designated representative shall issue the evidence of coverage.

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

(c) An evidence of coverage shall contain a clear, concise and complete statement of:
(i) The health care services and the insurance or other benefits, if any, to which the enrollee is entitled;

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

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

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

(v) A description of the health maintenance organization's method for resolving enrollee grievances.

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

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

(2) Premiums may be established in accordance with actuarial principles: Provided, That premiums shall not be excessive, inadequate or unfairly discriminatory. A certification by a qualified independent actuary shall accompany a rate filing and shall certify that: The rates are neither inadequate nor excessive nor unfairly discriminatory; that the rates are appropriate for the classes of risks for which they have been computed; provide an adequate descrip-
tion of the rating methodology showing that the methodology follows consistent and equitable actuarial principles; and the rates being charged are actuarially adequate to the end of the period for which rates have been guaranteed. In determining whether the charges are reasonable, the commissioner shall consider whether the health maintenance organization has (a) made a vigorous, good faith effort to control rates paid to health care providers; (b) established a premium schedule, including copayments, if any, which encourages enrollees to seek out preventive health care services; and (c) made a good faith effort to secure arrangements whereby basic services can be obtained by subscribers from local providers to the extent that the providers offer the services.

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

(4) The commissioner shall within a reasonable period approve any form if the requirements of subsection (1) of this section are met and any schedule of charges if the requirements of subsection (2) of this section are met. It is unlawful to issue the form or to use the schedule of charges until approved. If the commissioner disapproves of the filing, he or she shall notify the filer promptly. In the notice, the commissioner shall specify the reasons for his or her disapproval and the findings of fact and conclusions which support his or her reasons. A hearing will be granted by the commissioner within fifteen days after a request in writing, by the person filing, has been received by the commission. If the commissioner does not disapprove any form or schedule of charges within sixty days of the filing of the forms or charges, they shall be considered approved.
(5) The commissioner may require the submission of whatever relevant information in addition to the schedule of charges which he or she considers necessary in determining whether to approve or disapprove a filing made pursuant to this section.

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


(1) Every health maintenance organization shall comply with and is subject to the provisions of section fourteen, article four of this chapter relating to filing of financial statements with the commissioner and the national association of insurance commissioners. The annual financial statement required by that section shall include, but not be limited to, the following:

(a) A statutory financial statement of the organization, including its balance sheet and receipts and disbursements for the preceding year certified by an independent certified public accountant, reflecting at least: (i) All prepayment and other payments received for health care services rendered; (ii) expenditures to all providers, by classes or groups of providers, and insurance companies or nonprofit health service plan corporations engaged to fulfill obligations arising out of the health maintenance contract; and (iii) expenditures for capital improvements, or additions thereto, including, but not limited to, construction, renovation or purchase of facilities and capital equipment;

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

(c) A summary of information compiled p
subdivision (c), subsection (1), section four of this article in such form as may be required by the department of health and human resources or other accredited entity;

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

(e) Such other information relating to the performance of the health maintenance organization as is reasonably necessary to enable the commissioner to carry out his or her duties under this article.

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

(1) Once a health maintenance organization has been in operation at least five years, or has enrollment of not less than fifty thousand persons, the health maintenance organization shall, in any year following a year in which the health maintenance organization has achieved an operating surplus, maintain an open enrollment period of at least thirty days during which time the health maintenance organization shall, within the limits of its capacity, accept individuals in the order in which they apply without regard to preexisting illness, medical conditions or degree of disability except for individuals who are confined to an institution because of chronic illness or permanent injury: Provided, That no health maintenance organization shall be required to continue an open enrollment period after such time as enrollment pursuant to the open enrollment period is equal to three percent of the health maintenance organization's net increase in enrollment during the previous year.

(2) Where a health maintenance organization demonstrates to the satisfaction of the commissioner that it has a
disproportionate share of high-risk enrollees and that, by maintaining open enrollment, it would be required to enroll so disproportionate a share of high-risk enrollees as to jeopardize its economic viability, the commissioner may:

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

(b) Authorize the organization to impose such underwriting restrictions upon open enrollment as are necessary (i) to preserve its financial stability; (ii) to prevent excessive adverse selection by prospective enrollees; or (iii) to avoid unreasonably high or unmarketable charges for enrollee coverage of health services. A health maintenance organization may receive more than one waiver or authorization.

(3) The enrollment by a health maintenance organization of medicare beneficiaries who are at least sixty-five years of age and medicaid beneficiaries shall not exceed fifty percent of its total enrollee population. The commissioner may permit by written order and upon application of a health maintenance organization, the health maintenance organization to exceed the fifty percent limitation, but in no event may the medicare and medicaid beneficiaries enrollment exceed seventy-five percent of its total enrollee population: Provided, That before the commissioner grants such a waiver, the health maintenance organization must provide the opinion of a qualified independent actuary that the higher percentage of medicaid and medicare recipients will not be detrimental to the solvency of the health maintenance organization for a period of at least thirty-six months into the future.


(1) A health maintenance organization shall establish and maintain a grievance procedure, which has been approved by the commissioner, to provide adequate and reasonable procedures for the expeditious resolution of written grievances initiated by enrollees concerning any matter relating to any provisions of the organization's health maintenance contracts, including, but not limited to,
claims regarding the scope of coverage for health care services; denials, cancellations or nonrenewals of enrollee coverage; observance of an enrollee's rights as a patient; and the quality of the health care services rendered.

(2) A detailed description of the HMO's subscriber grievance procedure shall be included in all group and individual contracts as well as any certificate or member handbook provided to subscribers. This procedure shall be administered at no cost to the subscriber. An HMO subscriber grievance procedure shall include the following:

(a) Both informal and formal steps shall be available to resolve the grievance. A grievance is not considered formal until a written grievance is executed by the subscriber or completed on such forms as prescribed and received by the HMO;

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

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

(d) An address shall be included for written grievances;

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

(f) The HMO shall process the formal written subscriber grievance through all phases of the grievance procedure in a reasonable length of time not to exceed sixty days, unless the subscriber and HMO mutually agree to extend the time frame. If the complaint involves the collection of information outside the service area, the HMO has thirty additional days to process the subscriber com-
plaint through all phases of the grievance procedure. The
time limitations prescribed in this subdivision requiring
completion of the grievance process within sixty days shall
be tolled after the HMO has notified the subscriber, in
writing, that additional information is required in order to
properly complete review of the grievance. Upon receipt
by the HMO of the additional information requested, the
time for completion of the grievance process set forth in
this subdivision shall resume;

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

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

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

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

(k) Each HMO shall maintain an accurate record of
each formal grievance. Each record shall include the fol-
lowing: (i) A complete description of the grievance, the
subscriber's name and address, the provider's name and
address and the HMO's name and address; (ii) a complete
description of the HMO's factual findings and conclusions
after completion of the full formal grievance procedure;
(iii) a complete description of the HMO's conclusions
pertaining to the grievance as well as the HMO's final
disposition of the grievance; and (iv) a statement as to
which levels of the grievance procedure the grievance has
been processed and how many more levels of the griev-
ance procedure are remaining before the grievance has
been processed through the HMO's entire grievance pro-
cedure.

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

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

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


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

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

(b) A statement or item of information shall be con-
considered to be misleading, whether or not it may be literally untrue if, in the total context in which the statement is made or the item of information is communicated, the statement or item of information may be reasonably understood by a reasonable person, not possessing special knowledge regarding health care coverage, as indicating any benefit or advantage or the absence of any exclusion, limitation, or disadvantage of possible significance to an enrollee of, or person considering enrollment in, a health maintenance organization, if the benefit or advantage or absence of limitation, exclusion or disadvantage does not in fact exist;

(c) An evidence of coverage shall be considered to be deceptive if the evidence of coverage taken as a whole, and with consideration given to typography and format, as well as language, shall be such as to cause a reasonable person, not possessing special knowledge regarding health maintenance organizations, and evidences of coverage therefor, to expect benefits, services or other advantages which the evidence of coverage does not provide or which the health maintenance organization issuing the evidence of coverage does not regularly make available for enrollees covered under such evidence of coverage; and

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

(2) No health maintenance organization may cancel or fail to renew the coverage of an enrollee except for: (a) Failure to pay the charge for health care coverage; (b) termination of the health maintenance organization; (c) termination of the group plan; (d) enrollee moving out of the area served; (e) enrollee moving out of an eligible group; or (f) other reasons established in rules promulgated by the commissioner. No health maintenance organization shall use any technique of rating or grouping to cancel or fail to renew the coverage of an enrollee. An enrollee shall be given thirty days' notice of any cancellation or nonrenewal and the notice shall include the reasons for the cancellation or nonrenewal: Provided, That each enrollee moving out of an eligible group shall be granted the opportunity to enroll in the health maintenance orga-
nization on an individual basis. A health maintenance organization may not disenroll an enrollee for nonpayment of copayments unless the enrollee has failed to make payment in at least three instances over any twelve-month period: Provided, however, That the enrollee may not be disenrolled if the disenrollment would constitute abandonment of a patient. Any enrollee wrongfully disenrolled shall be reenrolled.

(3) No health maintenance organization may use in its name, contracts or literature any of the words "insurance", "casualty", "surety", "mutual" or any other words which are descriptive of the insurance, casualty or surety business or deceptively similar to the name or description of any insurance or surety corporation doing business in this state: Provided, That when a health maintenance organization has contracted with an insurance company for any coverage permitted by this article, it may so state.

(4) The providers of a health maintenance organization who provide health care services and the health maintenance organization shall not have recourse against enrollees for amounts above those specified in the evidence of coverage as the periodic prepayment or copayment for health care services.

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

(6) No health maintenance organization shall discriminate in enrollment policies or quality of services against any person on the basis of race, sex, age, religion, place of residence, health status or source of payment: Provided, That differences in rates based on valid actuarial distinc-
(7) No agent of a health maintenance organization or person selling enrollments in a health maintenance organization shall sell an enrollment in a health maintenance organization unless the agent or person shall first disclose in writing to the prospective purchaser the following information using the following exact terms in bold print: (a) "Services offered", including any exclusions or limitations; (b) "full cost", including copayments; (c) "facilities available and hours of services"; (d) "transportation services"; (e) "disenrollment rate"; and (f) "staff", including the names of all full-time staff physicians, consulting specialists, hospitals and pharmacies associated with the health maintenance organization. In any home solicitation, any three-day cooling-off period applicable to consumer transactions generally applies in the same manner as consumer transactions.

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

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

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

§33-25A-15. Agent licensing and appointment required; regulation of marketing.

(1) Health maintenance organizations are subject to the provisions of article twelve of this chapter.
(2) After a subscriber signs an HMO enrollment application and before the HMO can process the application changing or initiating the subscriber coverage, each HMO must verify the intent and desire of the individual subscriber to join the HMO. The verification must be in writing and conducted by someone outside the HMO's marketing department. Each verification shall include the following:

(a) Confirmation that the subscriber intends and desires to join the HMO;

(b) If the subscriber is a medicare or medicaid recipient, confirmation that the subscriber understands by joining the HMO he or she will be limited to the benefits provided by the HMO, and medicare or medicaid will pay the HMO for the subscriber coverage;

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

(d) If the subscriber is a member of an HMO, confirmation that the subscriber understands he or she is transferring to another HMO.

(e) The HMO shall not pay a commission, fee, money or any other form of scheduled compensation to any health insurance agent until verification from the subscriber of his or her intent and desire to enroll into the HMO has been secured and the enrollment process has been completed. The HMO shall verify the intent of the subscriber to enroll with a written notice to the subscriber stating that he or she has transferred from his or her existing coverage (i.e. from medicare, medicaid, another HMO, etc.) to the new HMO. Each written verification notice shall be accompanied with printed materials explaining the nature of the HMO and any applicable restrictions and exclusions. The enrollment process shall be considered complete seven days after the HMO mails the confirmation notice. Each HMO must notify the subscriber of the date enrollment begins and when benefits will be available.

Each HMO is directly responsible for enrollment abuses.
(3) The commissioner may, in his or her discretion, after notice and hearing, promulgate rules as are necessary to regulate marketing of health maintenance organizations by persons compensated directly or indirectly by the health maintenance organizations. When necessary the rules may prohibit door-to-door solicitations, may prohibit commission sales, and may provide for such other prescriptions and other rules as are required to effectuate the purposes of this article.


(1) An insurance company licensed in this state or a hospital or medical service corporation authorized to do business in this state, after applying for and receiving a certificate of authority as a health maintenance organization, may through a subsidiary or affiliate organize and operate a health maintenance organization under the provisions of this article. Notwithstanding any other law to the contrary, any two or more insurance companies, hospital or medical service corporations, or subsidiaries or affiliates thereof, may jointly organize and operate a health maintenance organization. The business of insurance is considered to include the providing of health care by a health maintenance organization owned or operated by an insurer or a subsidiary thereof.

(2) Notwithstanding any provision of insurance and hospital or medical service corporation laws, an insurer or a hospital or medical service corporation may contract with a health maintenance organization to provide insurance or similar protection against the cost of care provided through health maintenance organizations and to provide coverage in the event of the failure of the health maintenance organization to meet its obligations. The enrollees of a health maintenance organization constitute a permissible group under such laws. Among other things, under the contracts, the insurer or hospital or medical service corporation may make benefit payments to health maintenance organizations for health care services rendered by providers.

§33-25A-17. Examinations.
(1) The commissioner may make an examination of the affairs of any health maintenance organization and providers with whom the organization has contracts, agreements or other arrangements as often as he or she considers it necessary for the protection of the interests of the people of this state but not less frequently than once every three years.

(2) The commissioner may contract with the department of health and human resources or any entity contracted with by the department of health and human resources which has been accredited by a nationally recognized accrediting organization and has been approved by the commissioner to make examinations concerning the quality of health care services of any health maintenance organization and providers with whom the organization has contracts, agreements or other arrangements as often as it considers necessary for the protection of the interests of the people of this state, but not less frequently than once every three years: Provided, That in making the examination, the department of health and human resources or the accredited entity shall utilize the services of persons or organizations with demonstrable expertise in assessing quality of health care.

(3) Every health maintenance organization and affiliated provider shall submit its books and records to the examinations and in every way facilitate them. For the purpose of examinations, the commissioner and the department of health and human resources have all powers necessary to conduct the examinations, including, but not limited to, the power to issue subpoenas, the power to administer oaths to and examine the officers and agents of the health maintenance organization and the principles of the providers concerning their business.

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

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

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

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

(b) The health maintenance organization issues evidence of coverage or uses a schedule of premiums for health care services which do not comply with the requirements of section eight of this article;

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

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

(e) The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees or is otherwise determined by the commissioner to be in a hazardous financial condition;

(f) The health maintenance organization has failed to implement a mechanism affording the enrollees an opportunity to participate in matters of policy and operation under section six of this article;

(g) The health maintenance organization has failed to
implement the grievance procedure required by section twelve of this article in a manner to reasonably resolve valid grievances;

(h) The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive or unfair manner;

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

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

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

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

(3) When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization shall not, during the period of the suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of existing enrollees, and shall not engage in any advertising or solicitation whatsoever.

(4) When the certificate of authority of a health maintenance organization is revoked, the organization shall proceed, immediately following the effective date of the order of revocation, to terminate its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of the organization. It shall engage in no further advertising or solicitation whatsoever. The commissioner may, by written order, permit such further operation of the organization as he or she may find to be in the best interests of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage.

§33-25A-19. Rehabilitation, liquidation or conservation of health maintenance organization.
Any rehabilitation, liquidation or conservation of a health maintenance organization shall be considered to be the rehabilitation, liquidation or conservation of an insurance company, shall be the exclusive remedy for rehabilitation, liquidation and conservation of an HMO as provided by this article and shall be conducted under the supervision of the commissioner pursuant to the law governing the rehabilitation, liquidation or conservation of insurance companies. The commissioner may apply for an order directing him or her to rehabilitate, liquidate or conserve a health maintenance organization upon any one or more grounds set out in the rehabilitation statutes or when, in his or her opinion, the continued operation of the health maintenance organization would be hazardous either to the enrollees or to the people of this state.


(a) Except as otherwise provided in this article, provisions of the insurance laws and provisions of hospital or medical service corporation laws are not applicable to any health maintenance organization granted a certificate of authority under this article. The provisions of this article shall not apply to an insurer or hospital or medical service corporation licensed and regulated pursuant to the insurance laws or the hospital or medical service corporation laws of this state except with respect to its health maintenance corporation activities authorized and regulated pursuant to this article.

(b) Factually accurate advertising or solicitation regarding the range of services provided, the premiums and copayments charged, the sites of services and hours of operation, and any other quantifiable, nonprofessional aspects of its operation by a health maintenance organization granted a certificate of authority, or its representative shall not be construed to violate any provision of law relating to solicitation or advertising by health professions: Provided, That nothing contained in this subsection shall be construed as authorizing any solicitation or advertising which identifies or refers to any individual provider or makes any qualitative judgment concerning any provider.
(c) Any health maintenance organization authorized under this article shall not be considered to be practicing medicine and is exempt from the provision of chapter thirty of this code, relating to the practice of medicine.

(d) The provisions of section fifteen, article four (general provisions); article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eight (investments); article nine (administration of deposits); article twelve (agents, brokers, solicitors and excess line); section fourteen, article fifteen (individual accident and sickness insurance); section sixteen, article fifteen (coverage of children); section eighteen, article fifteen (equal treatment of state agency); section nineteen, article fifteen (coordination of benefits with medicaid); article fifteen-b (uniform health care administration act); section three, article sixteen (required policy provisions); section three-f, article sixteen (treatment of temporomandibular disorder and craniomandibular disorder); section eleven, article sixteen (coverage of children); section thirteen, article sixteen (equal treatment of state agency); section fourteen, article sixteen (coordination of benefits with medicaid); article sixteen-a (group health insurance conversion); article sixteen-c (small employer group policies); article sixteen-d (marketing and rate practices for small employers); article twenty-seven (insurance holding company systems); article thirty-four-a (standards and commissioner's authority for companies deemed to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); article thirty-seven (managing general agents); and article thirty-nine (disclosure of material transactions) shall be applicable to any health maintenance organization granted a certificate of authority under this article. In circumstances where the code provisions made applicable to health maintenance organizations by this section refer to the "insurer", the "corporation" or words of similar import, the language shall be construed to include health maintenance organizations.

(e) Any long-term care insurance policy delivered or issued for delivery in this state by a health maintenance organization shall comply with the provisions of article
§33-25A-25. Filings and reports as public documents.

All applications, filings and reports required under this article shall be treated as public documents: Provided, that where the provisions of other articles in this chapter are applicable to health maintenance organizations, all applications, filings and reports required under those articles shall be afforded the level of confidentiality as provided in those articles.


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


On or before the fifteenth day of January, one thousand nine hundred ninety-six, the commissioner shall submit a report to the Legislature setting forth a plan to establish a guaranty fund for health maintenance organizations operating in West Virginia.
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:

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

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

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

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

Any employer who willfully and knowingly violates the provisions of this section shall be required to reinstate such employee to his former position and shall be required to pay such employee all lost wages and benefits for the period between termination and reinstatement. Any action to enforce the provisions of this section shall be commenced within a period of one year after the date of violation and such action shall be commenced in the circuit court of the county wherein the place of employment 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.

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

1. Of controlling and directing fire fighting and fire control activities at such scene;

2. To order any person or persons to leave any building or place in the vicinity of such scene for the purpose of protecting such persons from injury;

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

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

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

6. To enter any building, including private dwellings, or premises near the scene of the emergency for the purpose of protecting the building or premises or for the purpose of eliminating the emergency which is in progress in another building or premises;

7. To inspect for preplanning, all buildings, structures or other places in their fire district, excepting, however, the interior of a private dwelling, with the consent of the own-
er or occupant, where any combustible materials, including waste paper, rags, shavings, waste, leather, rubber, crates, boxes, barrels, rubbish or other combustible material that is or may become dangerous as a fire menace to such building or buildings, structure or other places has been allowed to accumulate or where such chief or his designated representative has reason to believe that such material of a combustible nature has accumulated or is liable to be accumulated;

(8) To direct the removal or destroying of any fence, house, motor vehicle or other thing which may reasonably be determined to be necessary to be pulled down, destroyed, or removed to prevent the further spread of the fire or hazardous condition;

(9) To request and be supplied with additional materials such as sand, treatments, chemicals, etc., and special equipment when dealing with an accident on a public highway or railroad right-of-way when it is deemed a necessity to prevent the further spread of the fire or hazardous condition, the cost of which to be borne by the owner of the instrumentality which caused the fire or hazardous condition;

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

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

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

(a) It shall be unlawful, while any fire department or company or firefighter is lawfully exercising or discharging such department's, company's or firefighter's official duty during an emergency, for any person to:
(1) Attack any firefighter or any of his or her equipment with any deadly weapon as defined in section two, article seven, chapter sixty-one of this code, or

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

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

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

(d) Nothing in this article shall be construed to prevent law-enforcement officials from controlling traffic 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.

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

CHAPTER 143


[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.
When any law-enforcement officer employed by the state or any of its political subdivisions dies while on active duty or after being honorably discharged or honorably retired, upon the request of next of kin, the state shall honor the officer by providing a state flag, at no cost, for draping the coffin at the funeral service of the deceased officer. The superintendent of the West Virginia state police or his or her designee shall upon request provide 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.
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 authorized to maintain at his or her own cost a complete standard uniform from the law-enforcement agency of which he or she was a member, and shall be issued an identification card indicating his or her honorable retirement from the law-enforcement agency. The uniform may be worn by the officer in retirement only on the following occasions: Police Officer's Memorial Day, Law Enforcement Appreciation Day, at the funeral of a law-enforcement officer or during any other police ceremony. The honorably retired officer is authorized to acquire a badge of the law-enforcement agency from which he or she is retired with the word "retired" placed on 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.

A police officer, upon honorable retirement, shall be authorized to maintain at his or her own cost a complete standard uniform from the law-enforcement agency of which he or she was a member, and shall be issued an identification card indicating his or her honorable retirement from the law-enforcement agency. The uniform may be worn by the officer in retirement only on the following occasions: Police Officer's Memorial Day, Law Enforcement Appreciation Day, at the funeral of a law-enforcement officer or during any other police ceremony. The honorably retired officer is authorized to acquire a badge of the law-enforcement agency from which he or she is 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.

In addition to civil service qualifications and requirements, persons selected as conservation officers shall have reached their eighteenth birthday at the time of appointment, be in good physical condition and of good moral character, temperate in habits and shall not have been convicted of a felony. Whenever possible and practicable, preference in selection of conservation officers shall be given honorably discharged United States military person-
Each conservation officer, before entering upon the discharge of his duties, shall take and subscribe to the oath of office prescribed in article IV, section 5 of the Constitution of West Virginia, which executed oath shall be filed with the director.

The director shall prescribe the kind, style and material of uniforms to be worn by conservation officers. Uniforms and other equipment furnished to the conservation officers shall be and remain the property of the state, except as hereinafter provided in this section.

A conservation officer, upon honorable retirement, shall be authorized to maintain at his or her own cost a complete standard uniform from the law-enforcement agency of which he or she was a member, and shall be issued an identification card indicating his or her honorable retirement from the law-enforcement agency. The uniform may be worn by the officer in retirement only on the following occasions: Police Officer's Memorial Day, Law Enforcement Appreciation Day, at the funeral of a law-enforcement officer or during any other police ceremony. The honorably retired officer is authorized to acquire a badge of the law-enforcement agency from which he or she is retired with the word "retired" placed on it.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

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

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

(1) That the applicant is a citizen of the United States
of America or lawfully resides in the United States of America;

(2) That, on the date the application is made, the applicant is a bona fide resident of this state and of the county in which the application is made;

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

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

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

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

(7) That the applicant is physically and mentally competent to carry such weapon;

(8) That, in the case of a person applying for a license to carry a concealed pistol or revolver, the applicant has qualified under minimum requirements for handling and firing such firearms. These minimum requirements are those promulgated by the division of natural resources and attained under the auspices of the division of natural resources: Provided, That the court shall waive this requirement in the case of a renewal applicant who has previously qualified: Provided, however, That the following may be substituted for those minimum requirements promulgated by the division of natural resources:

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

(B) Successful completion of any firearms safety or training course or class available to the general public offered by an official law-enforcement organization, community college, junior college, college, or private or public
institution or organization or firearms training school, utilizing instructors currently certified by the national rifle association;

(C) Successful completion of any firearms training or safety course or class conducted by a firearms instructor certified as such by the state or by the national rifle association.

A photocopy of a certificate of completion of any of the courses or classes or an affidavit from the instructor, school, club, organization, or group that conducted or taught said course or class attesting to the successful completion of the course or class by the applicant or a copy of any document which shows successful completion of the course or class, shall constitute evidence of qualification under this section.

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

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

(d) If an application is approved, the court shall require in its order granting the license that before any license shall be issued or become effective, the applicant
shall pay to the sheriff a license fee in the amount of fifty
dollars. Any such license shall be valid for five years,
unless sooner revoked.

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

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

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

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

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

1 (1) "Deputy sheriff" means any person appointed by a sheriff as his or her deputy whose primary duties as deputy are within the scope of active, general law enforcement and as such is authorized to carry deadly weapons, patrol the highways, perform police functions, make arrests or safeguard prisoners. This definition may not be construed
to include any person or persons whose sole duties are the
service of civil process and subpoenas as provided in sec­
tion fourteen, article one, chapter fifty of this code, but the
exclusion does not preclude the service of civil process or
subpoenas by deputy sheriffs covered by the provisions of
this code.

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

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

(4) "Hearing board" means a board which is autho­
rized by the sheriff to hold a hearing on a complaint
against a deputy sheriff and which consists of three mem­
ers, all to be selected from deputy sheriffs within that
agency, or law-enforcement officers or firefighters of
another agency with the approval of the sheriff and who
have had no part in the investigation or interrogation of
the deputy sheriff under investigation. One of the mem­
ers of the board shall be appointed by the sheriff, one
shall be appointed by the deputy sheriff's association and
these two members of the board shall, by mutual agree­
ment, appoint the third member of the board: Provided,
That if the first two members of the board fail to agree
upon the appointment of the third member of the board
within five days, they shall submit to the sheriff's civil
service commission a list of four qualified candidates from
which list the commission shall appoint the third member
of the board: Provided, however, That in the event one or
more members of the board cannot be appointed as other­
wise provided in this section, then the chief judge of the
circuit court of the county shall appoint a sufficient num­
ber of citizens of the county as may be necessary to con­
stitute the board. At least one member of the hearing
board shall be of the same rank as the deputy sheriff
against whom the complaint has been filed.
"Hearing" means any meeting in the course of an investigatory proceeding, other than an interrogation at which no testimony is taken under oath, conducted by a hearing board for the purpose of taking or inducing testimony or receiving evidence.

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

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

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the deputy sheriff is on duty, or during his or her normal working hours, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during the off-duty time of the deputy sheriff being interrogated at any place other than his or her residence, the deputy sheriff shall be compensated for that off-duty time in accordance with regular department procedure. If the interrogation of the deputy sheriff occurs during his or her regular duty hours, the deputy sheriff may not be released from employment for any work missed due to interrogation.

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

(c) No deputy sheriff under interrogation may be subjected to offensive language or threatened with punitive action. No promise of reward may be made as an inducement to answering questions.

(d) The complete interrogation of any deputy sheriff
shall be recorded, whether written, taped or transcribed. Upon request of the deputy sheriff under investigation or his or her counsel, and upon advance payment of the reasonable cost thereof, a copy of the record shall be made available to the deputy sheriff not less than ten days prior to any hearing.

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

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

§7-14C-3. Hearing.

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

(b) The hearing shall be conducted by the hearing board of the deputy sheriff except that in the event the recommended punitive action is discharge, suspension or reduction in rank or pay, and the action has been taken, the hearing shall be pursuant to the provisions of section seventeen, article fourteen of this chapter, if applicable. Both the sheriff and the deputy sheriff shall be given am-
ple opportunity to present evidence and argument with respect to the issues involved.

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

(d) Any decision, order or action taken as a result of the hearing shall be in writing and shall be accompanied by findings of fact. The findings shall consist of a concise statement upon each issue in the case. A copy of the decision or order and accompanying findings and conclusions, along with written recommendations for action, shall be delivered or mailed promptly to the deputy sheriff or to his or her attorney of record.

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

For the purposes of job assignment or other personnel action, a sheriff may not require or request a deputy sheriff to disclose any item if his or her property, income, assets, sources of income, debts or personal or domestic expenditures unless such information is obtained through proper legal procedures or is necessary for the employing agency to ascertain the desirability of assigning the deputy sheriff to a specialized unit in which there is a strong possibility that bribes or other improper inducements might be offered.

§7-14C-5. Appeal.

Any deputy sheriff adversely affected by any decision, order or action taken as a result of a hearing as herein provided has the right to appeal the decision, order or action to the deputy sheriff's civil service commission, in the manner provided for in section fifteen, article fourteen of this chapter.
The sheriff may also appeal the decision of the hearing board if he or she believes the department would be adversely affected by the order or action of the hearing board.

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

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

(a) The rates which a publisher or proprietor of a qualified newspaper in West Virginia may charge and receive for a single or first publication of any legal advertisement set solid shall depend upon the bona fide circulation of such newspaper, as follows:

(1) Two cents per word if the qualified newspaper has a bona fide circulation of less than one thousand, except as provided in subdivision (1), subsection (a) of this section;

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

(4) Seven and one-fourth cents per word if the qualified newspaper has a bona fide circulation of forty thousand or more: Provided, That on the first day of July in the year one thousand nine hundred ninety-five and on the first day of July in the year one thousand nine hundred ninety-six, the allowable rate per word in each of the classifications of qualified newspapers with reference to circulation as set forth in this subsection shall, for each classification, increase one cent per word over the prior year's rate. It is the intent of the Legislature to reconsider the issue of publication rates for legal advertisement in the year one thousand nine hundred ninety-seven.

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

(c) In determining the cost of a legal advertisement which is to appear more than once in the same qualified newspaper, the cost for the first publication shall be computed as specified in subsections (a) and (b) of this section, and the cost of the second and each subsequent publication shall be seventy-five percent of the cost of the first publication computed as aforesaid.

(d) The average bona fide circulation stated by each qualified newspaper in the statement filed by such newspaper with the United States post office department in November, one thousand nine hundred ninety-four, shall control the rate of circulation classification of such qualified newspaper for the period commencing the first day of July, one thousand nine hundred ninety-five, until the first day of July, one thousand nine hundred ninety-six. On or before the first day of November, one thousand nine hun-
dred ninety-five, the publisher or proprietor of each newspaper desiring to publish any legal advertisement during the ensuing one year time period commencing the first day of July, one thousand nine hundred ninety-six, shall file with the secretary of state an affidavit stating the average bona fide circulation of such newspaper during the preceding twelve month time period ending the thirtieth day of June immediately preceding the November in which the affidavit is filed, and sufficient facts shall be set forth in the affidavit to show whether such newspaper is a qualified newspaper. The average bona fide circulation stated in such affidavit by each qualified newspaper shall control the rate circulation classification for the ensuing twelve month period commencing the first day of July, one thousand nine hundred ninety-six. The publisher or proprietor of each newspaper desiring to publish any legal advertisement during the ensuing twelve month period commencing the first day of July, shall file an affidavit as aforesaid on or before the first day of November of each succeeding year, and such affidavit shall control the rate circulation classification of such newspaper, if it is a qualified newspaper, for the ensuing twelve month period commencing the first day of July. Any qualified newspaper for which the required affidavit is not filed on or before the first day of March of any calendar year after the year one thousand nine hundred ninety-six, shall be conclusively presumed to have for the ensuing twelve month period commencing the first day of July of such year, a bona fide circulation of less than one thousand. At the time a publisher or proprietor of a qualified newspaper files an affidavit with the secretary of state, as aforesaid, such publisher or proprietor shall notify the clerk of the county commission and the board of education of the county in which such qualified newspaper is published of the circulation classification of such qualified newspaper and of the applicable rate for publishing legal advertisements in such qualified newspaper during the ensuing twelve month period commencing the first day of July. If the qualified newspaper is published in a municipality, the publisher or proprietor shall at the same time also furnish the same notification to the clerk or recorder of such municipality.
(e) The rate charged for political advertising appearing in a newspaper at any time or times during the time period commencing thirty days prior to any primary or general election and ending the day following such election may not exceed one hundred five percent of the lowest commercial rate charged by the newspaper in which such political advertising appears.

(f) Nothing contained herein may prohibit qualified newspapers from charging less than the specified rates for 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.

(a) The following days are legal holidays:

1. The first day of January is "New Year's Day";
2. The third Monday of January is "Martin Luther
King's Birthday";

(3) The twelfth day of February is "Lincoln's Birthday";

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

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

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

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

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

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

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

(11) The fourth Thursday of November is "Thanksgiving Day";

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

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

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

(b) If a holiday otherwise described in subsection (a) of this section falls on a Sunday, then the following Monday is the legal holiday. If a holiday otherwise described in subsection (a) of this section falls on a Saturday, then the preceding Friday is the legal holiday:

Provided, That this subsection (b) shall not apply to subdivision (13), subsection (a) of this section.

(c) Any day or part thereof designated by the governor as time off, without charge against accrued
annual leave, for state employees statewide may also be
time off for county employees if the county commission
elects to designate the day or part thereof as time off,
without charge against accrued annual leave for county
employees. Any entire or part statewide day off desig-
nated by the governor may, for all courts, be treated as if it
were a legal holiday.

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

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

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

(g) The provisions of this section do not increase or
diminish the legal school holidays provided for in section
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 third day of December, one thousand nine hundred ninety-one, modified by the board of trustees to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the twenty-first day of January, one thousand nine hundred ninety-two, relating to the board of trustees (report card), are authorized.

9 (b) The legislative rules filed in the state register on the thirteenth day of July, one thousand nine hundred ninety-one, relating to the board of trustees (equal opportunity and affirmative action), are authorized.
(c) The legislative rules filed in the state register on the eighth day of September, one thousand nine hundred ninety-two, relating to the board of trustees (holidays), are authorized.

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

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

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

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

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

§18B-17-3. Board of directors.

(a) The legislative rules filed in the state register on the sixteenth day of December, one thousand nine hundred ninety-one, modified by the board of directors to meet the
objections of the legislative oversight commission on education accountability and refiled in the state register on the twenty-first day of January, one thousand nine hundred ninety-two, relating to the board of directors (report card), are authorized.

(b) The legislative rules filed in the state register on the twenty-seventh day of September, one thousand nine hundred ninety-one, relating to the board of directors (equal opportunity and affirmative action), are authorized.

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

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

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

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

(g) The legislative rules filed in the state register on the eighth day of December, one thousand nine hundred ninety-three, modified by the board of directors to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the eleventh day of January, one thousand nine hundred ninety-four, relating to the board of directors (assessment, payment and refund of fees), are authorized.
(h) The legislative rules filed in the state register on the first day of November, one thousand nine hundred ninety-three, modified by the board of directors to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the twenty-first day of December, one thousand nine hundred ninety-three, relating to the board of directors (personnel administration), are authorized.

(i) The legislative rules filed in the state register on the twenty-seventh day of October, one thousand nine hundred ninety-four, modified by the board of directors to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the nineteenth day of December, one thousand nine hundred ninety-four, relating to the board of directors (proprietary, correspondence, business, 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-3-11. 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.

When an agency proposes to promulgate a rule other than an emergency rule, it shall file with the secretary of state, for publication in the state register, a notice of its action, including therein any request for the submission of evidence to be presented on any factual determinations or inquiries required by law to promulgate such rule. At the time of filing the notice of its action, the agency shall also file with the secretary of state a copy of the full text of the rule proposed, and a fiscal note as defined in subsection (b), section four of this article. If the agency is considering alternative draft proposals, it may also file with the secretary of state the full text of such draft proposals.

The notice shall fix a date, time and place for the receipt of public comment in the form of oral statements, written statements and documents bearing upon any findings and determinations which are a condition precedent to the final approval by the agency of the proposed rule, and shall contain a general description of the issues to be decided. If no specific findings and determinations are required as a condition precedent to the final approval by the agency of the approved rule, the notice shall fix a date,
time and place for the receipt of general public comment on the proposed rule. To comply with the public comment provisions of this section, the agency may hold a public hearing or schedule a public comment period for the receipt of written statements and documents, or both.

If findings and determinations are a condition precedent to the promulgation of such rule, then an opportunity for general public comment on the merits of the rule shall be afforded after such findings and determinations are made. In such event, notice of the hearing or of the period for receiving public comment on the proposed rule shall be attached to and filed as a part of the findings and determinations of the agency when filed in the state register.

In any hearing for public comment on the merits of the rule, the agency may limit presentations to written material. The time, date and place fixed in the notice shall constitute the last opportunity to submit any written material relevant to any hearing, all of which may be earlier submitted by filing with the agency. After the public hearing or the close of the public comment period, whichever is later, the agency shall not permit the filing or receipt of, nor shall it consider, any attempted ex parte communications directed to it in the form of additional comment, prior to the submission of its final agency-approved rule to the legislative rule-making review committee pursuant to the provisions of section eleven of this article.

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

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


When an agency proposes a legislative rule, other than an emergency rule, it shall be deemed to be applying to the Legislature for permission, to be granted by law, to promulgate such rule as approved by the agency for submission to the Legislature or as amended and authorized
An agency proposing a legislative rule, other than an emergency rule, after filing the notice of proposed rule making required by the provisions of section five of this article, shall then proceed as in the case of a procedural and interpretive rule to the point of, but not including, final adoption. In lieu of final adoption, the agency shall finally approve the proposed rule, including any amendments, for submission to the Legislature and file such notice of approval in the state register and with the legislative rule-making review committee, within ninety days after the public hearing was held or within ninety days after the end of the public comment period required under section five of this article: Provided, That upon receipt of a written request from an agency, setting forth valid reasons why the agency is unable to file the agency approved rule within the ninety-day time period, the legislative rule-making review committee may grant the agency an extension of time to file the agency approved rule.

Such final agency approval of the rule under this section is deemed to be approval for submission to the Legislature only and does not give any force and effect to the proposed rule. The rule shall have full force and effect only when authority for promulgation of the rule is granted by an act of the Legislature and the rule is promulgated pursuant to the provisions of section thirteen of this article.

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

(a) When an agency finally approves a proposed legislative rule for submission to the Legislature, pursuant to the provisions of section nine of this article, the secretary of the executive department which administers the agency pursuant to the provisions of article two, chapter five of this code shall submit to the legislative rule-making review committee at its offices or at a regular meeting of such committee fifteen copies of: (1) The full text of the legislative rule as finally approved by the agency, with new language underlined and with language to be deleted from
any existing rule stricken through but clearly legible; (2) a brief summary of the content of the legislative rule and a description and a copy of any existing rule which the agency proposes to amend or repeal; (3) a statement of the circumstances which require the rule; (4) a fiscal note containing all information included in a fiscal note for either house of the Legislature and a statement of the economic impact of the rule on the state or its residents; (5) one copy of any relevant federal statutes or regulations; and (6) any other information which the committee may request or which may be required by law. If the agency is an agency, board or commission which is not administered by an executive department as provided for in article two, chapter five-f of this code, the agency shall submit the final agency-approved rule as required by this subsection.

(b) The committee shall review each proposed legislative rule and, in its discretion, may hold public hearings thereon. Such review shall include, but not be limited to, a determination of:

(1) Whether the agency has exceeded the scope of its statutory authority in approving the proposed legislative rule;

(2) Whether the proposed legislative rule is in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret or make specific;

(3) Whether the proposed legislative rule conflicts with any other provision of this code or with any other rule adopted by the same or a different agency;

(4) Whether the proposed legislative rule is necessary to fully accomplish the objectives of the statute under which the rule was proposed for promulgation;

(5) Whether the proposed legislative rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it;

(6) Whether the proposed legislative rule could be
made less complex or more readily understandable by the
general public; and

(7) Whether the proposed legislative rule was proposed
for promulgation in compliance with the requirements of
this article and with any requirements imposed by any
other provision of this code.

(c) After reviewing the legislative rule, the committee
shall recommend that the Legislature:

(1) Authorize the promulgation of the legislative rule;
or

(2) Authorize the promulgation of part of the legisla-
tive rule; or

(3) Authorize the promulgation of the legislative rule
with certain amendments; or

(4) Recommend that the proposed rule be withdrawn.

The committee shall file notice of its action in the state
register and with the agency proposing the rule: Provided,
That when the committee makes the recommendations
of subdivision (2), (3) or (4) of this subsection, the notice
shall contain a statement of the reasons for such recom-
mendation.

(d) When the committee recommends that a rule be
authorized, in whole or in part, by the Legislature, the
committee shall instruct its staff or the office of legislative
services to draft a bill authorizing the promulgation of all
or part of the legislative rule and incorporating such
amendments as the committee desires. If the committee
recommends that the rule not be authorized, it shall in-
clude in its report a draft of a bill authorizing promulga-
tion of the rule together with a recommendation. Any
draft bill prepared under this section shall contain a legis-
lative finding that the rule is within the legislative intent of
the statute which the rule is intended to implement, extend,
apply or interpret and shall be available for any member
of the Legislature to introduce to the Legislature.

§29A-3-12. Submission of legislative rules to Legislature.
(a) No later than forty days before the sixtieth day of each regular session of the Legislature, the cochairmen of the legislative rule-making review committee shall submit to the clerk of the respective houses of the Legislature copies of all proposed legislative rules which have been submitted to and considered by the committee pursuant to the provisions of section eleven of this article and which have not been previously submitted to the Legislature for study, together with the recommendations of the committee with respect to such rules, a statement of the reasons for any recommendation that a rule be amended or withdrawn and a statement that a bill authorizing the legislative rule has been drafted by the staff of the committee or by legislative services pursuant to section eleven of this article. The cochairman of the committee may also submit such rules at the direction of the committee at any time before or during a special session in which consideration thereof may be appropriate. The committee may withhold from its report any proposed legislative rule which was submitted to the committee fewer than two hundred twenty-five days before the end of the regular session. The clerk of each house shall submit the report to his or her house at the commencement of the next session.

All bills introduced authorizing the promulgation of a rule may be referred by the speaker of the House of Delegates and by the president of the Senate to appropriate standing committees of the respective houses for further consideration or the matters may be otherwise dealt with as each house or its rules provide. The Legislature may by act authorize the agency to adopt a legislative rule incorporating the entire rule or may authorize the agency to adopt a rule with any amendments which the Legislature shall designate. The clerk of the house originating such act shall forthwith file a copy of any bill of authorization enacted with the secretary of state and with the agency proposing such rule and the clerk of each house may prepare and file a synopsis of legislative action during any session on any proposed rule submitted to the house during such session for which authority to promulgate was not by law provided during such session. In acting upon the separate bills authorizing the promulgation of rules,
the Legislature may, by amendment or substitution, combine the separate bills of authorization insofar as the various rules authorized therein are proposed by agencies which are placed under the administration of one of the single separate executive departments identified under the provisions of section two, article one, chapter five-f of this code or the Legislature may combine the separate bills of authorization by agency or agencies within an executive department. In the case of rules proposed for promulgation by an agency which is not administered by an executive department pursuant to the provisions of article two of said chapter, the separate bills of authorization for the proposed rules of that agency may, by amendment or substitution, be combined. The foregoing provisions relating to combining separate bills of authorization according to department or agency are not intended to restrict the permissible breadth of bills of authorization and do not preclude the Legislature from otherwise combining various bills of authorization which have a unity of subject matter. Any number of provisions may be included in a bill of authorization, but the single object of the bill shall be to authorize the promulgation of proposed legislative rules.

(b) If the Legislature fails during its regular session to act upon all or part of any legislative rule which was submitted to it by the legislative rule-making review committee during such session, no agency may thereafter issue any rule or directive or take other action to implement such rule or part thereof unless and until otherwise authorized to do so.

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

(d) Whenever the Legislature is convened by proclamation of the governor, upon his or her own initiative or upon application of the members of the Legislature, or whenever a regular session of the Legislature is extended or convened by the vote or petition of its members, the
Legislature may by act enacted during such extraordinary or extended session authorize, in whole or in part, any legislative rule whether submitted to the legislative rule-making review committee, or not, if legislative action on such rule during such session is a lawful order of business.

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

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

ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

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

§64-1-1. Legislative authorization.

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

§64-1-2. Effective date of rules.

1. The effective date of the legislative rules authorized in articles two through ten of this chapter shall be governed by the provisions of section thirteen, article three, chapter twenty-nine-a, unless the agency promulgating the rules establishes an effective date which is earlier than that pro-
6 provided by section thirteen, article three, chapter twenty-nine-a, in which case the effective date established by the agency shall control, unless the Legislature in the bill authorizing the rules establishes an effective date for such rules in which case the effective date established by the Legislature shall control.

§64-1-3. Technical deficiencies waived.

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

ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO PROMULGATE LEGISLATIVE RULES.

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

§64-3-2. Environmental boards.

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

(a) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-four, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of November, one thousand nine hundred ninety-four, relating to the division of environmental protection (requirements for determining conformity of general federal actions to applicable air quality implementation plans (general conformity), 45 CSR 35), are authorized.

(b) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-four, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state
register on the twenty-third day of November, one thousand nine hundred ninety-four, relating to the division of environmental protection (emission standards for hazardous air pollutants pursuant to 40 CFR Part 63, 45 CSR 34), are authorized.

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

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

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

And,

On page two, section 4, after subdivision 'k', by inserting a new subdivision to read as follows:

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

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

(e) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-four, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of November, one thousand nine hundred ninety-four, relating to the division of environmental protection (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, 45 CSR 36), are authorized.

(f) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-four, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-ninth day of December, one thousand nine hundred ninety-four, relating to the division of environmental protection (to prevent and control air pollution from the operation of coal preparation plants and coal handling operations, 45 CSR 5), are authorized.

(g) The legislative rules filed in the state register on the thirteenth day of September, one thousand nine hundred ninety-four, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of January, one thousand nine hundred ninety-five, relating to the division of environmental protection (to prevent and control air pollution from hazardous waste treatment, storage or disposal facilities, 45 CSR 25), are authorized.

(h) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-four, modified by the division of environmental
protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of November, one thousand nine hundred ninety-four, relating to the division of environmental protection (acid rain provisions and permits, 45 CSR 33), are authorized.

(i) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-four, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of November, one thousand nine hundred ninety-four, relating to the division of environmental protection (emission standards for hazardous air pollutants pursuant to 40 CFR Part 61, 45 CSR 15), are authorized.

(j) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-four, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of November, one thousand nine hundred ninety-four, relating to the division of environmental protection (provisions for determination of compliance with air quality management rules, 45 CSR 33), are authorized.

(k) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-four, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of November, one thousand nine hundred ninety-four, relating to the division of environmental protection (prevention and control of pollution from combustion of refuse, 45 CSR 10), are authorized.
(e) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-four, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of November, one thousand nine hundred ninety-four, relating to the division of environmental protection (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, 45 CSR 36), are authorized.

(f) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-four, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-ninth day of December, one thousand nine hundred ninety-four, relating to the division of environmental protection (to prevent and control air pollution from the operation of coal preparation plants and coal handling operations, 45 CSR 5), are authorized.

(g) The legislative rules filed in the state register on the thirteenth day of September, one thousand nine hundred ninety-four, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of January, one thousand nine hundred ninety-five, relating to the division of environmental protection (to prevent and control air pollution from hazardous waste treatment, storage or disposal facilities, 45 CSR 25), are authorized.

(h) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred 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
95 (i) The legislative rules filed in the state register on the
96 twelfth day of August, one thousand nine hundred
97 ninety-four, modified by the division of environmental
98 protection to meet the objections of the legislative
99 rule-making review committee and refiled in the state
100 register on the twenty-third day of November, one thou-
101 sand nine hundred ninety-four, relating to the division of
102 environmental protection (emission standards for hazar-
103 dous air pollutants pursuant to 40 CFR Part 61, 45 CSR 15),
104 are authorized.
105
106 (j) The legislative rules filed in the state register on the
107 twelfth day of August, one thousand nine hundred
108 ninety-four, modified by the division of environmental
109 protection to meet the objections of the legislative
110 rule-making review committee and refiled in the state
111 register on the twenty-third day of November, one thou-
112 sand nine hundred ninety-four, relating to the division of
113 environmental protection (provisions for determination of
114 compliance with air quality management rules, 45 CSR
115 38), are authorized.
116
117 (k) The legislative rules filed in the state register on
118 the twelfth day of August, one thousand nine hundred
119 ninety-four, modified by the division of environmental
120 protection to meet the objections of the legislative
121 rule-making review committee and refiled in the state
122 register on the twenty-third day of November, one thou-
123 sand nine hundred ninety-four, relating to the division of
124 environmental protection (to prevent and control air pol-
125 lution from combustion of refuse, 45 CSR 6), are autho-
126 rized.
The legislative rules filed in the state register on the fifteenth day of August, one thousand nine hundred ninety-four, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of January, one thousand nine hundred ninety-five, relating to the division of environmental protection (dam safety, 47 CSR 34), are authorized with the amendments set forth below:

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

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

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

"The design precipitation for a Class 3 dam may be reduced based on Risk Assessment pursuant to paragraph 3.5.4 of this rule, but in no case to less than a P$_{100}$ rainfall of six (6) hours in duration."

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

"Performance Requirements - All dams completed before July 1, 1973, shall meet the applicable design requirements of Section 7 of this rule. Those dams which do not meet the applicable design requirement of Section 7 of this rule shall be modified, breached, removed, or properly abandoned pursuant to the provisions of this rule. In developing the required plans, specifications, and documentation necessary to bring the structure into conformity with section 7 of this rule, the design engineer may consider in his submitted analyses, peculiarities and local conditions for each impounding structure with recognition of the many factors involved, some of which may not be precisely known. Existing construction documen-
(m) The legislative rules filed in the state register on the fifteenth day of August, one thousand nine hundred ninety-four, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of January, one thousand nine hundred ninety-five, relating to the division of environmental protection (regulations governing environmental laboratories certification and standards of performance, 47 CSR 32), are authorized.

(n) The legislative rules filed in the state register on the twenty-eighth day of February, one thousand nine hundred ninety-four, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of July, one thousand nine hundred ninety-four, relating to the division of environmental protection (state water pollution control revolving fund program, 47 CSR 31), are authorized.

(o) The legislative rules filed in the state register on the fifteenth day of August, one thousand nine hundred ninety-four, relating to the division of environmental protection (underground storage tanks, 47 CSR 36), are authorized.

(p) The legislative rules filed in the state register on the fifteenth day of August, one thousand nine hundred ninety-four, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of January, one thousand
nine hundred ninety-five, relating to the division of environmental protection (hazardous waste management regulations, 47 CSR 35), are authorized.

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

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

"In lieu of completing the training program, the applicant for certification or re-certification may complete a self-study course using the study guide and other materials available from the Division of Environmental Protection."

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

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

On page 9, subsection 11.1, by striking out the subsection and inserting in lieu thereof a new subsection to read as follows: "11.1. Suspension - Upon service of a written notice of violation by the Director to a certified blaster, the Director may suspend his or her certification. Prior to the issuance of such an order, the certified blaster shall be
granted a hearing before the Director to show cause why
his or her certification should not be suspended."

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

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

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

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

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

And,

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

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

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

10.2. In the event a fuel burning unit employing a flue gas desulphurization system must by-pass such system because of necessary planned or unplanned maintenance, visible emissions may not exceed twenty percent (20%) opacity during such period of maintenance. The Director may require advance notice of necessary planned maintenance, including a description of the necessity of the maintenance activity and its expected duration and may limit the duration of the variance or the amount of the excess opacity exception herein allowed. The Director shall be notified of unplanned maintenance and may limit the duration of the variance or the amount of excess opacity exception allowed during unplanned maintenance.

And, by renumbering subsequent sections.

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

On pages 2 and 3, by striking out subsections 1.6, 1.7
and 1.8 in their entirety;

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

"Chemical Treatment means - the treatment of water from a surface coal mining operation using chemical reagents such as but not limited to sodium hydroxide, calcium carbonate, or anhydrous ammonia for purposes of meeting applicable state and federal effluent limitations. Chemical treatment does not include passive treatment systems such as but not limited to limestone drains, wetlands, alkaline addition, application of flyash, agricultural lime, or injection of flyash, limestone, or other minerals into underground coal operations."

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

On page 25, by striking the second paragraph of subsection 3.1 (o) and inserting in lieu thereof a new second paragraph 3.1 of subsection 3.1 (o), to read as follows:

"Any permit application which references an approved centralized ownership and control file may be determined to be complete and accurate for the purposes of this subsection. Each centralized ownership and control file shall at a minimum:"

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

On page 63, by striking out the first sentence in subsection 3.26, and inserting in lieu thereof the following:

"(a) All changes including name changes, replacements, and additions to the ownership or control data relative to a permittee or assignee who will function as an operator pursuant to the provisions of paragraph (c) of subsection 3.25 of this rule shall be reported to the Director."

On page 64, after subsection 3.26 (a) (5) by inserting a new subsection 3.26 (a) (6) to read as follows:
"(6) In the event that a permittee or operator has incurred no changes in its ownership and control information and therefore has not been obligated to file a report within any consecutive twelve-month period, that permittee or operator is required to notify the Director in writing that no changes to the information required by paragraphs (b), (c), (d), and (i) of subsection 3.1 of this rule have occurred."

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

"(a) All active surface mining operations shall be subject to the renewal requirements and provisions for issuance of a renewal discussed in Section 19 of the Act: Provided, That the Director may waive the requirement for renewal if the permittee certifies in writing that all coal extraction is completed, that all backfilling and regrading will be completed within sixty (60) days prior to the expiration date of the permit, and that an application for Phase I bond release will be filed prior to the expiration date of the permit. Failure of the permittee complete backfilling and regrading within sixty (60) days prior to the expiration date of the permit will nullify the waiver.

Those operations which have been granted inactive status in accordance with subsection 14.11 of this rule shall also be subject to the renewal requirements of Section 19 of the Act.

Applications for renewal shall be filed on forms provided by the Director and shall contain at a minimum the following information:

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

On page 80, subsection 3.34 (b) after the word "criteria" by inserting the words "paragraph (b) of subsection 3.32 of this section";

On page 80, by striking out subsection 3.34 (b) (3)
and substituting therefor a new subsection 3.34 (b) (3), to
read as follows: "(3) The permittee was linked to a viola-
tion, penalty or fee through ownership or control, under
the violation review criteria, paragraph (b) of subsection
3.32 of this section at the time the permit was issued and
an ownership or control link between the permittee and
the person responsible for the violation, penalty or fee still
exists, or when the link was severed the permittee contin-
ues to be responsible for the violation, penalty or fee."

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

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

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

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

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

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

On Page 148, section 11.6 (a) in the underscored
language, after the word, "completed" by inserting the words "or nearly completed".

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

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

On Page 240, subsection 17.1, in the first sentence, after the words "mining and reclamation," by striking out the remainder of the paragraph and substituting therefor the following: "required by the Act and these Rules, including the engineering analyses and designs; the development of cross-section maps and plans; the geologic drilling and statement of results of test borings and core samplings; preblast surveys; the collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values; and the collection of archaeological and historical information; and any other archaeological
and historical information required by the federal department of the interior and the preparation of plans that may be necessitated thereby; and the director shall provide or assume the cost of training coal operators that meet the qualifications concerning the preparation of permit applications and compliance with the regulatory program, and shall ensure that qualified coal operators are aware of the assistance available under this section.

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

On Page 241, by striking out subsection 17.4 in its entirety and substituting therefor the following: "17.4 Request for Assistance. Each applicant requesting assistance shall provide information on forms provided by the director in an application that shall be clear and concise and shall be provided in a format prescribed by the Director and/or a format required by the Federal Office of Surface Mining Reclamation and Enforcement."

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

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

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

On page 274, subsection 20.6 (d), by striking out the first sentence, and inserting in lieu thereof the following: "The time and place of an informal assessment conference
§64-3-2. Environmental boards.

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

(b) The legislative rules filed by the solid waste management board in the state register on the fourth day of August, one thousand nine hundred ninety-four, under the authority of section six, article three, chapter twenty-two-c of this code, relating to the solid waste management board (regulating for the disbursement of grants to solid waste 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.


§64-2-3. Division of personnel.

§64-2-4. Ethics commission.

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

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

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


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

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

§64-2-3. Division of personnel.

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

"On page 61, section 17.01, by striking out all of paragraph (h)."

§64-2-4. Ethics commission.

The legislative rules filed in the state register on the eighth day of April, one thousand nine hundred ninety-four, modified by the ethics commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of August, one thousand nine hundred ninety-four, relating to the ethics commission (guidelines and standards for determining the existence of disqualifying financial 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.

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

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

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

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

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

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

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

And,

On page 3, section 3.8.8, by striking out "section
3.8.10" and inserting the words "The facility administrator
and staff should note that the various types of legal repre-
sentatives do not necessarily have the lawful authority to
act on behalf of the resident in all matters which may
require action by a legal representative. For example, a
conservator may have responsibility for financial affairs,
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 promulga-
tion of administrative rules by the various executive or ad-
ministrative agencies and the procedures relating thereto;
legislative mandate or authorization for the promulgation of
certain legislative rules by various executive and administra-
tive 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 promul-
gate 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.

(a) The legislative rules filed in the state register on the fifth day of August, one thousand nine hundred ninety-four, modified by the division of corrections to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of November, one thousand nine hundred ninety-four, relating to the division of corrections
(recording of inmate telephone calls, 90 CSR 5), are au-

thorized with the amendment set forth below:

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

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

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

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

The legislative rules filed in the state register on the
eleventh day of August, one thousand nine hundred
ninety-four, modified by the jail and correctional facility
standards commission to meet the objections of the legis-

tative rule-making review committee and refiled in the
state register on the fourth day of November, one thou-
sand nine hundred ninety-four, relating to the jail and
correctional facility standards commission (West Virginia
minimum standards for construction, operation and main-
tenance of jails, 95 CSR 1), are authorized with the amend-
ment set forth below:

On page forty, following section 17.18, by inserting a
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:
Primary Care Facility: Medical care and services at the point when a person first seeks assistance from the health care system for the simpler and more common illnesses and emergency patient treatment/stabilization, and which takes ongoing responsibility for the recipient's health maintenance and illness. Including these and similar facilities: primary care centers, local health departments, rural health initiative/Kellogg Clinics, and birthing centers where patients are capable of taking action for self preservation. No more than three non-ambulatory patients are permitted.

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

Minimum Construction Requirements:

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

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

B. Existing Construction - no requirement except unprotected wood frame construction shall not be acceptable unless provided with an automatic sprinkler protection system.

Sprinkler System:

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

Occupant Load:

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

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

Means of Egress Requirements:

Every aisle, passageway, corridor, stairways, exit dis-
charge, exit location, and access shall be in accordance with NFPA 101, Life Safety Code, Means of Egress Requirements, and as modified by this rule.

Number of Exits:
There shall be not less than two remote exits provided from each floor.

Corridors:
A. No dead end corridor shall exceed 20 feet.
B. Travel distance to an exit shall not exceed 150 feet in a nonsprinklered building or 200 feet in a sprinklered building.
C. All corridors shall be a minimum of 44 inches in clear width. Primary Care facilities accepting non-ambulatory patients shall have 6 foot corridors.
D. Corridors shall be of smoke tight construction.

Doors:
B. All exit doors shall be equipped with panic hardware.
C. Doors not in the means of egress shall comply with NFPA 101, Life Safety Code, Means of Egress Components

Protection:
B. Hazardous Areas:
1. All hazardous areas shall be separated by one hour fire resistive construction with openings protected with one hour fire resistive assemblies or shall be protected with an automatic sprinkler system and construction that resists the
passage of smoke.

2. General anesthetizing locations and laboratories using hazardous chemicals shall be protected in accordance with NFPA 99, Standard for Health Care Facilities.

C. Interior Finish:

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

D. Carpet:

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

E. Fire Alarm:

The fire alarm system will comply with Section 11.01 and 11.04 of this rule. EXCEPTION: The fire alarm system is not required to be connected to a communication center.

F. Building Services:


G. Rescue and Ventilation:

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

H. Separation Requirements:

When a facility is located within a building having more than one occupancy, the facility will be separated from all other occupancies with a two (2) hour fire barrier, or the building will be completely protected with an automatic sprinkler system in accordance with NFPA 13, Standard for the Installation of Sprinkler System.
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.

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

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

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

"On page twenty-five, by striking subsection 7.3.4.";
By renumbering the remaining subdivisions;
And,
"On page thirty-one, by adding a new subsection, denoted as subsection 13.2.1.3 to read as follows:
In the event a brewer withdraws his products from the state and subsequently reintroduces his products to the state at a later date, that brewer or his successor shall offer the territorial franchise for those products to such distributors who had a franchise agreement with the brewer in effect at the time of the original withdrawal of the brewer's products."

§64-7-2. Division of banking.

(a) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-four, modified by the division of banking to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of November, one thousand nine hundred ninety-four, relating to the division of banking (legal lending limit, 106 CSR 9), are authorized.

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

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

(a) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-four, modified by the division of tax to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixth day of January, one thousand nine hundred ninety-five, relating to the division of tax (business investment and jobs expansion tax credit, corporation headquarters relocation tax credit, small business tax credit, 110 CSR 13C), are authorized.
(b) The legislative rules filed in the state register on
the twelfth day of August, one thousand nine hundred
ninety-four, modified by the division of tax to meet the
objections of the legislative rule-making review committee
and refiled in the state register on the sixth day of January,
one thousand nine hundred ninety-five, relating to the
division of tax (exchange of information agreement be-	ween tax division and division of environmental protec-
tion, 110 CSR 6B), are authorized.

§64-7-4. Insurance commissioner.

(a) The legislative rules filed in the state register on the
seventeenth day of August, one thousand nine hundred
ninety-three, modified by the insurance commissioner to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the seven-
teenth day of June, one thousand nine hundred
ninety-four, relating to the insurance commissioner (indi-
vidual accident and sickness insurance minimum stan-
dards, 114 CSR 12), are authorized.

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

(c) The legislative rules filed in the state register on the
twelfth day of August, one thousand nine hundred
ninety-four, modified by the insurance commissioner to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the
twenty-third day of November, one thousand nine hun-
dred ninety-four, relating to the insurance commissioner
(credit for reinsurance, 114 CSR 40), are authorized.
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 on the fifteenth day of February, one thousand nine hundred ninety-five, under the authority of section nineteen, article two-a, chapter seventeen of this code (relating to acquisition, disposal, lease and management of real property and appurtenant structures and relocation 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.
§64-9-1. Commissioner of agriculture.

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

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

"1.1 The Commissioner will inspect aquaculture production on a voluntary basis for a period of three years. At the end of this three year period the Aquaculture Farm Rule shall be reviewed to determine whether the rule should become mandatory. Aquaculture producers wishing to participate in the voluntary inspection program must apply in writing to the Commissioner. Once a producer enters the voluntary program they will be required to produce fish according to all of the provisions of this rule for the remaining portion of the three year period. The inspections will be conducted on a risk assessment basis with the purpose of educating farmers and assuring the production of wholesome, unspoiled and unadulterated fish and fishery products."

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

"3.1 All producers of fish participating in the voluntary inspection program outlined in this rule shall have and implement a written Hazard Analysis Critical Control Point Plan, approved by the commissioner, for each location where fish are grown. The commissioner shall furnish a model Hazard Analysis Critical Control Point Plan to the producers for them to follow."

On page 5, section 61-23-3, by striking out section
On page 6, section 61-23-4, by striking out all of section 4.6 and substituting in lieu thereof the following:

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

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

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

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

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

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

"7.5.a. Shipments of fish to other producers before the completion of a required withdrawal period shall be accompanied by a written notification including the name and dose of the drug, feed, color additive, pesticide, and/or medicated feed; date administered and length of required
On page 9, section 61-23-9, by striking out section 9.1 and substituting in lieu the following:

"9.1 It is prohibited to:"

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

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

"12.1.a. Enter and inspect, during reasonable hours, any aquaculture production area participating in the voluntary inspection program, where fish are produced, sold, stored, or transported. The inspection includes, but is not limited to, photographing, video taping, verifying, copying and auditing computer files, records and papers relating to the production of fish, as is necessary to determine compliance with this rule and to investigate consumer complaints. The inspection also includes, but is not limited to, photographing, video taping, observing and verifying the premises, vehicles, personnel and activities;"

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

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

And,

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

(b) The legislative rules filed in the state register on the twenty-second day of July, one thousand nine hundred ninety-four, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refilled in the state register on the ninth day of August, one thousand nine hundred
ninety-four, relating to the commissioner of agriculture
(inspection of nontraditional, domesticated animals, 61
CSR 23D), are authorized.

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

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

§64-9-2. Secretary of state.

The legislative rules filed in the state register on the
fifteenth day of August, one thousand nine hundred
ninety-four, modified by the secretary of state to meet the
objections of the legislative rule-making review committee
and refiled in the state register on the fourteenth day of
November, one thousand nine hundred ninety-four, rela-
ting to the secretary of state (combined voter registration
and driver licensing fund, 153 CSR 28), are authorized.
§64-9-3. Governor's committee on crime, delinquency and correction.

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

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

(a) The legislative rules filed in the state register on the fourteenth day of July, one thousand nine hundred ninety-four, modified by the West Virginia board of examiners for licensed practical nurses to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of August, one thousand nine hundred ninety-four, relating to the West Virginia board of examiners for licensed practical nurses (fees for services rendered by the board, 10 CSR 4), are authorized.

(b) The legislative rules filed in the state register on the fourteenth day of July, one thousand nine hundred ninety-four, modified by the West Virginia board of examiners for licensed practical nurses to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of August, one thousand nine hundred ninety-four, relating to the West Virginia board of examiners for licensed practical nurses (policies regulating licensure of the licensed practical nurse, 10 CSR 2), are authorized.

§64-9-5. Board of medicine.

The legislative rules filed in the state register on the fourteenth day of July, one thousand nine hundred ninety-four, modified by the board of medicine to meet
the objections of the legislative rule-making review com-
mittee and refiled in the state register on the twelfth day of
October, one thousand nine hundred ninety-four, relating
to the board of medicine (fees for services rendered by the
board of medicine, 11 CSR 4), are authorized.

§64-9-6. Board of examiners for registered professional
nurses.

(a) The legislative rules filed in the state register on the
fifteenth day of August, one thousand nine hundred
ninety-four, modified by the board of examiners for reg-
istered professional nurses to meet the objections of the
legislative rule-making review committee and refiled in the
state register on the twenty-eighth day of November, one
thousand nine hundred ninety-four, relating to the board
of examiners for registered professional nurses (continu-
ing education, 19 CSR 11), are authorized.

(b) The legislative rules filed in the state register on
the fifteenth day of August, one thousand nine hundred
ninety-four, modified by the board of examiners for reg-
istered professional nurses to meet the objections of the
legislative rule-making review committee and refiled in the
state register on the twenty-eighth day of November, one
thousand nine hundred ninety-four, relating to the board
of examiners for registered professional nurses (require-
ments for licensure and registration, 19 CSR 3), are autho-
ized.

(c) The legislative rules filed in the state register on the
fifteenth day of August, one thousand nine hundred
ninety-four, modified by the board of examiners for reg-
istered professional nurses to meet the objections of the
legislative rule-making review committee and refiled in the
state register on the twenty-eighth day of November, one
thousand nine hundred ninety-four, relating to the board
of examiners for registered professional nurses (policies
and criteria for the evaluation and accreditation of colleg-
es, departments or schools of nursing, 19 CSR 1), are au-
thorized.

The legislative rules filed in the state register on the fifteenth day of August, one thousand nine hundred ninety-four, modified by the real estate commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of October, one thousand nine hundred ninety-four, relating to the real estate commission (requirements in licensing real estate brokers, associate brokers, and salespersons and the conduct of brokerage business, 174 CSR 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.

(a) The legislative rules filed in the state register on the fifteenth day of August, one thousand nine hundred ninety-four, modified by the division of labor to meet the objections of the legislative rule-making review committee and refiled in the state register on the third day of November, one thousand nine hundred ninety-four, relating to the division of labor (regulation of trade, weights and measures, 42 CSR 22), are authorized.

(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 November,
14 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.

(a) The legislative rules filed in the state register on the
14 fourteenth day of July, one thousand nine hundred
15 ninety-four, modified by the division of natural resources
16 to meet the objections of the legislative rule-making re-
17 view committee and refiled in the state register on the
18 eighth day of September, one thousand nine hundred
19 ninety-four, relating to the division of natural resources
20 (recycling assistance fund grant program, 58 CSR 43), are
21 authorized.

(b) The legislative rules filed in the state register on
22 the twelfth day of August, one thousand nine hundred
23 ninety-four, modified by the division of natural resources
24 to meet the objections of the legislative rule-making re-
25 view committee and refiled in the state register on the
26 fourteenth day of October, one thousand nine hundred
27 ninety-four, relating to the division of natural resources
28 (West Virginia wildlife management areas, 58 CSR 6), are
29 authorized with the following amendments:

On page four, section 6.4.3, before the word "No" by
inserting "Except for persons who are under sixteen years
of age and who have a valid West Virginia hunting li-
cense,";

And,

On page four, section 6.4.3, by deleting the capital
letter "N" and substituting in lieu thereof the lower case
"n."

(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.

(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.

(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:

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".

(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:

On page five, section 2.23, line four, before the word
"chartered" by inserting the word "A" and by deleting the letter "s" at the end of the word "foundations".

(g) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-four, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of October, one thousand nine hundred ninety-four, relating to the division of natural resources (prohibitions when hunting and trapping, 58 CSR 11B) are authorized with the following amendments:

On page two, by striking out section 3.5 and renumbering the remaining sections;

In section 3.7, after the word "net" by inserting the word "bait" and after the word "any" by inserting the word "deer";

And,

By striking out subsection 3.7.1 and renumbering the remaining sections.

CHAPTER 159

(S. B. 238—By Senators Wooton, Dittmar, Buckaiew, 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.

(a) A person is guilty of making a false statement to the commission on special investigations when:

(1) Such person, with the intent to impede the commission or to impede an investigator of the commission acting in the lawful exercise of his or her official duties, knowingly and willfully makes any false, fictitious or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry;

(2) Such statement, representation, writing or document is made or given to the commission or an investigator of the commission acting in the lawful exercise of his or her official duties; and

(3) The misrepresentation is material.

(b) The provisions of subsection (a) of this section are not applicable to a person in the relation of husband and wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity, of an individual who is the subject of an investigation by the commission.

(c) Any person who violates the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or confined in jail for not more than one year, or both, in the discretion of the court.
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.

There shall be a state library commission, known as the "West Virginia library commission", which shall consist of five members who shall be appointed by the governor, by and with the advice and consent of the Senate, each for a term of four years. Thereafter, on the first day of July, one thousand nine hundred ninety-five, four additional members shall be appointed: Provided, That for the four new members added to the commission in the year one thousand nine hundred ninety-five, one shall serve an initial term of four years and three shall serve an initial term of two years. No more than three members may reside in the same congressional district. At least four members of the commission shall be women and at least four members shall be men. No member of the commission shall receive compensation for services rendered, nor be engaged or interested in the publishing business.
The members of the commission in office on the date this code takes effect shall, unless sooner removed, continue to serve until their respective terms expire and their successors have been appointed and have qualified. On or before the expiration of the terms for which said members are appointed, the governor shall appoint their successors.

CHAPTER 161

(H. B. 2796—By Delegates Browning, Burke, Seacrist, Mezzatesta, Kelley, Tomlin 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.

Notwithstanding the provisions of subdivision one, subsection (c), section ten of this article, beginning on the first day of July, one thousand nine hundred ninety-five and continuing thereafter, the net terminal income received by the commission shall be paid into the state lottery fund created by section eighteen, article twenty-two of this chapter, to be appropriated by the Legislature: Provided, That income deposited pursuant to this section shall not be subject to the provisions of subsections (b), (c), (d) or (e), 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.

The West Virginia supreme court of appeals is authorized and empowered to create a panel of senior magistrates to consist of, and to utilize the talent and experience of, retired magistrates of this state. The supreme court of appeals shall promulgate rules providing for such senior magistrates to be assigned duties as needed and as feasible toward the objective of reducing caseloads and providing for replacement of magistrates who are unavailable: Provided, That reasonable payment shall be made to said senior magistrates on a per diem basis: Provided, however, That the per diem and retirement compensation of a senior magistrate shall not exceed the salary of a sitting magistrate and allowances shall also be made for necessary expenses pursuant to the travel regulations of the supreme court of appeals.
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.

Whenever required by workload and upon the recommendation of the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, the supreme court of appeals may by rule provide for the appointment of magistrate court deputy clerks, not to exceed fifty-seven in number. Such magistrate court deputy clerks shall be appointed by the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, with such appointee to serve at his will and pleasure under the immediate supervision of the magistrate court clerk. Such magistrate court deputy clerk shall have such duties, clerical or otherwise, as may be assigned by the magistrate court clerk and as may be prescribed by the rules of the supreme court of appeals or the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court. Such magistrate court deputy clerks shall also have authority to exercise the power and perform the duties of the magistrate court clerk as may be delegated or assigned by such magistrate court clerk.
Such magistrate court deputy clerk shall not be a member of the immediate family of any magistrate, magistrate court clerk, magistrate assistant or circuit court judge within the same county, shall not have been convicted of a felony or any misdemeanor involving moral turpitude and shall reside in the state of West Virginia. For the purpose of this section, "immediate family" shall mean the relationships of mother, father, sister, brother, child or spouse.

Magistrate court deputy clerks shall be paid a monthly salary by the state. Such salary shall be paid on the same basis and in the same applicable amounts as for magistrate assistants in each county as provided in section nine of this article.

CHAPTER 164

(S. B. 431—By Senators Wooton, Anderson, Wiedebusch, 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.

(a) Any magistrate, magistrate court clerk, magistrate assistant or magistrate deputy clerk who receives a fee, cost, percentage, penalty, commission, allowance, bond, deposit, surety or other cash payment or sum shall issue a receipt to the payor thereof, in duplicate, on a form approved by the chief inspector, in accordance with the provisions of article nine, chapter six of this code. The magistrate court official shall issue the original of such receipt to the payor and shall retain the copy. The chief inspector shall prescribe the minimum information to be included on such receipt forms.

(b) All money collected shall be deposited in accordance with rules promulgated by the supreme court of appeals.

§50-3-10. Removal of magistrate court official.

If any magistrate, magistrate court clerk, magistrate assistant or magistrate court deputy clerk shall fail to comply with the provisions of this article, the chief inspector may, in addition to any other remedies provided by law, seek the removal from office of such official, in accordance with provisions of section seven, article six, 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.

In this article, the following terms shall have the meanings ascribed to them:

(1) "Expressway" means a road that serves major intrastate and interstate travel, including federal interstate routes.

(2) "Feeder" means a road that serves community to community travel or collects and feeds traffic to the higher systems or both.

(3) "Maintenance association" means an association established pursuant to the requirements of this article.

(4) "Maintenance association member" means any person owning residential property that fronts on either side of a road which is designated by a maintenance association document.

(5) "Maintenance association documents" means documents approved by the county commission as
(6) "Park and forest road" means a road that serves travel within state parks, state forests and public hunting and fishing areas.

(7) "Public roads" means all roads and bridges under the control of the county commission or the governing body of a municipality.

(8) "State local service road" means localized arterial and spur roads which provide land access and socioeconomical benefits to abutting properties.

(9) "State road" means and includes all roads classified and prescribed as either expressway, trunkline, feeder, park and forest or state local service roads.

(10) "State road system" means roads that are functionally classified into five categories as follows: (1) Expressway; (2) trunkline; (3) feeder; (4) state local service; and (5) park and forest.

(11) "Trunkline" means a road that serves major city to city travel.

§7-12A-2. Purpose of the maintenance association.

Maintenance associations may be established in any county outside an incorporated area to protect the health, safety and welfare of persons and the general public located within the designated maintenance association area. The maintenance association shall be created with the objective of establishing and maintaining improvements for the area designated in a petition filed pursuant to section three of this article, which may include constructing and maintaining shared streets, drainage facilities, sidewalks, water and sewer systems, signs, street lights and other improvements necessary for the protection of health, safety and welfare of the general public: Provided, That such improvements made to the state road system shall be made only as specified and approved by the commissioner of highways.

§7-12A-3. Petition to establish maintenance association.
(a) A petition in writing may be made to the county commission that duly verifies that sixty percent of the persons owning property on both sides of any orphan road, subdivision road, state road or public road in any unincorporated area request the approval of the formation of a maintenance association. The petition shall be accompanied by the proposed maintenance association's recordable documents that establish the association.

(b) Upon the filing of such petition and the proposed maintenance association documents, the county commission shall fix a time and place for hearing protests and shall require the petitioners to post notice of such hearing in at least two conspicuous places on the state road, public road, orphan road or subdivision road of the area affected, and to give notice thereof by publication of such notice as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area for such publication shall be the county in which the maintenance association shall be located. The hearing shall be held not less than ten nor more than thirty days after the filing of such petition.

(c) At the time and place set for hearing protests, the county commission may examine witnesses and consider other evidence to show that:

1. Said petition was filed in good faith;
2. The signatures on the petition are genuine;
3. The maintenance association document addresses the maintenance association purpose; and
4. The proposed maintenance association will result in special benefits to all owners of residential property abutting on said orphan road, subdivision road, state road or public road.

The commission shall within ten days thereafter enter a formal order stating its decision.

(d) Any owner of residential property abutting upon said orphan road, subdivision road, state road or public road aggrieved by such order shall have the right to review the order on the record made before the county
commission by filing a petition with the clerk of the circuit court within ten days after the entry of such order. The owner shall give bond in an amount to be fixed by the circuit court sufficient to pay costs or expenses incurred by the court and the maintenance association upon appeal if the order of the county commission is affirmed. The circuit court shall proceed to review the 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.]
ARTICLE 1. LEGISLATIVE PURPOSE AND DEFINITIONS.

§9-1-2. Definitions.

1 The following words and terms when used in this chapter shall have the meaning hereafter ascribed to them unless the context clearly indicates a different meaning, and any amendment of this section shall apply to any verdict, settlement, compromise or judgment entered after the effective date of the amendments to this section enacted during the regular session of the Legislature, one thousand nine hundred ninety-five.

(a) The term "department" means the state division of human services.

(b) The term "commissioner" means the commissioner of human services.

(c) The term "federal-state assistance" means and includes (1) all forms of aid, care, assistance and services to or on behalf of persons, which are authorized by, and who are authorized to receive the same under and by virtue of, subchapters one, four, five, ten, fourteen, sixteen, eighteen and nineteen, chapter seven, Title 42, United States Code, as those subchapters have heretofore been and may hereafter be amended, supplemented and revised by acts of Congress, and as those subchapters so amended, supplemented and revised have heretofore been and may hereafter be supplemented by valid rules and regulations promulgated by authorized federal agents and agencies, and as those subchapters so amended, supplemented and revised have heretofore been and may hereafter be supplemented by rules and regulations promulgated by the state division of human services, which division rules and regulations shall be consistent with federal laws, rules and regulations, but not inconsistent with state law, and (2)
all forms of aid, care, assistance and services to persons, which are authorized by, and who are authorized to receive the same under and by virtue of, any act of Congress, other than the federal Social Security Act, as amended, for distribution through the state division of human services to recipients of any form of aid, care, assistance and services to persons designated or referred to in (1) of this definition and to recipients of state assistance, including by way of illustration, surplus food and food stamps, which Congress has authorized the secretary of agriculture of the United States to distribute to needy persons.

(d) The term "federal assistance" means and includes all forms of aid, care, assistance and services to or on behalf of persons, which are authorized by, and who are authorized to receive the same under and by virtue of, any act of Congress for distribution through the state division of human services, the cost of which is paid entirely out of federal appropriations.

(e) The term "state assistance" means and includes all forms of aid, care, assistance, services and general relief made possible solely out of state, county and private appropriations to or on behalf of indigent persons, which are authorized by, and who are authorized to receive the same under and by virtue of, state division of human services' rules and regulations.

(f) The term "welfare assistance" means the three classes of assistance administered by the state division of human services, namely: Federal-state assistance, federal assistance and state assistance.

(g) The term "indigent person" means any person who is domiciled in this state and who is actually in need as defined by department rules and regulations and has not sufficient income or other resources to provide for such need as determined by the state division of human services.

(h) The term "domiciled in this state" means being
physically present in West Virginia accompanied by an
intention to remain in West Virginia for an indefinite
period of time, and to make West Virginia his or her
permanent home. The state division of human services
may by rules and regulations supplement the foregoing
definition of the term "domiciled in this state", but not in
such a manner as would be inconsistent with federal laws,
rules, and regulations applicable to and governing
federal-state assistance.

(i) The term "medical services" means medical,
surgical, dental and nursing services, and other remedial
services recognized by law, in the home, office, hospital,
clinic and any other suitable place, provided or prescribed
by persons permitted or authorized by law to give such
services; such services to include drugs and medical
supplies, appliances, laboratory, diagnostic and therapeutic
services, nursing home and convalescent care and such
other medical services and supplies as may be prescribed
by such persons.

(j) The term "general relief" means cash or its
equivalent in services or commodities expended for care
and assistance to an indigent person other than for care in
a county infirmary, child shelter or similar institution.

(k) The term "secretary" means the secretary of the
department of health and human resources.

(l) The term "estate" means all real and personal
property and other assets included within the individual's
estate as defined in the state's probate law.

(m) The term "services" means nursing facility
services, home and community-based services, and related
hospital and prescription drug services for which an
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.

(a) Submission of an application to the department of health and human resources for medical assistance is, as a matter of law, an assignment of the right of the applicant or legal representative thereof, to recovery from personal insurance or other sources, including, but not limited to, liable third parties, to the extent of the cost of medical services paid for by the medicaid program. This assignment of rights does not extend to medicare benefits.

At the time the application is made, the department shall include a statement along with such application that explains that the applicant has assigned all such rights and the legal implications of making such assignment as provided in this section.

If medical assistance is paid or will be paid to a provider of medical care on behalf of a recipient of medical assistance because of any sickness, injury, disease or disability, and another person is legally liable for such expense, either pursuant to contract, negligence or otherwise, the department of health and human resources shall have a right to recover full reimbursement from any award or settlement for such medical assistance from such other person, or from the recipient of such assistance if he has been reimbursed by the other person. The department shall be legally assigned the rights of the recipient against the person so liable, but only to the extent of the reasonable value of the medical assistance paid and attributable to the sickness, injury, disease or disability for which the recipient has received damages. When an action or claim is brought by a medical assistance recipient or by someone on his or her behalf against a third party who may be liable for the injury, disease, disability or death of
a medical assistance recipient, any settlement, judgment or award obtained is subject to the claim of the department of health and human resources for reimbursement of an amount sufficient to reimburse the department the full amount of benefits paid on behalf of the recipient under the medical assistance program for the injury, disease, disability or death of the medical assistance recipient. The claim of the department of health and human resources assigned by such recipient shall not exceed the amount of medical expenses for the injury, disease, disability or death of the recipient paid by the department on behalf of the recipient. The right of subrogation created in this section includes all portions of the cause of action, by either settlement, compromise, judgment or award, notwithstanding any settlement allocation or apportionment that purports to dispose of portions of the cause of action not subject to the subrogation. Any settlement, compromise, judgment or award that excludes or limits the cost of medical services or care shall not preclude the department of health and human resources from enforcing its rights under this section. The secretary may compromise, settle and execute a release of any such claim, in whole or in part.

(b) Nothing in this section shall be construed so as to prevent the recipient of medical assistance from maintaining an action for injuries received by him against any other person and from including therein, as part of the compensatory damages sought to be recovered, the amount or amounts of his or her medical expenses, even though such person received medical assistance in the payment of such medical expenses, in whole or in part.

If the action be tried by a jury, the jury shall not be informed as to the interest of the department of health and human resources, if any, and such fact shall not be disclosed to the jury at any time. The trial judge shall, upon the entry of judgment on the verdict, direct that an amount equal to the amount of medical assistance given be withheld and paid over to the department of health and
human resources. Irrespective of whether the case be terminated by judgment or by settlement without trial, from the amount required to be paid to the department of health and human resources there shall be deducted the attorney fees attributable to such amount in accordance with and in proportion to the fee arrangement made between the recipient and his or her attorney of record so that the department shall bear the pro rata portion of such attorney fees. Nothing in this section shall preclude any person who has received medical assistance from settling any cause of action which he may have against another person and delivering to the department of health and human resources, from the proceeds of such settlement, the sums received by him or her from the department or paid by the department for his or her medical assistance. If such other person is aware of or has been informed of the interest of the department of health and human resources in the matter, it shall be the duty of the person to whose benefit the release inures to withhold so much of the settlement as may be necessary to reimburse the department to the extent of its interest in the settlement. No judgment, award of or settlement in any action or claim by a medical assistance recipient to recover damages for injuries, disease or disability, in which the department of health and human resources has interest, shall be satisfied without first giving the department notice and reasonable opportunity to establish its interest. The department shall have sixty days from receipt of such written notice to advise the recipient or his or her representative in writing of the department's desire to establish its interest through the assignment. If no such written intent is received within the sixty-day period, then the recipient may proceed and in the event of full recovery forward to the department the portion of the recovery proceeds less the department's share of attorney's fees and costs expended in the matter. In the event of less than full recovery the recipient and the department shall agree as to the amount to be paid to the department for its claim. If there is no recovery, the department shall under no circumstances be liable for any costs or attorneys fees
expended in the matter. If, after being notified in writing of a subrogation claim and possible liability of the recipient, guardian, attorney or personal representative for failure to subrogate the department, a recipient, his or her guardian, attorney or personal representative disposes of the funds representing the judgment, settlement or award, without the written approval of the department, that person shall be liable to the department for any amount that, as a result of the disposition of the funds, is not recoverable by the department. In the event that a controversy arises concerning the subrogation claims by the department, an attorney shall interplead, pursuant to rule twenty-two of the rules of civil procedure, the portion of the recipient's settlement that will satisfy the department exclusive of attorneys fees and costs regardless of any contractual arrangement between the client and the attorney.

(c) Nothing contained herein shall authorize the department of health and human resources to institute a class action or multiple plaintiff action against any manufacturer, distributor or vendor of any product to recover medical care expenditures paid for by the medicaid program.

§9-5-11a. Notice of action or claim.

If either the medical assistance recipient or the department of health and human resources brings an action or claim against a third person, the recipient, his attorney or such department shall, within thirty days of filing the action, give to the other written notice of the action or claim by certified mail. This notice shall contain the name of the third person and the court in which the action is brought. If the department of health and human resources institutes said action, the notice shall advise the recipient of their right to bring such action in their own name, in which they may include as a part of their claim the sums claimed by such department. Proof of such notice shall be filed in said action subject to the notice and intent procedure as outlined in section eleven of this article. If an action or claim is brought by either the
recipient or the department of health and human resources, the other may, at any time before trial, become a party to the action, or shall consolidate his action or claim with the other if brought independently: Provided, That this consolidation or entry as a party does not delay the proceedings.

§9-5-11c. Right of the department of health and human resources to recover medical assistance.

(a) Upon the death of a person who was fifty-five years of age or older at the time the person received welfare assistance consisting of nursing facility services, home and community-based services, and related hospital and prescription drug services, the department of health and human resources, in addition to any other available remedy, may file a claim or lien against the estate of the recipient for the total amount of medical assistance provided by medicaid for nursing facility services, home and community-based services, and related hospital and prescription drug services provided for the benefit of the recipient. Claims so filed shall be classified as and included in the class of debts due the state.

(b) The department may recover pursuant to subsection (a) only after the death of the individual's surviving spouse, if any and only after such time as the individual has no surviving children under the age of twenty-one, or when the individual has no surviving children who meet the Social Security Act's definition of blindness or permanent and total disability.

(c) The state shall have the right to place a lien upon the property of individuals who are inpatients in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution who, after notice and an opportunity for a hearing, the state has deemed to be permanently institutionalized. This lien shall be in an amount equal to medicaid expenditures for services provided by a nursing facility, intermediate care facility for the mentally retarded or other medical institution, and
shall be rendered against the proceeds of the sale of property except for a minimal amount reserved for the individual's personal needs. Any such lien shall dissolve upon that individual's discharge from the medical institution. The secretary has authority to compromise or otherwise reduce the amount of this lien in cases where enforcement would create a hardship.

(d) No lien may be imposed on such individual's home when the home is the lawful residence of: (1) The spouse of the individual; (2) the individual's child who is under the age of twenty-one; (3) the individual's child meets the Social Security Act's definition of blindness or permanent and total disability; or (4) the individual's sibling has an equity interest in the home and was residing in the home for a period of at least one year immediately before the date of the individual's admission to a medical institution.

(e) The filing of a claim, pursuant to this section, shall neither reduce nor diminish the general claims of the department of health and human resources, except that such department shall not receive double recovery for the same expenditure. The death of the recipient shall neither extinguish nor diminish any right of such department to recover. Nothing in this section affects or prevents a proceeding to enforce a lien pursuant to this section or a proceeding to set aside a fraudulent conveyance.

(f) Any claim or lien imposed pursuant to this section is effective for the full amount of medical assistance provided by medicaid for nursing facility services, home and community-based services, and related hospital and prescription drug services. Said lien attaches and is perfected automatically as of the beginning date of medical assistance, the date when a recipient first receives treatment for which the department of health and human resources may be obligated to provide medical assistance. A claim may be waived by such department, if such department determines, pursuant to applicable federal law and rules and regulations, that the claim will cause substantial hardship to the surviving dependents of the deceased.
Upon the effective date of this section, the attorney general, on behalf of the state of West Virginia, shall commence an action in a court of competent jurisdiction to test the validity, constitutionality, and the ability of the Congress of the United States to mandate the implementation of this section. This subsection does not limit the right of others, including recipients, to intervene in any litigation, nor does it limit the discretion of the attorney general or appropriate counsel to seek affected persons to act as parties to the litigation, either individually 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.

(a) After the entry of a judgment of not guilty by reason of mental illness, mental retardation or addiction, the court of record shall determine on the record the offense of which the person otherwise would have been convicted, and the maximum sentence he could have received. The court shall commit such defendant to a mental health facility under the jurisdiction of the department of health, with the court retaining jurisdiction over the defendant for the maximum sentence period.

(b) If the defendant is released from an inpatient mental health facility while under the jurisdiction of the court, the court may impose such conditions as are necessary to protect the safety of the public.

§27-6A-4. Release from jurisdiction of the court; discharge.

(a) No later than thirty days prior to the release of a defendant because of the expiration of the court's jurisdiction, if the defendant's supervising physician believes that the defendant's mental illness or mental retardation or addiction causes the defendant to be dangerous to self or others, the supervising physician shall notify the prosecuting attorney in the county of the court having jurisdiction of such opinion and the basis therefore. Following this notification, the prosecuting attorney shall file a civil commitment application against the defendant, pursuant to article five of this chapter.

(b) The court may discharge a mentally ill or addicted defendant from the court's period of jurisdiction prior to the expiration of the period specified in this section only when the court finds that the person is no longer mentally
ill or addicted and that the person is no longer a danger to
self or others. The court may discharge a mentally
retarded defendant from the court's period of jurisdiction
prior to the expiration of the period specified in this
section only when the court finds that the person is no
longer a danger to self or others. However, a defendant
may not be released from the jurisdiction of the court
when the defendant's mental illness is in remission solely
as a result of medication or hospitalization or other mode
of treatment if it can be determined within a reasonable
degree of medical certainty that without continued therapy
or hospitalization or other mode of treatment, the
defendant's mental illness will make him a danger to self
or others.

(c) Those persons committed under the provisions of
this article may be released or discharged from the
inpatient mental health facility only upon entry of an
order from the court of record which committed the
defendant finding that the defendant will not be a danger
to self or others if so released, based upon the evidence
introduced at the hearing.

(d) The court shall promptly conduct a hearing after
receipt of the physician's notification referred to in
subsection (a) of this section. The clerk shall notify the
prosecuting attorney and the victim or next of kin of the
victim of the offense for which the person was committed
of the hearing. The burden shall be on the victim or next
of kin to the victim to keep the court apprised of that
person's current mailing address.


The department of health shall, on or before the first
day of the regular session of the Legislature in the year
one thousand nine hundred ninety-six, provide to the
president of the Senate and the speaker of the House of
Delegates a complete proposed plan for the implementat-
ion of a conditional release or outpatient status program
for persons committed to an inpatient mental health
facility due to having been judicially determined to be not

9 guilty by reason of insanity, incompetence to stand trial or
civilly committed after having been judicially determined
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 article, unless the context clearly requires a different meaning:

2 (1) "Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water;

3 (2) "Motorboat" means any vessel propelled by an electrical, steam, gas, diesel or other fuel propelled or driven motor, whether or not the motor is the principal source of propulsion, but shall not include a vessel which has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto;

4 (3) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security;

5 (4) "Commissioner" means the commissioner of the division of motor vehicles; and

6 (5) "Director" means the director of the division of natural resources.

§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.

1 Every motorboat, as herein defined, operating upon public waters within the territorial limits of this state, shall be numbered as herein provided:

2 (a) The owner of each motorboat requiring numbering by this state shall file an application for a number with
the commissioner on forms approved by the division of
motor vehicles. The application shall be signed by the
owner of the motorboat and shall be accompanied by a
fee of fifteen dollars for a three-year registration period if
propelled by a motor of three or more horsepower. The
fee may be prorated by the commissioner for periods of
less than three years. There shall be no fee for motorboats
propelled by motors of less than three horsepower. All
such fees, including those received under subdivision (b)
of this section, shall be deposited in the state treasury and
fifty percent shall be credited to the division of motor
vehicles and shall be used and paid out upon order of the
commissioner solely for the administration of the certifi-
cate of number system. The remaining fifty percent shall
be credited to the division of natural resources and shall
be used and paid out upon order of the director solely for
the enforcement and safety education of the state boating
system. Upon receipt of the application in approved form,
the commissioner shall enter the same upon the records of
the division and issue to the applicant a number awarded
to the motorboat and the name and address of the owner.
The owner shall paint on or attach to each side of the bow
of the motorboat the identification number in the manner
as may be prescribed by rules of the commissioner in
order that it may be clearly visible. The number shall be
maintained in legible condition. The certificate of num-
ber shall be pocket size and shall be available at all times
for inspection on the motorboat for which issued, whenev-
er the motorboat is in operation.

(b) In order to permit a motorboat sold to a purchaser
by a dealer to be operated pending receipt of the certifi-
cate of number from the commissioner, the commissioner
may deliver to dealers, upon application therefor and
payment of one dollar for each, temporary certificates of
number to in turn be issued to purchasers of motorboats.
Every person who is issued a temporary certificate by a
dealer shall, under the provisions of subdivision (a) of this
section, apply for a certificate of number no later than ten
days from the date of issuance of the temporary certifi-
cate. A temporary certificate shall expire upon receipt of
the certificate, upon recision of the contract to purchase
the motorboat in question or upon the expiration of forty
days from the date of issuance, whichever shall first occur.
It is unlawful for any dealer to issue any temporary certifi-
cate knowingly containing any misstatement of fact or
knowingly to insert any false information on the face
thereof. The commissioner may by rule prescribe addi-
tional requirements upon the dealers and purchasers as are
consistent with the effective administration of this section.

(c) The owner of any motorboat already covered by a
number in full force and effect which has been awarded to
it pursuant to then operative federal law or a federally
approved numbering system of another state shall record
the number prior to operating the motorboat on the waters
of this state in excess of the sixty-day reciprocity period
provided for in section fourteen of this article. The recor-
dation shall be in the manner and pursuant to procedure
required for the award of a number under subdivision (a)
of this section, except that an additional or substitute num-
ber shall not be issued.

(d) Should the ownership of a motorboat change, a
new application form with fee shall be filed with the com-
missioner and a new certificate of number shall be award-
ed in the same manner as provided for in an original
award of number.

(e) In the event that an agency of the United States
government shall have in force an overall system of identi-
fication numbering for motorboats within the United
States, the numbering system employed pursuant to this
article by the division of motor vehicles shall be in confor-
mity therewith.

(f) All records of the director made or kept pursuant
to this section shall be transferred to the commissioner and
shall be maintained as public records.

(g) The license shall be valid for a maximum period
of three years. If at the expiration of that period owner-
ship has remained unchanged, the owner shall, upon appli-
cation and payment of the proper fee, be granted a renew-
al of the certificate of number for an additional three-year
period.
(h) The owner shall furnish the commissioner notice of the transfer of all or any part of an interest, other than the creation of a security interest, in a motorboat numbered in this state pursuant to subdivisions (a) and (b) of this section, or of the destruction or abandonment of the motorboat, within fifteen days thereof. The transfer, destruction or abandonment shall terminate the certificate of number for the motorboat, except that in the case of a transfer of a part interest which does not affect the owner's right to operate the motorboat, the transfer shall not terminate the certificate of number.

(i) Any holder of a certificate of number shall notify the commissioner within fifteen days if his or her address no longer conforms to the address appearing on the certificate and shall, as a part of the notification, furnish the commissioner with his or her new address. The commissioner may provide rules for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of an outstanding certificate to show the new address of the holder.

(j) No number other than the number awarded to a motorboat or granted reciprocity pursuant to this article shall be painted, attached or otherwise displayed on either side of the bow of the motorboat.

(k) It shall be the duty of the commissioner on or before the thirtieth day of August of each year, commencing with the year one thousand nine hundred eighty, to forward to the assessor of each county a list of the names and addresses of all persons, firms and corporations owning vessels and operating the same or other boats registered with the commissioner under the provisions of this article. In furnishing this information to each county assessor, the commissioner shall include the information as to make and model of the vessels and other equipment required to be registered for use by said owner or operator thereof under the provisions of this article: Provided, That the commissioner need not furnish the information to the assessor if the cost price of the vessel does not exceed five hundred dollars or the cost of the motor does
not exceed two hundred fifty dollars.

(I) No person may operate an unlicensed motorboat upon any waters of this state without first acquiring the 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.

Certificates of number and renewals therefor shall not be issued or furnished by the division of motor vehicles, or any other officer charged with the duty, unless the applicant therefor furnishes the receipt hereinafter provided to show full payment of the personal property taxes for the calendar year which immediately precedes the calendar year in which application is made on all motorboats which were listed with the division of motor vehicles in the applicant's name on the tax day for the former calendar year. If the applicant contends that any motorboat so listed was not subject to personal property taxation for that year, he or she shall furnish the information and evidence as the commissioner of motor vehicles may require to substantiate his or her contention.

The assessor shall require any person having a duty to make a return of property for taxation to him or her to furnish information identifying each motorboat subject to the numbering provisions of this article. When the property taxes on the motorboat have been paid, the officer to whom the payment was made shall deliver to the person paying the taxes a written or printed receipt therefor, and shall retain for his or her records a duplicate of the receipt. The assessor and sheriff, respectively, shall see that the assessment records and the receipts contain information adequately identifying the motorboat as registered under the provisions of this article. The officer receiving payment shall sign each receipt in his or her own handwriting.

The assessors shall commence their duties hereunder during the tax year one thousand nine hundred eighty-nine and the division of motor vehicles shall com-
mence its duties hereunder as of the first day of January, one thousand nine hundred ninety.

The state tax commissioner shall annually compile a schedule of motorboat values, based on the lowest values shown in a nationally accepted used motorboat guide, which schedule shall be furnished to each assessor and shall be used by him or her as a guide in placing the 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 commission" or "state road commission," when used in this chapter, shall refer to and mean the West Virginia commissioner of highways, created by section one, article two-a of this chapter. Whenever reference is made to the "commission," "road commission" or "state road commission," the power or duty prescribed shall apply to the West Virginia commissioner of highways, unless the context clearly requires a different meaning.
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.

(a) The division upon registering a vehicle shall issue to the owner one registration plate for a motorcycle, trailer, semitrailer or other motor vehicle.

(b) Registration plates issued by the division shall meet the following requirements:

(1) Every registration plate shall be of reflectorized material and have displayed upon it the registration number assigned to the vehicle for which it is issued; the name
of this state, which may be abbreviated; and the year number for which it is issued or the date of expiration of the plate.

(2) Every registration plate and the required letters and numerals on the plate shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight: Provided, That the requirements of this subdivision shall not apply to the year number for which the plate is issued or the date of expiration.

(3) Registration numbering for registration plates shall begin with number two.

(c) The division shall not issue, permit to be issued or distribute any special registration plates except as follows:

(1) The governor shall be issued two registration plates, on one of which shall be imprinted the numeral one and on the other the word one.

(2) State officials and judges may be issued special registration plates as follows:

(A) Upon appropriate application, there shall be issued to the secretary of state, state superintendent of free schools, auditor, treasurer, commissioner of agriculture and the attorney general, the members of both houses of the Legislature, including the elected officials thereof, the justices of the supreme court of appeals of West Virginia, the representatives and senators of the state in the Congress of the United States, the judges of the United States district courts for the state of West Virginia and the judges of the United States court of appeals for the fourth circuit, if any of the judges are residents of West Virginia, a special registration plate for a Class A motor vehicle owned by the official or his or her spouse: Provided, That the division shall not issue more than two plates for each official.

(B) Each plate issued pursuant to this subdivision shall bear any combination of letters and numbers not to exceed an amount determined by the commissioner and a designation of the office. Each plate shall supersede the regular numbered plate assigned to the official or his or
her spouse during the official's term of office and while the motor vehicle is owned by the official or his or her spouse.

(C) An annual fee of fifteen dollars shall be charged for every registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter.

(3) Members of the national guard forces may be issued special registration plates as follows:

(A) Upon receipt of an application on a form prescribed by the division and receipt of written evidence from the chief executive officer of the army national guard or air national guard, as appropriate, or the commanding officer of any United States armed forces reserve unit that the applicant is a member thereof, the division shall issue to any member of the national guard of this state or a member of any reserve unit of the United States armed forces a special registration plate designed by the commissioner for any number of Class A motor vehicles owned by the member.

(B) An initial application fee of ten dollars shall be charged for each special registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into a special revolving fund to be used in the administration of this section.

(4) Specially arranged registration plates may be issued as follows:

(A) Upon appropriate application, any owner of a motor vehicle subject to Class A registration, or a motorcycle subject to Class G registration, as defined by this article, may request that the division issue a registration plate bearing specially arranged letters or numbers with the maximum number of letters or numbers to be determined by the commissioner. The division shall attempt to comply with the request wherever possible.

(B) The commissioner shall promulgate rules in accor-
dance with the provisions of chapter twenty-nine-a of this code regarding the orderly distribution of the plates:

Provided, That for purposes of this subdivision, the registration plates requested and issued shall include all plates bearing the numbers two through two thousand.

(C) An annual fee of fifteen dollars shall be charged for each special registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter.

(5) Honorably discharged veterans may be issued special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any honorably discharged veteran, of any branch of the armed services of the United States, a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the commissioner of the division of motor vehicles.

(B) A special initial application fee of ten dollars shall be charged in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section: Provided, That nothing in this section shall be construed to exempt any veteran from any other provision of this chapter.

(C) Special registration plates issued pursuant to this subdivision are not transferable to any other person. Any special registration issued under this subdivision terminates upon the death of the registered owner of the special registration plate.

(6) Disabled veterans may be issued special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any disabled veteran, who is exempt from the payment of registration fees under the provisions of this chapter, a registration plate for a vehicle titled in the name of the qualified applicant which bears the letters "DV" in red and
also the regular identification numerals in red.  

(B) Special registration plates issued pursuant to this subdivision are not transferable to any other person. Any special registration issued under this subdivision terminates upon the death of the registered owner of the special registration plate.  

(C) A qualified disabled veteran may obtain a second disabled veteran license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. An annual fee of fifteen dollars, in addition to all other fees required by this chapter, shall be charged for the second plate.  

(7) Recipients of the distinguished purple heart medal may be issued special registration plates as follows:  

(A) Upon appropriate application, there shall be issued to any armed service person holding the distinguished purple heart medal for persons wounded in combat a registration plate for a vehicle titled in the name of the qualified applicant bearing letters or numbers. The registration plate shall be designed by the commissioner of motor vehicles and shall denote that those individuals who are granted this special registration plate are recipients of the purple heart. All letterings shall be in purple where practical.  

(B) Registration plates issued pursuant to this subdivision are exempt from all registration fees otherwise required by the provisions of this chapter.  

(C) Special registration plates issued pursuant to this subdivision are not transferable to any other person. Any special registration issued under this subdivision terminates upon the death of the registered owner of the special registration plate.  

(D) A recipient of the purple heart medal may obtain a second purple heart medal license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. An annual fee of fifteen dollars, in addition to all other fees required by this chapter, shall be charged for the second plate.
(8) Survivors of the attack on Pearl Harbor may be issued special registration plates as follows:

(A) Upon appropriate application, the owner of a motor vehicle who was enlisted in any branch of the armed services that participated in and survived the attack on Pearl Harbor on the seventh day of December, one thousand nine hundred forty-one, shall be issued a special registration plate for a vehicle titled in the name of the qualified applicant. The registration plate shall be designed by the commissioner of motor vehicles.

(B) Registration plates issued pursuant to this subdivision are exempt from the payment of all registration fees otherwise required by the provisions of this chapter.

(C) Special registration plates issued pursuant to this subdivision are not transferable to any other person. Any special registration issued under this subdivision terminates upon the death of the registered owner of the special registration plate.

(D) A survivor of the attack on Pearl Harbor may obtain a second survivors of the attack on Pearl Harbor license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. An annual fee of fifteen dollars, in addition to all other fees required by this chapter, shall be charged for the second plate.

(9) Nonprofit charitable and educational organizations may be issued special registration plates as follows:

(A) Nonprofit charitable and educational organizations may design a logo or emblem for inclusion on a special registration plate and submit the logo or emblem to the commissioner for approval and authorization. Upon the approval and authorization, the nonprofit charitable and educational organizations may market the special registration plate to organization members and the general public.

(B) Approved nonprofit charitable and educational organizations may accept and collect applications for special registration plates from owners of Class A motor vehicles.
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 subdi-
237 vision shall be accompanied by an affidavit signed by the
fire chief or department head of the applicant stating that
the applicant is justified in having a registration with the
requested insignia; proof of compliance with all laws of
this state regarding registration and licensure of motor
vehicles; and payment of all required fees.

(C) Each application submitted pursuant to this subdi-
vision shall be accompanied by payment of a special ini-
tial application fee of ten dollars, which is in addition to
any other registration or license fee required by this chap-
ter. All special fees shall be collected by the division and
deposited into a special revolving fund to be used for the
purpose of compensating the division of motor vehicles
for additional costs and services required in the issuing of
such special registration and for the administration of this
section.

(11) Special scenic registration plates:

(A) Upon appropriate application, the commissioner
shall issue a special registration plate displaying a scenic
design of West Virginia no later than the first day of Janu-
ary, one thousand nine hundred ninety-six. This special
plate shall display the words "Wild Wonderful" as a slogan.

(B) A special one-time initial application fee of ten
dollars shall be charged in addition to all other fees re-
quired by this chapter. All initial application fees collect-
ed by the division shall be deposited into a special revolv-
ing fund to be used in the administration of this chapter.

(d) The commissioner shall promulgate rules in accor-
dance with the provisions of chapter twenty-nine-a of this
code regarding the proper forms to be used in making
application for the special license plates authorized by this
section.

(e) Nothing in this section shall be construed to re-
quire a charge for a free prisoner of war license plate or a
free recipient of the congressional medal of honor license
plate for a vehicle titled in the name of the qualified appli-
cant as authorized by other provisions of this code: Pro-
vided, That the registration plates are not transferable to
any person, and the registration plates terminate upon the
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death of the registered owner of the special registration plate. Qualified former prisoners of war and recipients of the congressional medal of honor may obtain a second special registration plate for use on a passenger vehicle titled in the name of the qualified applicant. An annual fee of fifteen dollars, in addition to all other fees required by this chapter, shall be charged for the second special plate.

(f) Special ten-year registration plates may be issued as follows:

(1) The commissioner may issue or renew for a period of no more than ten years any registration plate exempted from registration fees pursuant to any provision of this code or any restricted use antique motor vehicle license plate authorized by section three-a, article ten of this chapter: Provided, That the provisions of this subsection shall not apply to any person who has had a special registration suspended for failure to maintain motor vehicle liability insurance as required by section three, article two-a, chapter seventeen-d of this code or failure to pay personal property taxes as required by section three-a of this article.

(2) An initial nonrefundable fee shall be charged for each special registration plate issued pursuant to this subsection, which is the total amount of fees required by section fifteen, article ten of this chapter, section three, article three of this chapter or section three-a, article ten of this chapter for the period requested.

(3) Special registration plates issued pursuant to this subsection are not transferable to any other person. Any special registration issued under this subsection terminates upon the death of the registered owner of the special registration plate.

(g) The provisions of this section shall not be construed to exempt any registrant from maintaining motor vehicle liability insurance as required by section three, article two-a, chapter seventeen-d of this code or from paying personal property taxes on any motor vehicle as required by section three-a of this article.
(h) The commissioner may, in his or her discretion, issue a registration plate of reflectorized material suitable for permanent use on motor vehicles, trailers and semitrailers, together with appropriate devices to be attached thereto to indicate the year for which the vehicles have been properly registered or the date of expiration of the registration. The design and expiration of the plates shall be determined by the commissioner.

(i) Any license plate issued or renewed pursuant to this chapter, which is paid for by a check that is returned for nonsufficient funds, shall be void without further notice to the applicant. The applicant may not reinstate the registration until the returned check is paid by the applicant in cash, money order or certified check and all applicable fees assessed as a result thereof have been paid.
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.

(a) Every vehicle registration under this chapter and every registration card and registration plate issued hereunder shall expire at midnight on the last day of the month designated by the commissioner: Provided, That the commissioner may extend the period during which said registration plates may be used.

Certificates of title need not be renewed annually but shall remain valid until canceled by the division for cause or upon a transfer of any interest shown therein.

(b) Notwithstanding the provisions of this section or of any provision of this chapter, the commissioner shall adopt a staggered registration system whereby the registration of Class A motor vehicles shall be for a period of twelve consecutive calendar months, the expiration dates thereof to be staggered throughout the year.

(1) On or after the first day of July, one thousand nine hundred seventy-eight, all Class A motor vehicles as defined in section one, article ten of this chapter, shall be registered for a period of twelve consecutive calendar months. There hereby are established twelve registration periods, each of which shall start on the first day of each calendar month of the year and shall end on the last day of the twelfth month from date of beginning. The period ending on the thirty-first day of January shall be designated the first period; that ending on the twenty-eighth (twenty-ninth) day of February shall be designated the second; that ending on the thirty-first day of March shall
be designated the third; that ending on the thirtieth day of April shall be designated the fourth; that ending on the thirty-first day of May shall be designated the fifth; that ending on the thirtieth day of June shall be designated the sixth; that ending on the thirty-first day of July shall be designated the seventh; that ending on the thirty-first day of August shall be designated the eighth; that ending on the thirtieth day of September shall be designated the ninth; that ending on the thirty-first day of October shall be designated the tenth; that ending on the thirtieth day of November shall be designated the eleventh; and that ending on the thirty-first day of December shall be designated the twelfth.

(2) All Class A motor vehicles, which are operated for the first time upon the public highways of this state to and including the fifteenth day of any given month shall be subject to registration and payment of fee for the twelve-month period commencing the first day of the month of operation. All Class A motor vehicles operated for the first time upon the public highways of this state on and after the sixteenth day of any given month shall be subject to registration and payment of fee for the twelve-month period commencing the first day of the month of the next following calendar month.

(c) On or before the first day of July, one thousand nine hundred ninety-six, all Class T and Class R vehicles shall be registered for a maximum period of three years or portion thereof based on the number of years remaining 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 indicated shall be paid to the division for the registration of vehicles subject to registration hereunder when equipped with pneumatic tires:

(a) Registration fees for the following classes shall be
paid to the division annually:

(1) Class A. — The registration fee for all motor vehicles of this class is as follows:

(A) For motor vehicles of a weight of three thousand pounds or less — twenty-five dollars.

(B) For motor vehicles of a weight of three thousand one pounds to four thousand pounds — thirty dollars.

(C) For motor vehicles of a weight in excess of four thousand pounds — thirty-six dollars.

(D) For motor vehicles designed as trucks with declared gross weights of four thousand pounds or less — twenty-five dollars.

(E) For motor vehicles designed as trucks with declared gross weights of four thousand one pounds to eight thousand pounds — thirty dollars.

For the purpose of determining the weight, the actual weight of the vehicle shall be taken: Provided, That for vehicles owned by churches, or by trustees for churches, which vehicles are regularly used for transporting parishioners to and from church services, no license fee shall be charged, but notwithstanding such exemption, the certificate of registration and license plates shall be obtained the same as other cards and plates under this article.

(2) Class B, Class E and Class K. — The registration fee for all motor vehicles of these three classes is as follows:

(A) For declared gross weights of eight thousand one pounds to sixteen thousand pounds — twenty-eight dollars plus five dollars for each one thousand pounds or fraction thereof that the gross weight of such vehicle or combination of vehicles exceeds eight thousand pounds.

(B) For declared gross weights greater than sixteen thousand pounds, but less than fifty-five thousand pounds — seventy-eight dollars and fifty cents plus ten dollars for each one thousand pounds or fraction thereof that the
§ 17-1-41. Gross weight of such vehicle or combination of vehicles exceeds sixteen thousand pounds.

(C) For declared gross weights of fifty-five thousand pounds or more — seven hundred thirty-seven dollars and fifty cents plus fifteen dollars and seventy-five cents for each one thousand pounds or fraction thereof that the gross weight of such vehicle or combination of vehicles exceeds fifty-five thousand pounds.

(3) **Class C and Class L.** — The registration fee for all vehicles of these two classes is seventeen dollars and fifty cents except that semitrailers, full trailers, pole trailers and converter gear registered as Class C and Class L may be registered for a period of ten years at a fee of one hundred dollars.

(4) **Class G.** — The registration fee for each motorcycle is eight dollars.

(5) **Class H.** — The registration fee for all vehicles for this class operating entirely within the state is five dollars; and for vehicles engaged in interstate transportation of persons, the registration fee is the amount of the fees provided by this section for Class B, Class E and Class K reduced by the amount that the mileage of such vehicles operated in states other than West Virginia bears to the total mileage operated by such vehicles in all states under a formula to be established by the division of motor vehicles.

(6) **Class J.** — The registration fee for all motor vehicles of this class is eighty-five dollars. Ambulances and hearses used exclusively as such are exempt from the above special fees.

(7) **Class S.** — The registration fee for all vehicles of this class is seventeen dollars and fifty cents.

(8) **Class U.** — The registration fee for all vehicles of this class is fifty-seven dollars and fifty cents.

(9) **Class Farm Truck.** — The registration fee for all motor vehicles of this class is as follows:
(A) For farm trucks of declared gross weights of eight thousand one pounds to sixteen thousand pounds — thirty dollars.

(B) For farm trucks of declared gross weights of sixteen thousand one pounds to twenty-two thousand pounds — sixty dollars.

(C) For farm trucks of declared gross weights of twenty-two thousand one pounds to twenty-eight thousand pounds — ninety dollars.

(D) For farm trucks of declared gross weights of twenty-eight thousand one pounds to thirty-four thousand pounds — one hundred fifteen dollars.

(E) For farm trucks of declared gross weights of thirty-four thousand one pounds to forty-four thousand pounds — one hundred sixty dollars.

(F) For farm trucks of declared gross weights of forty-four thousand one pounds to fifty-four thousand pounds — two hundred five dollars.

(G) For farm trucks of declared gross weights of fifty-four thousand one pounds to sixty-four thousand pounds — two hundred fifty dollars.

(b) Registration fees for the following classes shall be paid to the division for a maximum period of three years, or portion thereof based on the number of years remaining in the three-year period designated by the commissioner:

(1) Class R. — The annual registration fee for all vehicles of this class is twelve dollars.

(2) Class T. — The annual registration fee for all vehicles of this class is eight dollars.

(c) The fees paid to the division for a multiyear registration provided for by this chapter shall be the same as the annual registration fee established by this section and any other fee required by this chapter multiplied by the number of years for which the registration is issued.
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, owned or leased by the state of West Virginia, or any of its departments, bureaus, commissions or institutions, except vehicles used by the governor, treasurer, vehicles operated by the department of public safety, not to exceed six vehicles operated by conservation officers of the division of natural resources, not to exceed ten vehicles operated by the arson investigators of the office of state fire marshal and not to exceed sixteen vehicles operated by inspectors of the office of the alcohol beverage control commission-er, shall not be operated or driven by any person unless it shall have displayed and attached to the front thereof, in the same manner as regular motor vehicle registration
plates are attached, a plate of the same size as the regular registration plate, with white lettering on a green back-
ground bearing the words "West Virginia" in one line and the words "State Car" in another line, and the lettering for the words "State Car" shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight.

Such vehicle shall also have attached to the rear a plate bearing a number and such other words and figures as the commissioner of motor vehicles shall prescribe. The rear plate shall also be green with the number in white.

On registration plates issued to vehicles owned by counties, the color shall be white on red with the word "County" on top of the plate and the words "West Virginia" on the bottom. On any registration plates issued to a city or municipality, the color shall be white on blue with the word "City" on top, and the words "West Virginia" on the bottom. The colors may not be reversed and shall be of reflectorized material. The registration plates issued to counties, municipalities and other governmental agencies authorized to receive colored plates hereunder shall be affixed to both the front and rear of such vehicles.

The commissioner is authorized to designate the colors and design of any other registration plates that are issued without charge to any other agency in accordance with the motor vehicle laws.

Upon application and payment of fees, the commissioner is authorized to issue a maximum of five Class A license plates per applicant to be used by county sheriffs and municipalities on law-enforcement vehicles while engaged in undercover investigations.

The commissioner is authorized to issue an unlimited number of license plates per applicant to authorized drug and violent crime task forces in the state of West Virginia when the chairperson of the control group of a drug and violent crime task force signs a written affidavit stating that the vehicle or vehicles for which the plates are being requested will be used only for official undercover work conducted by such drug and violent crime task force.
The commissioner is authorized to issue twenty Class A license plates to the criminal investigation division of the department of tax and revenue for use by its investigators.

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

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

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

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

Magistrates shall have concurrent jurisdiction with circuit and criminal courts for the enforcement of this 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 voluntary act of the owner after the original issue of title to be properly recorded must be shown on the certificate of title. In such cases, the owner or lienholder shall file application with the department on a blank furnished for that purpose, setting forth the lien or liens and such information and evidence of the lien in connection therewith as the department may deem necessary. Such information shall include the name and address of the lienholder, the kind of and nature of the lien, the date thereof, and the amount thereby secured. However, only the name and address of the lienholder shall be endorsed on the title certificate with the endorsement of the fact of such lien as hereinafter provided. The department, if satisfied that it is proper that the same be recorded, and upon surrender of the certificate of title covering the vehicle, shall thereupon
issue a new certificate of title, showing the liens or encum-
brances in the order of their filing being according to the
date, hour and minute of receipt by the department of the
application for same. For the purpose of recording a
subsequent lien on a certificate of title, the subsequent
lienholder shall make a written request upon the lienholder-
in possession of the certificate of title, accompanied by
proof of the existence of the subsequent lien, stating his
need to have possession of the certificate of title for the
purpose of having his lien recorded thereon by the divi-
sion of motor vehicles. Thereupon, the lienholder in
possession of the certificate shall within a reasonable time,
not to exceed ten days from the receipt of said written
request, deliver the certificate of title to the requesting
subsequent lienholder.

Upon delivery of the certificate of title, the subsequent
lienholder shall immediately forward it and the lienhold-
er's own application to the division of motor vehicles for
the filing of the lien and for the recording of the same on
the certificate of title. Upon issuing the new certificate, the
department shall thereupon send or deliver it to the holder
of the first lien.

(b) The provisions of subsection (a) of this section
shall not apply to vehicles held as inventory for sale by a
registered dealer holding title by assignment entered upon
a certificate of title. Any lien or encumbrance placed on
such vehicles by the voluntary act of the owner shall be
created and perfected in accordance with the provisions of
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.

(a) A certificate of title, when issued by the depart-
ment showing a lien or encumbrance, shall be deemed
from and after the filing with the department of the appli-
cation therefor adequate notice to the state and its agen-
cies, boards and commissions, to the United States government and its agencies, boards and commissions, to creditors and to purchasers that a lien against the vehicle exists and the recording of such reservation of title, lien or encumbrance in the county wherein the purchaser or debtor resides or elsewhere is not necessary and shall not be required or have any effect. Notwithstanding any other provision of this code to the contrary, and subject to the provisions of subsection (b) of this section and of section four of this article, any lien or encumbrance placed upon a vehicle by the voluntary act of the owner but not shown on such certificate of title shall be void as to any purchaser for value or lien creditor, who, in either case, without notice of such lien or encumbrance, purchases such vehicle or acquires by attachment, levy or otherwise a lien thereupon.

(b) The creation and perfection of a lien against a vehicle held as inventory for sale by a registered dealer holding title by assignment in accordance with the provisions of article nine, chapter forty-six of this code shall be deemed adequate notice to the state and its agencies, boards and commissions, to the United States government and its agencies, boards and commissions, to creditors and to purchasers that a lien against the vehicle exists, subject to the provisions of section three hundred seven, article nine, chapter forty-six of this code, except that any lien or encumbrance on such a vehicle shall not be effective against the rights of any purchaser for value who purchases such vehicle primarily for personal, family, household or agricultural purposes unless such lien or encumbrance is recorded on the certificate of title or specified on the bill of sale.

§17A-4A-5. Priority of liens shown on certificate.

The liens shown upon a certificate of title issued by the department pursuant to applications for same shall have priority over any other liens against such vehicle, however created and recorded, except as otherwise provided 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.

(a) No person shall engage or represent or advertise that he or she is engaged or intends to engage in the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer, or wrecker or dismantler, in this state, unless and until he or she first obtains a license certificate therefor as provided in this article, which license certificate remains unexpired, unsuspended and unrevoked. Any person desiring to engage in more than one such business must, subject to the provisions of section five of this article, apply for and obtain a separate license certificate for each such business.

(b) Except for the qualification contained in subdivi-
(c) Any person who violates this section shall, in addition to any other penalty prescribed by law, be subject to a civil penalty levied by the commissioner in an amount not to exceed one thousand dollars for the first violation, two thousand dollars for the second violation, and five thousand dollars for every subsequent violation.

(d) The commissioner shall promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this code, establishing procedures whereby persons against whom such civil penalties are to be assessed shall be afforded all due process required pursuant to the provisions 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.]
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.

(a) No person, except those hereinafter expressly exempted, may drive any motor vehicle upon a street or highway in this state or upon any subdivision street, as used in article twenty-four, chapter eight of this code, when the use of such subdivision street is generally used by the public unless the person has a valid driver's license under the provisions of this code for the type or class of vehicle being driven.

Any person licensed to operate a motor vehicle as provided in this code may exercise the privilege thereby granted as provided in this code and, except as otherwise provided by law, shall not be required to obtain any other license to exercise such privilege by any county, munici-
(b) The division, upon issuing a driver's license, shall indicate on the license the type or general class or classes of vehicle or vehicles the licensee may operate in accordance with the provisions of this code, federal law or rule.

(c) Driver's licenses issued by the division shall be classified in the following manner:

(1) Class A, B or C license shall be issued to those persons eighteen years of age or older with two years driving experience and who have qualified for the commercial driver's license established by chapter seventeen-e of this code and the federal Commercial Motor Vehicle Safety Act of 1986, Title XII of public law 99870 and subsequent rules, and have paid the required fee.

(2) Class D license shall be issued to those persons eighteen years and older with one year driving experience who operate motor vehicles other than those types of vehicles which require the operator to be licensed under the provisions of chapter seventeen-e of this code and federal law and rule and whose primary function or employment is the transportation of persons or property for compensation or wages and have paid the required fee. For the purposes of the regulation of the operation of a motor vehicle, wherever the term chauffeur's license is used in this code, it shall be construed to mean the Class A, B, C or D license described in this section or chapter seventeen-e of this code or federal law or rule: Provided, That anyone who is not required to be licensed under the provisions of chapter seventeen-e of this code and federal law or rule and who operates a motor vehicle which is registered or which is required to be registered as a Class A motor vehicle as that term is defined in section three, article ten, chapter seventeen-a of this code with a gross vehicle weight rating of less than eight thousand one pounds, is not required to obtain a Class D license.
(3) Class E license shall be issued to those persons who have qualified under the provisions of this chapter and who are not required to obtain a Class A, B, C or D license and who have paid the required fee. The Class E license may be endorsed under the provisions of section seven-b of this article for motorcycle operation.

(4) Class F license shall be issued to those persons who successfully complete the motorcycle examination procedure provided for by this chapter and have paid the required fee, but who do not possess a Class A, B, C and D or E driver's license.

(d) No person, except those hereinafter expressly exempted, shall drive any motorcycle upon a street or highway in this state or upon any subdivision street, as used in article twenty-four, chapter eight of this code, when the use of such subdivision street is generally used by the public unless the person has a valid motorcycle license or a valid license which has been endorsed under section seven-b of this article for motorcycle operation or has a valid motorcycle instruction permit.

(e) (1) A nonoperator identification card may be issued to any person who:

(A) Is a resident of this state in accordance with the provisions of section one-a, article three, chapter seventeen-a of this code;

(B) Does not have a valid driver's license;

(C) Has reached the age of sixteen years;

(D) Has paid the required fee of ten dollars: Provided, That such fee is not required if the applicant is sixty-five years or older or is legally blind; and

(E) Presents a birth certificate or other proof of age and identity acceptable to the division with a completed application on a form furnished by the division.

(2) The nondriver identification card shall contain the
same information as a driver's license except that such identification card shall be clearly marked as identification card. The identification card shall expire every four years. It may be renewed on application and payment of the fee required by this section.

(A) After the thirtieth day of June, one thousand nine hundred ninety-six, every identification card issued to persons who have attained their twenty-first birthday shall expire on the last day of the month in which the applicant's birthday occurs in those years in which the applicant's age is evenly divisible by five. Except as provided in paragraph (B) of this subdivision, no identification card may be issued for less than three years nor more than seven years and such identification card shall be renewed in the month in which the applicant's birthday occurs and shall be valid for a period of five years expiring in the year in which the applicant's age is evenly divisible by five.

(B) Every identification card issued to persons who have not attained their twenty-first birthday shall expire on the last day of the month in which the applicant attains the age of twenty-one years.

(3) The identification card shall be surrendered to the division when the holder is issued a driver's license. The division may issue an identification card to an applicant whose privilege to operate a motor vehicle has been refused, canceled, suspended or revoked under the provisions of this code.

§17B-2-3a. Junior driver's license.

(a) In accordance with rules established by the commissioner and with the provisions hereinafter set forth in this section, a junior driver's license may be issued to any person between the ages of sixteen and eighteen years, if the person is in compliance with section eleven, article eight, chapter eighteen of this code and is not otherwise disqualified by law. Application for a junior driver's li-
A junior driver's license may be issued upon the applicant's successful completion of all examinations and driving tests required by law for the issuance of a driver's license to a person eighteen years of age or older. The commissioner may impose reasonable conditions or restrictions on the operation of a motor vehicle by a person holding a junior driver's license and the conditions or restrictions shall be printed on the license.

(b) In addition to all other provisions of this chapter for which a driver's license may be revoked, suspended or canceled, whenever a person holding a junior driver's license operates a motor vehicle in violation of the conditions or restrictions set forth on the license, or has a record of two convictions for moving violations of the traffic regulations and laws of the road, which convictions have become final, the junior driver's license of the person shall be permanently revoked, with like effect as if the person had never held a junior driver's license: Provided, That a junior driver's license shall be revoked upon one final conviction for any offense described in section five, article three of this chapter. Under no circumstances shall such a license be revoked for convictions of offenses in violation of any regulation or law governing the standing or parking of motor vehicles.

(c) A junior driver's license shall be suspended for noncompliance with the provisions of section eleven, article eight, chapter eighteen of this code, and may be reinstated upon compliance.

(d) A person whose junior driver's license has been revoked, or has been suspended without reinstatement, shall not thereafter receive a junior driver's license, but the person, upon attaining the age of eighteen, shall be eligible, unless otherwise disqualified by law, for examination and driver testing for a regular driver's license. If a person has had his or her junior driver's license revoked for a violation pursuant to section one or two, article five-a, chapter seventeen-c of this code or any offense specified
or has been adjudicated delinquent upon a charge which would be a crime under the provisions of section two, article five, chapter seventeen-c of this code if committed by an adult, the person shall be disqualified for examination and driver testing for a regular driver's license until that person: (1) Has attained the age of eighteen years; (2) has successfully completed the safety and treatment program provided for in section three, article five-a, chapter seventeen-c of this code; and (3) has had his or her junior driver's license revoked or suspended for the applicable statutory period of revocation or suspension or a period of time equal to the period of revocation or suspension which would have been imposed pursuant to section two of said article if the person had a regular driver's license at the time of the violation.

(e) No person shall receive a junior driver's license unless the application therefor is accompanied by a writing, duly acknowledged, consenting to the issuance of the junior driver's license and executed by the parents of the applicant; or if only one parent is living, then by such parent; or if the parents be living separate and apart, by the one to whom the custody of the applicant was awarded; or if there is a guardian entitled to the custody of the applicant, then by the guardian.

(f) Upon attaining the age of eighteen years, a person holding an unrevoked, unsuspended or reinstated junior driver's license shall be entitled to exercise all the privileges of a regular driver's license without further examination or driver testing.

§17B-2-8. Issuance and contents of licenses; fees.

(a) The division shall, upon payment of the required fee, issue to every applicant qualifying therefor a driver's license, which shall indicate the type or general class or classes of vehicle or vehicles the licensee may operate in accordance with this chapter or chapter seventeen-e of this code, or motorcycle-only license. Each license shall con-
tain a coded number assigned to the licensee, the full name, date of birth, residence address, a brief description and a color photograph of the licensee and either a facsimile of the signature of the licensee or a space upon which the signature of the licensee shall be written with pen and ink immediately upon receipt of the license. No license shall be valid until it has been so signed by the licensee: Provided, That the commissioner may issue a valid without-photo license for applicants temporarily out of state. A driver's license which is valid for operation of a motorcycle shall contain a motorcycle endorsement. The division shall use such process or processes in the issuance of licenses that will, insofar as possible, prevent any alteration, counterfeiting, duplication, reproduction, forging or modification of, or the superimposition of a photograph on, such license.

(b) The fee for the issuance of a Class E driver's license shall be ten dollars and fifty cents. The fee for issuance of a Class D driver's license shall be twenty-five dollars and fifty cents. Fifty cents of each such fee shall be deposited in the "combined voter registration and driver's licensing fund", established pursuant to the provisions of section twenty-two-a, article two, chapter three of this code. The one-time only additional fee for adding a motorcycle endorsement to a driver's license shall be five dollars. The fee for issuance of a motorcycle-only license shall be ten dollars. The fees for the motorcycle endorsement or motorcycle-only license shall be paid into a special fund in the state treasury known as the motorcycle safety fund as established in section seven, article one-d of this chapter.

(c) After the thirtieth day of June, one thousand nine hundred ninety-six, the fee for the issuance of a Class E driver's license shall be two dollars and fifty cents per year for each year such license is issued to be valid. The fee for issuance of a Class D driver's license shall be six dollars and twenty-five cents per year for each year such 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.

(a) Every driver's license shall expire four years from
the date of its issuance, except that the driver's license of
any person in the armed forces shall be extended for a
period of six months from the date the person is separated
under honorable circumstances from active duty in the
armed forces.

(b) After the thirtieth day of June, one thousand nine
hundred ninety-six, the following shall apply:

(1) Every driver's license issued to persons who have
attained their twenty-first birthday shall expire on the last
day of the month in which the applicant's birthday occurs
in those years in which the applicant's age is evenly divis-
ible by five. Except as provided in the following subdivi-
sions, no driver's license may be issued for less than three
years nor more than seven years and such driver's license
shall be renewed in the month in which the applicant's
birthday occurs and shall be valid for a period of five
years, expiring in the month in which the applicant's birth-
day occurs and in a year in which the applicant's age is
evenly divisible by five.
(2) Every driver's license issued to persons who have not attained their twenty-first birthday shall expire on the last day of the month in the year in which the applicant attains the age of twenty-one years.

(3) The driver's license of any person in the armed forces shall be extended for a period of six months from the date the person is separated under honorable circumstances from active duty in the armed forces.

(c) A person who allows his or her driver's license to expire may apply to the division for renewal thereof. Application shall be made upon a form furnished by the division and shall be accompanied by payment of the fee required by section eight of this article plus an additional fee of five dollars. The commissioner shall determine whether such person qualifies for a renewed license and may, in the commissioner's discretion, renew any expired license without examination of the applicant.

(d) Each renewal of a driver's license shall contain a new color photograph of the licensee. By first class mail to the address last known to the division, the commissioner shall notify each person who holds a valid driver's license of the expiration date of the license. The notice shall be mailed at least thirty days prior to the expiration date of 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.

Commercial driver's licenses may be issued, with the following classifications, endorsements and restrictions; the holder of a valid commercial driver's license may drive all vehicles in the class for which that license is issued, and all lesser classes of vehicles and vehicles which require an endorsement, unless the proper endorsement appears on 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
after issuing a commercial driver's license, the commissioner shall notify the commercial driver's license information system of that fact, providing all information required to ensure identification of the person.

(e) Expiration of license. —

(1) The commercial driver's license shall expire four years from date of issuance.

(2) After the thirtieth day of June, one thousand nine hundred ninety-six, the following shall apply:

(A) Every commercial driver's license issued to persons who have attained their twenty-first birthday shall expire on the last day of the month in which the applicant's birthday occurs in those years in which the applicant's age is evenly divisible by five. Except as provided in paragraph (B) of this subdivision, no commercial driver's license may be issued for less than three years nor more than seven years and such commercial driver's license shall be renewed in the month in which the applicant's birthday occurs and shall be valid for a period of five years, expiring in the month in which the applicant's birthday occurs and in a year in which the applicant's age is evenly divisible by five.

(B) Every commercial driver's license issued to persons who have not attained their twenty-first birthday shall expire on the last day of the month in the year in which the applicant attains the age of twenty-one years.

(3) Commercial driver's licenses held by any person in the armed forces which expire while that person is on active duty shall remain valid for thirty days from the date on which that person reestablishes residence in West Virginia.

(4) Any person applying to renew a commercial driver's license which has been expired for two years or more must follow the procedures for an initial issuance of a commercial driver's license, including the testing provisions.
License renewal procedures. — When applying for renewal of a commercial driver's license, the applicant must complete the application form and provide updated information and required certifications. If the applicant wishes to retain a hazardous materials endorsement, the written test for a hazardous materials endorsement must be 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.

(a) Any person who:

(1) Drives a vehicle in this state while:

(A) He is under the influence of alcohol; or
(B) He is under the influence of any controlled substance; or

(C) He is under the influence of any other drug; or

(D) He is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and

(2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of such vehicle, which act or failure proximately causes the death of any person within one year next following such act or failure; and

(3) Commits such act or failure in reckless disregard of the safety of others, and when the influence of alcohol, controlled substances or drugs is shown to be a contributing cause to such death, shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than ten years and shall be fined not less than one thousand dollars nor more than three thousand dollars.

(b) Any person who:

(1) Drives a vehicle in this state while:

(A) He is under the influence of alcohol; or

(B) He is under the influence of any controlled substance; or

(C) He is under the influence of any other drug; or

(D) He is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and
(2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of such vehicle, which act or failure proximately causes the death of any person within one year next following such act or failure, is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for not less than ninety days nor more than one year and shall be fined not less than five hundred dollars nor more than one thousand dollars.

(c) Any person who:

(1) Drives a vehicle in this state while:
  (A) He is under the influence of alcohol; or
  (B) He is under the influence of any controlled substance; or
  (C) He is under the influence of any other drug; or
  (D) He is under the combined influence of alcohol and any controlled substance or any other drug; or
  (E) He has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and

(2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of such vehicle, which act or failure proximately causes bodily injury to any person other than himself, is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars.

(d) Any person who:

(1) Drives a vehicle in this state while:
  (A) He is under the influence of alcohol; or
(B) He is under the influence of any controlled substance; or

(C) He is under the influence of any other drug; or

(D) He is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight;

(2) Is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for not less than one day nor more than six months, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(e) Any person who, being an habitual user of narcotic drugs or amphetamine or any derivative thereof, drives a vehicle in this state, is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for not less than one day nor more than six months, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(f) Any person who:

(1) Knowingly permits his or her vehicle to be driven in this state by any other person who is:

(A) Under the influence of alcohol; or

(B) Under the influence of any controlled substance; or

(C) Under the influence of any other drug; or

(D) Under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight;
(2) Is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(g) Any person who:

Knowingly permits his or her vehicle to be driven in this state by any other person who is an habitual user of narcotic drugs or amphetamine or any derivative thereof, is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(h) Any person under the age of twenty-one years who drives a vehicle in this state while he or she has an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, shall, for a first offense under this subsection, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars. For a second or subsequent offense under this subsection, such person is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars. A person who is charged with a first offense under the provisions of this subsection may move for a continuance of the proceedings from time to time to allow the person to participate in the vehicle alcohol test and lock program as provided for in section three-a, article five-a of this chapter. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person's record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this subsection shall not be construed as an admission or be used as evidence.
A person arrested and charged with an offense under the provisions of subsection (a), (b), (c), (d), (e), (f) or (g) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

(i) A person violating any provision of subsection (b), (c), (d), (e), (f) or (g) of this section shall, for the second offense under this section, be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for a period of not less than six months nor more than one year, and the court may, in its discretion, impose a fine of not less than one thousand dollars nor more than three thousand dollars.

(j) A person violating any provision of subsection (b), (c), (d), (e), (f) or (g) of this section shall, for the third or any subsequent offense under this section, be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than three years, and the court may, in its discretion, impose a fine of not less than three thousand dollars nor more than five thousand dollars.

(k) For purposes of subsections (i) and (j) of this section relating to second, third and subsequent offenses, the following types of convictions shall be regarded as convictions under this section:

(1) Any conviction under the provisions of subsection (a), (b), (c), (d), (e) or (f) of the prior enactment of this section for an offense which occurred on or after the first day of September, one thousand nine hundred eighty-one, and prior to the effective date of this section;

(2) Any conviction under the provisions of subsection (a) or (b) of the prior enactment of this section for an offense which occurred within a period of five years immediately preceding the first day of September, one thousand nine hundred eighty-one; and

(3) Any conviction under a municipal ordinance of this state or any other state or a statute of the United States
or of any other state of an offense which has the same
elements as an offense described in subsection (a), (b), (c),
(d), (e), (f) or (g) of this section, which offense occurred
after the tenth day of June, one thousand nine hundred
eighty-three.

(l) A person may be charged in a warrant or indict-
ment or information for a second or subsequent offense
under this section if the person has been previously arrest-
ed for or charged with a violation of this section which is
alleged to have occurred within the applicable time peri-
ods for prior offenses, notwithstanding the fact that there
has not been a final adjudication of the charges for the
alleged previous offense. In such case, the warrant or
indictment or information must set forth the date, location
and particulars of the previous offense or offenses. No
person may be convicted of a second or subsequent of-
fense under this section unless the conviction for the pre-
vious offense has become final.

(m) The fact that any person charged with a violation
of subsection (a), (b), (c), (d) or (e) of this section, or any
person permitted to drive as described under subsection
(f) or (g) of this section, is or has been legally entitled to
use alcohol, a controlled substance or a drug shall not
constitute a defense against any charge of violating sub-
section (a), (b), (c), (d), (e), (f) or (g) of this section.

(n) For purposes of this section, the term "controlled
substance" shall have the meaning ascribed to it in chapter
sixty-a of this code.

(o) The sentences provided herein upon conviction for
a violation of this article are mandatory and shall not be
subject to suspension or probation: Provided, That the
court may apply the provisions of article eleven-a, chapter
sixty-two of this code to a person sentenced or committed
to a term of one year or less. An order for home deten-
tion by the court pursuant to the provisions of article
eleven-b, chapter sixty-two of this code may be used as an
alternative sentence to any period of incarceration re-
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.

(a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad and shall not proceed until he can do so safely. The foregoing requirements shall apply when:

(1) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

(2) A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;
(3) A railroad train approaching within approximately one thousand five hundred feet of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard;

(4) Any approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

(b) No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

(c) Any person failing to comply with the requirements of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined one hundred dollars or imprisoned for not more than ten days. The commissioner shall promulgate rules to further penalize those convicted of violating this section by levying three points against the violator's driver's license record: Provided, That if the electric or mechanical signal device is malfunctioning, this subsection shall not apply.

§17C-12-3. Certain vehicles must stop at all railroad grade crossings.

(a) The driver of any motor vehicle carrying passengers for hire, or of any bus, or of any vehicle required to be placarded under 49 CFR part 172 carrying explosive substances, flammable liquids or hazardous materials as a cargo or part of a cargo, or of any vehicle owned by an employer which, in carrying on such employer's business or in carrying employees to and from work, is carrying more than six employees of such employer, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty feet but not less than fifteen feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely. After stopping
as required herein and upon proceeding when it is safe to do so the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such crossing and the driver shall not shift gears while crossing the track or tracks.

(b) No stop need be made at any such crossing where a police officer or a traffic-control signal directs traffic to proceed.

(c) This section shall not apply at street railway grade crossings within a business or residence district.

(d) Any person driving a vehicle that requires a commercial driver's license who fails to comply with the requirements of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined one hundred dollars or imprisoned for not more than ten days. The commissioner shall promulgate rules to further penalize those convicted of violating this section by levying three points against the violator's driver's license record: Provided, That if the electric or mechanical signal device is malfunctioning, 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.

Every vehicle other than a school bus, motorcycle, motor-driven cycle or moped operated upon a highway within this state at any time from sunset to sunrise, or during fog, smoke, rain or other unfavorable atmospheric conditions, or at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the highway at a distance of five hundred feet ahead, shall display lighted head lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles as provided for in subsection (c), section fifteen of this article. Every school bus, motorcycle, motor-driven cycle and moped shall display lighted head 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.


(a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps or flashing front-direction signals which projects a beam of light of an intensity greater than three hundred candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

(b) No person shall drive or move any vehicle or equipment upon any highway with any lamp or device thereon displaying other than a white or amber light visible from directly in front of the center thereof except as authorized by subsection (d) of this section.

(c) Except as authorized in subsections (d) and (f) of this section and authorized in section nineteen of this article, flashing lights are prohibited on motor vehicles: Provided, That any vehicle as a means for indicating right or left turn, or any vehicle as a means of indicating the same is disabled or otherwise stopped for an emergency may have blinking or flashing lights.

(d) Notwithstanding any other provisions of this chapter, the following colors of flashing warning lights are restricted for the use of the type of vehicle designated:

(1) Blue flashing warning lights are restricted to police vehicles. Authorization for police vehicles shall be designated by the chief administrative official of each police department.

(2) Except for standard vehicle equipment authorized by section nineteen of this article, red flashing warning lights are restricted to ambulances; firefighting vehicles; hazardous material response vehicles; industrial fire brigade vehicles; school buses; Class A vehicles, as defined by section one, article ten, chapter seventeen-a of this code, of those firefighters who are authorized by their fire chiefs to have such lights; Class A vehicles of members of ambulance services or duly chartered rescue squads who
are authorized by their respective chiefs to have such
lights; and Class A vehicles of out-of-state residents who
are active members of West Virginia fire departments,
ambulance services or duly chartered rescue squads who
are authorized by their respective chiefs to have such
lights. Red flashing warning lights attached to such Class
A vehicles shall be operated only when responding to or
engaged in handling an emergency requiring the attention
of such firefighters, members of such ambulance services,
or chartered rescue squads.

(3) The use of red flashing warning lights shall be
authorized as follows:

(A) Authorization for all ambulances shall be design-
nated by the department of health and human resources
and the sheriff of the county of residence.

(B) Authorization for all fire department vehicles shall
be designated by the fire chief and the state fire marshal's
office.

(C) Authorization for all hazardous material response
vehicles and industrial fire brigades shall be designated by
the chief of the fire department and the state fire marshal's
office.

(D) Authorization for all rescue squad vehicles not
operating out of a fire department shall be designated by
the squad chief, the sheriff of the county of residence and
the department of health and human resources.

(E) Authorization for school buses shall be designated
as set out in section twelve, article fourteen, chapter
seventeen-c.

(F) Authorization for firefighters to operate Class A
vehicles shall be designated by their fire chiefs and the
state fire marshal's office.

(G) Authorization for members of ambulance services
or any other emergency medical service personnel to
operate Class A vehicles shall be designated by their chief
official, the department of health and human resources
and the sheriff of the county of residence.
(H) Authorization for members of duly chartered rescue squads not operating out of a fire department to operate Class A vehicles shall be designated by their squad chiefs, the sheriff of the county of residence and the department of health and human resources.

(I) Authorization for out-of-state residents operating Class A vehicles who are active members of a West Virginia fire department, ambulance services or duly chartered rescue squads shall be designated by their respective chiefs.

(4) Yellow flashing warning lights are restricted to the following:

(A) All other emergency vehicles, including tow trucks and wreckers, authorized by this chapter and by section twenty-seven of this article;

(B) Postal service vehicles and rural mail carriers, as authorized in section nineteen of this article;

(C) Rural newspaper delivery vehicles;

(D) Flag car services;

(E) Vehicles providing road service to disabled vehicles;

(F) Service vehicles of a public service corporation;

(G) Snow removal equipment; and

(H) School buses.

(5) The use of yellow flashing warning lights shall be authorized as follows:

(A) Authorization for tow trucks, wreckers, rural newspaper delivery vehicles, flag car services, vehicles providing road service to disabled vehicles, service vehicles of a public service corporation and postal service vehicles shall be designated by the sheriff of the county of residence.

(B) Authorization for snow removal equipment shall be designated by the commissioner of the division of highways.
(C) Authorization for school buses shall be designated as set out in section twelve, article fourteen, chapter seventeen-c.

(e) Notwithstanding the foregoing provisions of this section, any vehicle belonging to a county board of education may be equipped with a white flashing strobotron warning light. This strobe light may be installed on the roof of a school bus not to exceed one-third the body length forward from the rear of the roof edge. The light shall have a single clear lens emitting light three hundred sixty degrees around its vertical axis and may not extend above the roof more than six and one-half inches. A manual switch and a pilot light must be included to indicate the light is in operation.

(f) It shall be unlawful for flashing warning lights of an unauthorized color to be installed or used on a vehicle other than as specified in this section, except that a police vehicle may be equipped with either or both blue or red 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.

(a) The division of motor vehicles shall control and regulate a motor vehicle alcohol test and lock program for persons whose licenses have been revoked pursuant to this article or the provisions of article five of this chapter. Such program shall include the establishment of a users fee for persons participating in the program which shall be paid in advance and deposited into the driver's rehabilitation fund. Except where specified otherwise, the use of the term "program" in this section refers to the motor vehicle alcohol test and lock program. The commissioner of the division of motor vehicles shall propose legislative rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code for the purpose of implementing the provisions of this section. Such rules shall also prescribe those requirements which, in addition to the requirements specified by this section for eligibility to participate in the program, the commissioner determines must be met to obtain the commissioner's approval to operate a motor vehicle equipped with a motor vehicle alcohol test and lock system. For purposes of this section, a "motor vehicle alcohol test and lock system" means a mechanical or computerized system which, in the opinion of the commissioner, prevents the operation of a motor vehicle when, through the system's assessment of the blood alcohol content of the person operating or attempting to
operate the vehicle, such person is determined to be under the influence of alcohol.

(b) (1) Any person whose license has been revoked pursuant to this article or the provisions of article five of this chapter is eligible to participate in the program when such person's minimum revocation period as specified by subsection (c) of this section has expired and such person is enrolled in or has successfully completed the safety and treatment program or presents proof to the commissioner within sixty days of receiving approval to participate by the commissioner that he or she is enrolled in a safety and treatment program: Provided, That no person whose license has been revoked pursuant to the provisions of section one-a of this article for conviction of an offense defined in subsections (a) or (b), section two, article five of this chapter, or pursuant to the provisions of subsections (f) or (g), section two of this article, shall be eligible for participation in the program: Provided, however, That any person whose license is revoked pursuant to this article or pursuant to article five of this chapter for an act which occurred either while participating in or after successfully completing the program shall not again be eligible to participate in such program.

(2) Any person whose license has been suspended pursuant to the provisions of subsection (l), section two of this article for driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, is eligible to participate in the program after thirty days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect: Provided, That in the case of a person under the age of eighteen, the person shall be eligible to participate in the program after thirty days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect, or after the person's eighteenth birthday, whichever is later. Before the commissioner
approves a person to operate a motor vehicle equipped with a motor vehicle alcohol test and lock system, the person must agree to thereafter comply with the following conditions:

(A) If not already enrolled, the person will enroll in and complete the educational program provided for in subsection (c), section three of this article at the earliest time that placement in the educational program is available, unless good cause is demonstrated to the commissioner as to why placement should be postponed;

(B) The person will pay all costs of the educational program, any administrative costs and all costs assessed for any suspension hearing.

(3) Notwithstanding the provisions of this section to the contrary, no person eligible to participate in the program shall operate a motor vehicle unless approved to do so by the commissioner.

(c) For purposes of this section, "minimum revocation period" means the portion which has actually expired of the period of revocation imposed by the commissioner pursuant to this article or the provisions of article five of this chapter upon a person eligible for participation in the program as follows:

(1) For a person whose license has been revoked for a first offense for six months pursuant to the provisions of section one-a of this article for conviction of an offense defined in section two, article five of this chapter, or pursuant to subsection (i), section two of this article, the minimum period of revocation before such person is eligible for participation in the test and lock program is thirty days, and the minimum period for the use of the ignition interlock device is five months, or that period described in subdivision (1), subsection (e) of this section, whichever period is greater;

(2) For a person whose license has been revoked for a first offense pursuant to section seven, article five of this
chapter, refusal to submit to a designated secondary chemical test, the minimum period of revocation before such person is eligible for participation in the test and lock program is thirty days, and the minimum period for the use of the ignition interlock device is nine months, or the period set forth in subdivision (1), subsection (e) of this section, whichever period is greater;

(3) For a person whose license has been revoked for a second offense pursuant to the provisions of section one-a of this article for conviction of an offense defined in section two, article five of this chapter, or pursuant to section two of this article, the minimum period of revocation before such person is eligible for participation in the test and lock program is nine months, and the minimum period for the use of the ignition interlock device is eighteen months, or that period set forth in subdivision (2), subsection (e) of this section, whichever period is greater;

(4) For a person whose license has been revoked for any other period of time pursuant to the provisions of section one-a of this article for conviction of an offense defined in section two, article five of this chapter, or pursuant to section two of this article or pursuant to section seven, article five of this chapter, the minimum period of revocation is eighteen months, and the minimum period for the use of the ignition interlock device is two years, or that period set forth in subdivision (3), subsection (e) of this section, whichever period is greater;

(5) An applicant for the test and lock program must not have been convicted of any violation of section three, article four, chapter seventeen-b of this code, for driving while the applicant's driver's license was suspended or revoked, within the two-year period preceding the date of application for admission to the test and lock program;

(6) The commissioner is hereby authorized to allow individuals in the test and lock program an additional device or devices if such is necessary for employment
purposes.

(d) Upon permitting an eligible person to participate in the program, the commissioner shall issue to such person, and such person shall be required to exhibit on demand, a driver's license which shall reflect that such person is restricted to the operation of a motor vehicle which is equipped with an approved motor vehicle alcohol test and lock system.

(e) Any person who has completed the safety and treatment program and who has not violated the terms required by the commissioner of such person's participation in the motor vehicle alcohol test and lock program shall be entitled to the restoration of such person's driver's license upon the expiration of:

(1) One hundred eighty days of the full revocation period imposed by the commissioner for a person described in subdivision (1) or (2), subsection (c) of this section;

(2) The full revocation period imposed by the commissioner for a person described in subdivision (3), subsection (c) of this section;

(3) One year from the date a person described in subdivision (4), subsection (c) of this section is permitted to operate a motor vehicle by the commissioner.

(f) A person whose license has been suspended pursuant to the provisions of subsection (l), section two of this article, who has completed the educational program, and who has not violated the terms required by the commissioner of such person's participation in the motor vehicle alcohol test and lock program shall be entitled to the reinstatement of his or her driver's license six months from the date the person is permitted to operate a motor vehicle by the commissioner. When a license has been reinstated pursuant to this subsection, the records ordering the suspension, records of any administrative hearing, records of any blood alcohol test results and all other
records pertaining to the suspension shall be expunged by operation of law: Provided, That a person shall be entitled to expungement under the provisions of this subsection only once. The expungement shall be accomplished by physically marking the records to show that such records have been expunged, and by securely sealing and filing the records. Expungement shall have the legal effect as if the suspension never occurred. The records shall not be disclosed or made available for inspection, and in response to a request for record information, the commissioner shall reply that no information is available. Information from the file may be used by the commissioner for research and statistical purposes so long as the use of such information does not divulge the identity of the person.

(g) In addition to any other penalty imposed by this code, any person who operates a motor vehicle not equipped with an approved motor vehicle alcohol test and lock system during such person's participation in the motor vehicle alcohol test and lock program is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail for a period not less than one month nor more than six months and fined not less than one hundred dollars nor more than five hundred dollars. Any person who assists another person required by the terms of such other person's participation in the motor vehicle alcohol test and lock program to use a motor vehicle alcohol test and lock system in any effort to bypass the system is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than six months and fined not less than one hundred dollars nor more than one thousand dollars: Provided, That notwithstanding any provision of this code to the contrary, a person enrolled and participating in the test and lock program may operate a motor vehicle solely at his or her job site, if such is a condition of his or her 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.

(a) Farmers. — Bona fide farmers or farm vehicle drivers, as defined, operating a vehicle otherwise covered by the commercial driver's license requirements may be exempted from the provisions of this article only if the vehicle used is:

(1) Driven by a farmer or farm vehicle driver;

(2) Used only to transport either agricultural products, farm machinery, farm supplies, to or from a farm;

(3) Not used in the operation of a common or contract motor carrier; and

(4) Used within one hundred fifty miles of the qualifying farm.

Farmers who wish to be exempted from the commercial driver's license requirements must apply to the division of motor vehicles for a certificate of exemption.

(b) Military personnel. — Military personnel,
including the national guard and reserve, will be exempt from the provisions of this article, only:

(1) When in uniform; and

(2) Operating equipment owned by the United States department of defense, except during declared emergencies or disaster situations; and

(3) On duty; and

(4) In possession of a valid classified military driver's license for the class of vehicle being driven.

(c) Fire fighting and rescue equipment. — Operators of vehicles authorized to hold an "authorized emergency vehicle permit" for use of red signal lights only are exempt from the provisions of this article while the "authorized emergency vehicle permit" is in force. Vehicles in this class include, but are not limited to, firefighters and rescue equipment:

(1) Owned and operated by state, county and municipal fire departments;

(2) Owned and operated by state, county and municipal civil defense organizations;

(3) Owned and operated by a manufacturer engaged in a type of business that requires firefighter equipment to protect the safety of their plants and its employees;

(4) Owned and operated by volunteer fire departments.

(d) Operators of off-road construction and mining equipment.— Operators of equipment which, by its design, appearance and function, is not intended for use on a public road, including, without limitation, motorscrapers, backhoes, motorgraders, compactors, excavators, tractors, trenches and bulldozers, will be exempt from the provisions of this article: Provided, That the exemption recognized by this subsection shall not be construed to permit the operation of such equipment on any public road except such operation as may be required for a crossing of such road: Provided, however, That no such
equipment may be operated on a public road for a distance exceeding five hundred feet from the place where such equipment entered upon the public road.

(e) The Commercial Motor Vehicles Safety Act of 1986 exempts vehicles used exclusively for personal use such as recreation vehicles and rental trucks used only to 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.
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".

(a) Any properly registered and qualified vendor who supplies services or commodities to any county, or agency thereof, shall be entitled to prompt payment upon presentation to that county or agency of a legitimate uncontested invoice.

(b) (1) Except as provided in subdivision (2) of this subsection, for purchases of services or commodities made on or after the first day of July, one thousand nine hundred ninety-five, a check shall be issued in payment thereof within sixty days after a legitimate uncontested invoice is received by the county or agency receiving the services or commodities. Any check issued after such sixty days shall include interest at the current rate, as determined by the state tax commissioner under the provisions of section seventeen-a, article ten, chapter eleven of this code, which interest shall be calculated from the sixty-first day after the invoice was received by the county or agency until the date on which the check is mailed to the vendor: Provided, That this section shall not apply if payment cannot be made within the sixty-day period because of unforeseen budgetary constraints.

(2) For purposes of this subsection, an invoice shall be deemed to be received by a county, or agency thereof, on the date on which the invoice is marked as received by the county or agency, or the date of the postmark made by the United States postal service as evidenced on the envelope in which the invoice is mailed, whichever is earlier, unless the vendor can provide sufficient evidence that the invoice was received by the county or agency on an earlier date: Provided, That in the event an invoice is received by a county, or agency thereof, prior to the date on which the commodities or services covered by the invoice are delivered and accepted or fully performed and accepted, the
invoice shall be deemed to be received on the date on which the commodities or services covered by the invoice were actually delivered and accepted or fully performed and accepted.

(c) The sheriff shall deduct the amount of any interest due for late payment of an invoice from any appropriate account of the agency responsible for the late payment: Provided, That if two or more agencies are responsible for the late payment, the sheriff shall deduct the amount of interest due on a pro rata basis.

(d) The county or agency initially receiving a legitimate uncontested invoice shall process the invoice for payment within ten days from its receipt. Failure to comply with the requirements of this subsection shall render the county or agency liable for payment of the interest mandated by this section when there is a failure to promptly pay a legitimate uncontested invoice: Provided, That a county agency shall not be liable for payment of interest owed by another county agency under this section.

(e) Any other county agency charged by law with processing a county agency’s requisition for payment of a legitimate uncontested invoice shall either process the claim or reject it for good cause within ten days after the agency receives it. Failure to comply with the requirements of this subsection shall render the county agency liable for payment of the interest mandated by this section when there is a failure to promptly pay a legitimate uncontested invoice: Provided, That a county agency shall not be liable for payment of interest owed by another county agency under this section.

(f) For purposes of this section, the term "agency" means any agency, department, board, office, bureau, commission, authority or any other entity of county government.

(g) This section may be cited as the "Prompt Pay Act 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".

(a) Any properly registered and qualified vendor who supplies services or commodities to any municipality or agency thereof, shall be entitled to prompt payment upon presentation to that municipality or agency of a legitimate uncontested invoice.

(b) (1) Except as provided in subdivision (2) of this subsection, for purchases of services or commodities made on or after the first day of July, one thousand nine hundred ninety-five, a check shall be issued in payment thereof within sixty days after a legitimate uncontested invoice is received by the municipality or agency receiving the services or commodities. Any check issued after the sixty days shall include interest at the current rate, as determined by the state tax commissioner under the provisions of section seventeen-a, article ten, chapter eleven of this code, which interest shall be calculated from the sixty-first day after the invoice was received by the municipality or agency until the date on which the check is mailed to the vendor: Provided, That this section shall not apply if payment cannot be made within the sixty-day period because of unforeseen budgetary constraints.

(2) For purposes of this subsection, an invoice shall be deemed to be received by a municipality or agency on the date on which the invoice is marked as received by the municipality or agency, or the date of the postmark made by the United States postal service as evidenced on the envelope in which the invoice is mailed, whichever is earlier, unless the vendor can provide sufficient evidence that the invoice was received by the municipality or agency on an earlier date: Provided, That in the event an invoice is received by a municipality or agency prior to the date on which the commodities or services covered by the invoice are delivered and accepted or fully performed and accept-
ed, the invoice shall be deemed to be received on the date
on which the commodities or services covered by the in-
voice were actually delivered and accepted or fully per-
formed and accepted.

(c) The municipal treasurer shall deduct the amount of
any interest due for late payment of an invoice from any
appropriate account of the agency responsible for the late
payment: Provided, That if two or more agencies are
responsible for the late payment, the municipal treasurer
shall deduct the amount of interest due on a pro rata basis.

(d) The municipality or agency initially receiving a
legitimate uncontested invoice shall process the invoice for
payment within ten days from its receipt. Failure to com-
ply with the requirements of this subsection shall render
the municipality or agency liable for payment of the inter-
est mandated by this section when there is a failure to
promptly pay a legitimate uncontested invoice: Provided,
That a municipality or agency shall not be liable for pay-
ment of interest owed by another municipal agency under
this section.

(e) Any other municipality or agency charged by law
with processing a municipal agency's requisition for pay-
ment of a legitimate uncontested invoice shall either pro-
cess the claim or reject it for good cause within ten days
after such municipality or agency receives it. Failure to
comply with the requirements of this subsection shall
render the municipal agency liable for payment of the
interest mandated by this section when there is a failure to
promptly pay a legitimate uncontested invoice: Provided,
That a municipal agency shall not be liable for payment
of interest owed by another municipal agency under this
section.

(f) For purposes of this section, the phrase "municipal
agency" means any agency, department, board, office,
bureau, commission, authority or any other entity of a
municipal corporation.

(g) This section may be cited as the "Prompt Pay Act
of 1995".
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; FIREFIGHTERS' 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.


§8-22-22. Investment of funds; exercise of judgment in making investments; actuarial studies required; annual report.
The board of trustees may invest a portion or all of the fund assets in the state consolidated fund or the consolidated pension fund. The board of trustees shall keep as an available sum for the purpose of making regular retirement, disability retirement, death benefit, payments and administrative expenses in an estimated amount not to exceed payments for a period of ninety days. The board of trustees, in acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of the fund shall exercise judgment and care under fiduciary duty which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable total return as well as the preservation of principal. Within the limitations of the foregoing standard, the board of trustees is authorized in its sole discretion to invest and reinvest any funds received by it and not invested in the consolidated fund or the consolidated pension fund in the following:

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

(b) Any evidence of indebtedness issued by any United States government agency guaranteed as to the payment of both principal and interest, directly or indirectly, by the United States of America including, but not limited to, the following: Government national mortgage association, federal land banks, federal national mortgage association, federal home loan banks, federal intermediate credit banks, banks for cooperatives, Tennessee valley authority, United States postal service, farmers home administration, export-import bank, federal financing bank, federal home loan mortgage corporation, student loan marketing association and federal farm credit banks;

(c) Readily marketable (i.e. traded on a national securities exchange) debt securities having a Standard & Poor rating of A (or equivalent to Moody’s rating) or higher,
excluding municipal securities;

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

(e) Repurchase agreements issued by any bank, trust company, national banking association or savings institutions which mature in less than one year and are fully collateralized, no reverse repurchase agreements shall be allowed;

(f) Interest bearing deposits including certificates of deposit and passbook savings accounts that are FDIC insured;

(g) Equity. — Common stocks, securities convertible into common stocks, or warrants and rights to purchase such securities: Provided, That each shall be listed on the NYSE, ASE or are traded on the National OTC Market and listed on the NASDAQ National Market;

(h) The board of trustees of each fund may delegate investment authority to equity mutual funds managers and/or professional registered investment advisors who are registered with the Securities and Exchange Commission, in addition to being registered with the Investment Advisors Act of 1940 and appropriate state regulatory agencies, if applicable, who also manage assets in excess of seventy-five million dollars.


Moneys invested as permitted by section twenty-two of this article are subject to the following restrictions and condition contained in this section:

(a) Fixed income securities shall at no time exceed ten percent of the total assets of the pension fund, which are issued by one issuer, other than the United States government or agencies thereof, whereas this limit shall not apply;
(b) At no time shall the equity portion of the portfolio exceed fifty percent of the total portfolio. Furthermore, the debit or equity securities of any one company or association shall not exceed five percent with a maximum of fifteen percent in any one industry;

(c) Notwithstanding any other provisions of this article, any investments in equities under subsections (g) and (h), section twenty-two of this article shall be subject to the following additional guidelines:

(1) Equity mutual funds shall be no sales load (front or back) and no contingent deferred sales charges shall be allowed. The total annual operating expense ratio shall not exceed one and three-quarter percent for any mutual fund;

(2) The stated investment policy requires one hundred percent of the equities of the portfolio be that of securities which are listed on the New York Stock Exchange, the American Stock Exchange, or the NASDAQ National Market;

(3) Equity mutual funds may be only of the following fund description stated purpose: growth funds, growth and income funds, equity income funds, index funds; utilities, funds, balanced funds and flexible portfolio funds;

(4) The equity value of investments shall not exceed twenty-five percent of the total portfolio for the first twelve months from enactment of these articles; thereafter no more than five percent of the total portfolio be invested in equity securities per calendar quarter up to the maximum of fifty percent.

(d) The board of trustees of each fund shall obtain an independent performance evaluation of the funds at least annually and such evaluation shall consist of comparisons with other funds having similar investment objectives for performance results with appropriate market indices;

(e) Each entity conducting business for each pension
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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.
The adverse party or parties shall be any property owner whom or which the record of the board of zoning appeals shows to have appeared at the hearing before the board in opposition to the petitioner. If the record shows a written remonstrance or other document opposing the request of petitioner containing the names of more than three property owners, the petitioner shall be required to cause notice to be issued and served upon the three property owners whose names first appear upon the remonstrance or document. Notice to the other parties named in the remonstrance or document shall not be required.

The notice shall state that a petition for a writ of certiorari has been filed in the circuit court of the county asking for a review of the decision or order of the board of zoning appeals, shall designate the premises affected and shall specify the date of the decision or order complained of.

Service of the notice by the sheriff on the chairman or secretary of the board of zoning appeals shall constitute notice to the board and to the municipality or county and to any official or board thereof charged with the enforcement of the zoning ordinance and no further summons or notice with reference to the filing of such petition shall be necessary.

(b) As an alternative to the requirements for notice prescribed in subsection (a) of this section, notice shall be sufficient upon a showing that the chairman or secretary of the board of zoning appeals and all adjacent landowners to the subject property have received personal service of process of the notice containing information as required by said subsection. As to all other interested parties, notice shall be sufficient if, by Class III-0 legal advertisement, notice containing information as required by said subsection is published in the county or counties wherein the subject property is located.
CHAPTER 185

(H. B. 2230—By Mr. Speaker, Mr. Chambers, and Delegates Leach and Smirk)

[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.

A purchase of or contract for all supplies, equipment and materials and a contract for the construction of facilities by any authority, when the expenditure required exceeds the sum of ten thousand dollars, shall be based on competitive sealed bids: Provided, That there are specifically excepted from the aforesaid requirement purchases of and contracts for replacement parts for urban mass transportation vehicles previously purchased by the authority. The bids shall be obtained by public notice published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be the service area of the authority. The publication shall
be made at least fourteen days before the final date for
submitting bids. In addition to the publication, the notice
may also be published by any other advertising medium
the authority may deem advisable, and the authority may
also solicit sealed bids by sending requests by mail to
prospective suppliers and by posting notice on a bulletin
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.

The Legislature hereby finds and declares:

(a) The National and Community Service Trust Act of 1993, P. L. 103-82, was enacted to foster civic responsibility and to enable the citizens of the various states to participate in, for the benefit of their communities, various volunteer and other service programs including, but not limited to, community corps programs, youth corps programs, school and campus-based programs, professional corps programs, americorps programs, national senior service corps programs and VISTA programs.

(b) The National and Community Service Trust Act of 1993, P. L. 103-82, created the corporation for national and community service for the purpose of assisting the various states in the creation and operation of a statewide commission that would have as its purpose the encouragement, coordination and assistance of the efforts of individuals or other entities from both the public and private sectors to create or participate in local community service programs.

(c) The corporation for national and community service assists a state's commission by and through a grant to the commission that is equal to a percentage of the commission's administrative costs.

(d) The deadline for the creation of a state commission was the first day of January, one thousand nine hundred ninety-four, if the state commission was to receive an administrative grant in the corporation for
national and community service's fiscal year beginning in
the calendar year one thousand nine hundred ninety-four.

(e) The West Virginia commission for national and
community service was created by an executive order of
the governor of the state of West Virginia made on the
twenty-eighth day of January, one thousand nine hundred
ninety-four, but the executive order contemplated the
enactment of legislation continuing the state commission
in the next session of the Legislature.

(f) The West Virginia commission for national and
community service has striven to develop a coordinated,
unified plan in response to the National and Community
Service Trust Act of 1993, P. L. 103-82, and to meet the
social, environmental, educational and public safety needs
of the state of West Virginia by instilling in its citizens a
greater sense of pride in, and responsibility for, their
communities.

(g) The Legislature intends to continue the West
Virginia commission for national and community service
for the purpose of complying with the provisions of the
National and Community Service Trust Act of 1993, P. L.
103-82, and for the purpose of meeting the social,
environmental, educational and public safety needs of the
state of West Virginia by and through promotion and
coordination of community outreach initiatives.

§5-26A-2. Continuation of West Virginia commission for
national and community service; support and
assistance to commission.

(a) The West Virginia commission for national and
community service is hereby continued as a state
commission within the meaning of, and in accordance
with, the provisions of the National and Community
Service Act of 1990, as amended by the National and
Community Service Trust Act of 1993, and the provisions
of any rules or regulations promulgated under the act.
(b) By executive order, the governor shall provide for any administrative support to the West Virginia commission for national and community service as the governor may deem to be necessary.

(c) All agencies of the state shall provide such assistance and information to the West Virginia commission for national and community service as is necessary to ensure a fully coordinated effort throughout the state relating to the promotion of national and community volunteer service.

§5-26A-3. Members.

(a) The West Virginia commission for national and community service shall have no fewer than fifteen and no more than twenty-five voting members to be appointed by the governor.

(b) The voting membership of the West Virginia commission for national and community service shall include:

(1) At least one individual with expertise in the educational and developmental needs of the state's disadvantaged youth;

(2) At least one individual with experience in promoting the involvement of older adults in national or community service and volunteer programs;

(3) A representative of a community-based agency operating within the state;

(4) The secretary of the department of education and arts created pursuant to section two, article one, chapter five-f of this code or a designee;

(5) The state superintendent of schools or a designee;

(6) A representative of a county or municipal government;
(7) A representative of a local labor organization;

(8) A representative of a for-profit business operating within the state; and

(9) An individual whose age is between the age of sixteen years and twenty-five years, inclusive, who has been, or remains, a participant or a supervisor in a volunteer or service program.

(c) The membership of the West Virginia commission for national and community service shall include a representative of the corporation for national and community service who shall serve as a member in a nonvoting, ex officio capacity.

(d) No more than twenty-five percent of the voting membership of the West Virginia commission for national and community service may be individuals who are employed by the state or its agencies, except that the membership may include additional employees of the state or its agencies in a nonvoting, ex officio capacity.

(e) No member of the West Virginia commission for national and community service may vote on an issue affecting organizations for which the member has served as a staff person or as a volunteer at any time during the twelve-month period before the member's appointment to the commission.

(f) No more than fifty percent plus one of the members of the West Virginia commission for national and community service may be members of the same political party.

(g) To the extent possible, the membership of the West Virginia commission for national and community service shall reflect the diversity of the state's population.

(h) Members of the West Virginia commission for national and community service who were appointed under the executive order of the governor entered on the
twenty-eighth day of January, one thousand nine hundred ninety-four, shall continue as members of the commission for a term of three years, except that the governor shall designate eight members who shall serve for a term of two years and shall also designate an additional eight members who shall serve for a term of one year. Additional appointments by the governor under the provisions of this section and appointments by the governor upon the expiration of a member's term shall be made for a term of three years. Appointments of members by the governor to serve for an unexpired term shall be for the remainder of the unexpired term. Members may be reappointed.

(i) The voting members of the West Virginia commission for national and community service shall annually elect a voting member to serve as the chair of the commission.

(j) The members of the West Virginia commission for national and community service shall meet at the call of the chair, who shall be obligated to call a meeting at the request of a simple majority of the members or as necessary to ensure that the members have met at least twice in each calendar year of the commission's operation.

(k) The members of the West Virginia commission for national and community service shall serve without compensation, except that the members of the commission who are not state employees shall be reimbursed for their actual and necessary expenses incurred in discharging their duties and responsibilities as members of the commission.

§5-26A-4. Duties and responsibilities.

The West Virginia commission for national and community service shall have the duties and responsibilities set forth in the provisions of the National and Community Service Act of 1990, as amended by the National and Community Service Trust Act of 1993, and the provisions of any rules or regulations promulgated under the act. The duties and responsibilities include:
8 (a) Advising and assisting the governor in the
development and implementation of a comprehensive
statewide plan for promoting volunteer involvement and
citizen participation in programs which are designed to
serve the needs of the citizens of the state and its
communities;

(b) Fulfilling federal program administration
requirements, including the provision of health care and
child care for program participants;

(c) Submitting annual state applications for the federal
funding of the americorps programs that are selected by
the commission;

(d) Integrating americorps programs, existing VISTA
and national senior service corps programs, and K-12
learn and serve programs into the state's strategic service
plan;

(e) Conducting local outreach to develop a
comprehensive and inclusive state service plan;

(f) Coordinating with existing programs for service
and volunteerism in order to prevent unnecessary
competition for private sources of funding;

(g) Providing technical assistance to service and
volunteer programs, including the development of training
methods and curriculum materials;

(h) Developing a statewide recruitment and placement
system for individuals who are interested in community
service opportunities;

(i) Preparing quarterly reports on progress for
submission to the governor and preparing an annual
report for submission to the governor and the Legislature
on or before the first day of January of each year which
shall detail the commission's activities for the preceding
year; and

(j) Serving as the state's liaison to national and state
entities or other organizations which also promote national
and community service and volunteerism.

(a) The West Virginia commission for national and community service may apply for and accept funds, grants, gifts and services from local government, the state or the federal government, or any of their agencies, or from any other public or private source and is authorized to use funds derived from these sources to defray administrative costs and implement programs to fulfill the commission's duties and responsibilities.

(b) The West Virginia commission for national and community service shall accept on behalf of the governor any reports that relate to community service and volunteerism issues and that are required to be submitted to the governor by the provisions of the code of West Virginia.

§5-26A-6. Termination date.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia commission for national and community service shall continue to exist until the first day of July, one thousand nine hundred ninety-seven, to allow for the completion of a preliminary performance 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, chapter 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:
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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.

The director shall select and designate a competent and qualified person to be department law-enforcement officer, who shall have the title of chief conservation officer and who shall be responsible for the prompt, orderly and effective enforcement of all of the provisions of this chapter. Under the supervision of the director and subject to personnel qualifications and requirements otherwise prescribed in this chapter, the chief conservation officer shall be responsible for the selection, training, assignment, distribution and discipline of conservation officers and the effective discharge of their duties in carrying out the law-enforcement policies, practices and programs of the department in compliance with the provisions of article seven of this chapter and other controlling laws. Except as otherwise provided in this chapter, he or she and his or her conservation officers are hereby authorized to enter into and upon private lands and waters to investigate complaints and reports of conditions, conduct, practices and activities considered to be adverse to and violative of the provisions of this chapter and to execute writs and warrants and make arrests thereupon.

The attorney general and his or her assistants and the prosecuting attorneys of the several counties shall render to the director, without additional compensation, such legal services as the director may require of them in the discharge of his or her duties and the execution of his or her powers under and his or her enforcement of the provisions of this chapter. The director, in an emergency and with prior approval of the attorney general, may employ an attorney to act in proceedings wherein criminal charges are brought against personnel of the department because of action in line of duty. For such attorney services, a
reasonable sum, not exceeding two thousand five hundred dollars, may be expended by the director in any one case.

The director, if he or she deems the action necessary, may request the attorney general to appoint an assistant attorney general, who shall perform, under the supervision and direction of the attorney general, the duties as may be required of him or her by the director. The attorney general, in pursuance of the request, may select and appoint an assistant attorney general to serve at the will and pleasure of the attorney general, and the assistant shall receive a salary to be paid out of any funds made available for 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.

§20-2-50. Permit to hunt, kill, etc., wildlife for scientific or propagation purposes.

The director may issue a permit to a person to hunt, kill, take, capture or maintain in captivity wildlife exclusively for scientific purposes, but not for any commercial purposes. Any person desiring to collect or procure any wildlife, including any body tissue, organ or other portion thereof, eggs, nesting materials or other materials from the habitat of such wildlife shall be required to make application to the director for a scientific collecting permit. The director shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code regarding the issuance of the permits. A permit may be issued only upon written application to the director setting forth at least:

1. The number and kind of wildlife to be taken;
2. The purpose and manner of taking;
3. The name, residence, profession and educational or scientific affiliation of the person applying for the permit; and
4. The geographic location where the collection or procurement is planned to take place.

No charge shall be made for this permit: Provided, That no permit shall be issued for the purpose of killing 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-la. Conservation officers excluded from coverage under wage and hour laws; regulation; salary increase based on length of service.

(a) Effective the first day of January, one thousand nine hundred ninety, each conservation officer shall receive and be entitled to an increase in salary based on length of service, including that heretofore and hereafter served as a conservation officer as follows: For five years of service with the department, a conservation officer shall receive a salary increase of three hundred dollars per year payable during his or her next three years of service and a like increase at three-year intervals thereafter, with these increases to be cumulative: Provided, That for purposes of calculating a salary increase, a maximum of twenty-five years of service shall be applicable. A salary increase shall be based upon years of service as of the first day of July of each year and may not be recalculated until the first day of July of the following year.

Conservation officers in service at the time the amendment to this section becomes effective shall be given credit for prior service and shall be paid such salaries as the same length of service will entitle them to receive under the provisions hereof.

(b) The director shall promulgate rules regarding overtime pay for conservation officers in accordance with chapter twenty-nine-a of this code: Provided, That such rules shall provide for the awarding of one and one-half hours compensatory time for each hour of overtime in lieu of cash overtime compensation.

(c) This section does not apply to special or emergency conservation officers appointed under the authority of section one of this article.

§20-7-1c. Conservation officers, ranks, salary schedule, base pay, exceptions.

(a) Notwithstanding any provision of this code to the contrary, the ranks within the law-enforcement section of
the division of natural resources shall be colonel, lieutenant colonel, major, captain, lieutenant, sergeant, conservation officer and conservation officer-in-training. Each such officer while in uniform shall wear the insignia of rank as provided by the chief conservation officer.

(b) Conservation officers shall be paid the minimum annual salaries based on the following schedule:

<table>
<thead>
<tr>
<th>ANNUAL SALARY SCHEDULE (BASE PAY)</th>
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<tbody>
<tr>
<td>SUPERVISORY AND NONSUPERVISORY RANKS</td>
</tr>
<tr>
<td>Conservation Officer-In-Training</td>
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<tr>
<td>Conservation Officer (first year)</td>
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<tr>
<td>Conservation Officer (second year)</td>
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<td>Conservation Officer (third year)</td>
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<td>Conservation Officer (fourth year)</td>
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<td>Conservation Officer (after fifth year)</td>
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<td>Conservation Officer (after tenth year)</td>
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<td>Conservation Officer (after fifteenth year)</td>
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<tr>
<td>Sergeant</td>
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<tr>
<td>Lieutenant</td>
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<tr>
<td>Captain</td>
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<tr>
<td>Major</td>
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</tbody>
</table>

Conservation officers in service at the time the amendment to this section becomes effective shall be given credit for prior service and shall be paid such salaries as the same length of service will entitle them to receive under the provisions hereof.
(c) This section does not apply to special or emergency conservation officers appointed under the authority of section one of this article.

(d) Nothing in this section shall prohibit other pay increases as provided for under section two, article five, 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 wildlife damage control agent. Unless otherwise prohibited by law, any person licensed as a wildlife damage control agent, acting pursuant to the license and subject to the rules promulgated by the director, is authorized to take and dispose of wildlife found by the wildlife damage control agent to be creating a nuisance in or around homes, businesses and other places where the presence of wildlife
may be a nuisance. The director is authorized to impose
and collect fees when issuing this license and the fees shall
be deposited in the nongame wildlife fund. The director
shall promulgate rules, pursuant to article three, chapter
twenty-nine-a of this code, governing the issuance and use
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.
§20-12-1. Short title.

This article shall be known and may be cited as the "Conservation and Preservation Easements Act".

§20-12-2. Purpose of article.

The West Virginia Legislature recognizes the importance and significant public benefit of conservation and preservation easements in its ongoing efforts to protect the natural, historic, agricultural, open-space and scenic resources of this state.

§20-12-3. Definitions.

The following words and phrases when used in this article have the meanings given to them in this section unless the context clearly indicates otherwise:

(a) "Conservation easement" means a nonpossessory interest of a holder in real property, whether appurtenant or in gross, imposing limitations or affirmative obligations, the purposes of which include, but are not limited to, retaining or protecting for the public benefit the natural, scenic or open-space values of real property; assuring its availability for agricultural, forest, recreational or open-space use; protecting natural resources and wildlife; maintaining or enhancing land, air or water quality; or preserving the historical, architectural, archaeological or cultural aspects of real property.

(b) "Holder" means:

(1) A governmental body empowered to hold an interest in real property under the laws of this state or the United States.
(2) A charitable corporation, charitable association or charitable trust registered with the secretary of state and exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. Section 501(c)(3), or other federal or state statutes or rules, the purposes or powers of which include retaining or protecting the natural, scenic, agricultural or open-space values of real property; assuring the availability of real property for agricultural, forest, recreational or open-space use; protecting natural resources and wildlife; maintaining or enhancing land, air or water quality; or preserving the historical, architectural, archaeological or cultural aspects of real property.

(c) "Preservation easement" means a nonpossessory interest in an historical building.

(d) "Third-party right of enforcement" means a right provided in a conservation or preservation easement, in order to enforce any of its terms, granted to a governmental body, charitable corporation, charitable association or charitable trust, which, although eligible to be a holder, is not a holder.

§20-12-4. Creation, transfer and duration.

(a) Except as otherwise provided in this article, a conservation or preservation easement may be created, conveyed, recorded, assigned, released, modified, terminated or otherwise altered or affected in the same manner as other easements.

(b) No right or duty of a holder, successive holder named in the easement deed or person having a third-party right of enforcement arises under a conservation or preservation easement before the easement's acceptance by the holder, successive holder or third party with right of enforcement and a recordation of the acceptance.

(c) Except as provided in subsection (b), section five of this article, a conservation or preservation easement created after the effective date of this article may be per-
petual in duration, but in no event shall be for a duration
of less than twenty-five years.

(d) An interest in real property in existence at the time
a conservation or preservation easement is created, includ-
ing an unrecorded lease for the production of minerals or
removal of timber, shall not be impaired unless the owner
of such interest is a party to the easement or expressly
consents to comply with the restriction of such easement.

§20-12-5. Judicial and related actions.

(a) An action affecting a conservation or preservation
easement may be brought by any of the following:

(1) An owner of an interest in the real property bur-
dened by the easement;

(2) A holder of the easement;

(3) A person having a third-party right of enforce-
ment; or

(4) A person, agency or entity otherwise authorized by
state or federal law.

(b) This article does not affect the power of a court to
modify or terminate a conservation or preservation eas-
ment in accordance with the principles of law and equity
consistent with the public policy of this article as stated
under section two of this article, when the easement is
broadly construed to effect that policy. Notwithstanding
 provision of law to the contrary, conservation and preser-
vation easements shall be liberally construed in favor of
the grants contained therein to effect the purposes of those
easements and the policy and purpose of this article.

(c) A holder, governmental entity or other person may
not exercise the right of eminent domain or the power of
condemnation to acquire a conservation easement without
condemning or exercising the right of eminent domain as
to the entire fee interest of the property: Provided, That
any public utility regulated pursuant to the provisions of
chapter twenty-four of this code or any public service
enterprise subject to the provisions of the Natural Gas Act,
title XV, United States Code, Section 717, et seq., or the
Federal Power Act, title XV, United States Code, Section
794a, et seq., or any successor statute for the regulation of
public utility or public service business, may condemn
land or an interest in land subject to a conservation or
preservation easement for any purpose authorized by the
governing regulatory statute or by the administrative
agency established under the statute. Nothing in this arti-
cle may be construed to limit the lawful exercise of the
right of eminent domain or the power of condemnation
by any person or entity having such power, or the right of
any real property owner to compensation by reason of the
lawful exercise of such right of eminent domain or power
of condemnation for any estate or interest in real property
except a conservation or preservation easement authorized
by this article.

§20-12-6. Validity.

(a) A conservation or preservation easement is valid
even though:

(1) It is not appurtenant to an interest in real property;

(2) It can be or has been assigned to another holder;

(3) It is not of a character that has been recognized
   traditionally as common law;

(4) It imposes a negative burden;

(5) It imposes affirmative obligations upon the owner
   of an interest in the burdened property or upon the hold-
   er;

(6) The benefit does not touch or concern real proper-
   ty; or

(7) There is no privity of estate or of contract.

(b) To be enforceable under the provisions of this
article, a conservation or preservation easement shall be
recorded within sixty days of the effective date of the easement. Upon proper recording, the provisions of this article apply retroactively to the effective date of the easement.

§20-12-7. Applicability.

(a) This article applies to any interest created after the effective date of this article, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement or otherwise.

(b) This article applies to any interest created before the effective date when the interest would have been enforceable had it been created after its effective date, unless retroactive application contravenes the constitution or laws of the United States or of this state. No conservation easement or preservation easement created prior to the effective date of this article may be invalidated by reason of the enactment of this article when the conservation easement or preservation easement was valid under the law in effect at the time of its creation.

(c) This article does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement or otherwise, that is enforceable under another law of this state.

§20-12-8. Uniformity of application and construction.

This article shall be applied and construed to effectuate its general purpose to make uniform the laws with respect to the subject of this article among states enacting similar laws. Except as expressly otherwise provided, nothing contained in this article is intended to be construed to alter applicable established common law. In a manner consistent with common law, the granting of a conservation or preservation easement shall not subsequently restrict the right of the fee owner to further grant any other interest in real property to any person or entity when the grant does not materially impair the prior con-
§12 preservation 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.]
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
  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,
and to develop or assist with the development of, abandoned railroad rights-of-way for interim use as public nonmotorized recreational trails.

§5B-1A-4. Powers and duties of the authority.

The state rail authority is authorized to:

1. Enter into agreements with any person on behalf of the state to acquire an interest in any abandoned railroad right-of-way, to develop, maintain or promote any rail trails created pursuant to the provisions of this article and, with the consent of the director of the division of natural resources, to transfer the maintenance and operation of rail trails created and developed to the division of natural resources.

2. Assist any political subdivision or any person in acquiring an interest in any abandoned railroad right-of-way and in developing, maintaining or promoting rail trails.

3. Evaluate existing and potential abandoned railroad rights-of-way so as to identify such lands as may be suitable for nonmotorized recreational trail use.

4. Establish state rail trails, subject to the limitations on acquisition of land for state recreational facilities as set forth in section twenty, article one, chapter twenty of this code.

§5B-1A-5. Powers to hold and acquire real property.

(a) The state rail authority shall hold fee simple title or any lesser interest in land, including easements and leaseholds, on all abandoned railroad rights-of-way acquired by the state and utilized for interim nonmotorized recreational trail use pursuant to the provisions of this article. The state rail authority may, at the option of a political subdivision of this state, hold fee simple title or any lesser interest in land, including easements and leaseholds, on all abandoned railroad rights-of-way acquired by such political subdivision and utilized for interim nonmotorized
recreational trail use. Any provision of article one-a, chapter twenty of this code to the contrary notwithstanding, the public land corporation shall not be vested with title to any abandoned railroad right-of-way which becomes vested in the state pursuant to the provisions of this article.

(b) The state rail authority may acquire an interest in an abandoned railroad right-of-way to be used as a rail trail, in accordance with the provisions of section six, article eighteen, chapter twenty-nine of this code.

(c) The state rail authority shall issue a rail bank certificate for each abandoned railroad right-of-way held by the state rail authority for interim nonmotorized recreational purposes in accordance with the provisions of section six of this article.

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-2. Council for community and economic development created; members, appointment and expenses; meetings; appointment and compensation of director.

§5B-2-8. Tourism commission created; members, appointment and expenses.


§5B-2-10. Program and policy action statement; submission to joint committee 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 director.

(a) There is hereby continued within the West Virginia development office a council for community and economic development, which is a body corporate and politic, constituting a public corporation and government instrumentality. Membership on the council shall consist of:

(1) Nine members to be appointed by the governor,
with the advice and consent of the Senate, representing community or regional interests, including economic development, commerce, banking, manufacturing, the utility industry, the mining industry, the telecommunications/data processing industry, small business, labor, tourism or agriculture: Provided, That one member appointed pursuant to this subsection shall be a member of a regional planning and development council. Of the nine members representing community or regional interests, three members shall be from each congressional district of the state and shall be appointed in such a manner as to provide a broad geographical distribution of members of the council;

(2) Two at-large members to be appointed by the governor with the advice and consent of the Senate;

(3) One member to be appointed by the governor from a list of two persons recommended by the speaker of the House of Delegates;

(4) One member to be appointed by the governor from a list of two persons recommended by the president of the Senate;

(5) The president of the West Virginia economic development council; and

(6) The chair of the tourism commission created pursuant to the provisions of section eight of this article.

(b) Not later than the first day of July, one thousand nine hundred ninety-two, the governor shall appoint the thirteen appointed members of the council for staggered terms. The terms of the board members first taking office on or after the effective date of this legislation shall expire as designated by the governor at the time of the nomination, three at the end of the first year, three at the end of the second year, three at the end of the third year and four at the end of the fourth year, after the first day of July, one thousand nine hundred ninety-two. As these original appointments expire, each subsequent appointment shall
be for a full four-year term. Any member whose term has expired shall serve until his successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any member shall be eligible for reappointment. In cases of any vacancy in the office of a member, such vacancy shall be filled by the governor in the same manner as the original appointment.

(c) Members of the council shall not be entitled to compensation for services performed as members, but shall be entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties. A majority of the members shall constitute a quorum for the purpose of conducting business. The council shall elect its chair for a term to run concurrent with the term of office of the member elected as chair. The chair is eligible for successive terms in that position.

(d) The council shall employ an executive director of the West Virginia development office by reason of extensive education and experience in the field of professional economic development to serve at the will and pleasure of the council. The salary of the director shall be fixed by the council. The director shall have overall management responsibility and administrative control and supervision within the West Virginia development office. It is the intention of the Legislature that the director shall provide professional and technical expertise in the field of professional economic and tourism development in order to support the policy-making functions of the council, but that the director is not a public officer, agent, servant or contractor within the meaning of section thirty-eight, article VI of the constitution of the state and is not a statutory officer within the meaning of section one, article two, chapter five-f of this code. Subject to the provisions of the contract provided for in section four of this article, the director is authorized to hire and fire economic development representatives employed pursuant to the provisions of section five of this article.
§5B-2-8. Tourism commission created; members, appointment and expenses.

(a) There is hereby created within the West Virginia development office an independent tourism commission, which is a body corporate and politic, constituting a public corporation and government instrumentality. Membership on the council shall consist of nine members:

(1) Six members to be appointed by the governor, with the advice and consent of the Senate, representing private-sector participants in the state's tourism industry. Of the six members so appointed, one shall represent a convention and visitors bureau and another shall be a member of a convention and visitors bureau. In making the private-sector appointments the governor may select from a list provided by the West Virginia hospitality and travel association of qualified applicants. Of the six private-sector members so appointed, no more than two shall be from each congressional district within the state and shall be appointed to provide the broadest geographic distribution which is feasible;

(2) One member to be appointed by the governor from the membership of the council for community and economic development created pursuant to the provisions of section two of this article;

(3) One member to be appointed by the governor to represent public sector nonstate participants in the tourism industry within the state; and

(4) The secretary of transportation or his or her designee, ex officio.

(b) Not later than thirty days from the date of enactment of this article, the governor shall appoint the eight appointed members of the commission to terms of four years, to assume the duties of the office and to meet at the call of the chair not later than the first day of July, one thousand nine hundred ninety-five. The terms of the initial members of the commission shall be staggered such
that the governor shall designate three members who shall
serve for a term of two years, three members who shall
serve for a term of three years and two members who shall
serve for a full term of four years. Each subsequent ap-
pointment of a member upon the expiration of the desig-
nated terms shall serve a term of four years. Any member
whose term has expired shall serve until his or her succes-
sor has been appointed. Any person appointed to fill a
vacancy shall serve only for the unexpired term. Any
member shall be eligible for reappointment. In cases of
vacancy in the office of member, such vacancy shall be
filled by the governor in the same manner as the original
appointment.

(c) Members of the commission shall not be entitled to
compensation for services performed as members. A
majority of these members shall constitute a quorum for
the purpose of conducting business. The governor shall
appoint a chair of the commission for a term to run con-
current with the term of the office of the member appoint-
ed to be the chair. The chair is eligible for successive
terms in that position.


(a) The commission shall develop a comprehensive
tourism promotion and development strategy for West
Virginia. "Comprehensive tourism promotion and devel-
opment strategy" means a plan that outlines strategies and
activities designed to continue, diversify or expand the
tourism base of the state as a whole; create tourism jobs;
develop a highly skilled tourism work force; facilitate
business access to capital for tourism; advertise and market
the resources offered by the state with respect to tourism
promotion and development; facilitate cooperation among
local, regional and private tourism enterprises; improve
infrastructure on a state, regional and community level in
order to facilitate tourism development; improve the tour-
ism business climate generally; and leverage funding from
sources other than the state, including local, federal and
private sources.
(b) In developing its strategies, the commission shall consider the following:

(1) Improvement and expansion of existing tourism marketing and promotion activities;

(2) Promotion of cooperation among municipalities, counties, and the West Virginia infrastructure and jobs development council in funding physical infrastructure to enhance the potential for tourism development.

(c) The tourism commission shall have the power and duty:

(1) To acquire for the state in the name of the commission by purchase, lease or agreement, or accept or reject for the state, in the name of the commission, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property, to effectuate or support the purposes of this article;

(2) To make recommendations to the governor and the Legislature of any legislation deemed necessary to facilitate the carrying out of any of the foregoing powers and duties and to exercise any other power that may be necessary or proper for the orderly conduct of the business of the commission and the effective discharge of the duties of the commission;

(3) To cooperate and assist in the production of motion pictures and television and other communications;

(4) To purchase advertising time or space in or upon any medium generally engaged or employed for said purpose to advertise and market the resources of the state or to inform the public at large or any specifically targeted group or industry about the benefits of living in, investing in, producing in, buying from, contracting with, or in any other way related to, the state of West Virginia or any business, industry, agency, institution or other entity therein: Provided, That of any funds appropriated and allocated for purposes of advertising and marketing expenses for
the promotion and development of tourism, not less than twenty percent of the funds shall be expended with the approval of the director of the division of natural resources to advertise, promote and market state parks, state forests, state recreation areas and wildlife recreational resources; and

(5) To take such additional actions as may be necessary to carry out the duties and programs described in this article.

(d) The commission shall submit a report annually to the council for community and economic development about the development of the tourism industry in the state and the necessary funding required by the state to continue the development of the tourism industry.

(e) The executive director of the West Virginia development office shall assist the commission in the performance of its powers and duties and the executive director is hereby authorized in providing this assistance to employ necessary personnel, contract with professional or technical experts or consultants and to purchase or contract for the necessary equipment or supplies.

(f) The commission shall promulgate legislative rules pursuant to the provisions of chapter twenty-nine-a of this code to carry out its purposes and programs, to include generally the programs available, the procedure and eligibility of applications relating to assistance under such programs and the staff structure necessary to support such programs, which structure shall include the qualifications for a professional staff person qualified by reason of exceptional training and experience in the field of advertising to supervise the advertising and promotion functions of the commission, and shall further include provision for the management of West Virginia welcome centers. The commission is further authorized to promulgate procedural rules pursuant to said chapter to include instructions and forms for applications relating to assistance.

§5B-2-10. Program and policy action statement; submission to joint committee on government and finance.
The tourism commission, the West Virginia development office and any other authorities, boards, commissions, corporations or other entities created or amended under this chapter and article eleven, chapter eighteen-b of this code, shall prepare and submit to the joint committee on government and finance on or before the first day of December, one thousand nine hundred ninety-five, and each year thereafter, a program and policy action statement which shall outline in specific detail according to the purpose, powers and duties of the office or section, its procedure, plan and program to be used in accomplishing its goals and duties as required under this article.

§5B-2-11. Public private partnerships.

(a) The commission is authorized to enter into contractual or joint venture agreements with a nonprofit corporation organized pursuant to the corporate laws of the state, organized to permit qualification pursuant to Section 501(c) of the Internal Revenue Code and organized for purposes of the promotion and development of tourism in West Virginia, and funded from sources other than the state. Members of the commission are authorized to sit on the board of directors of the private nonprofit corporation.

(b) From time to time the commission may enter into joint ventures wherein the West Virginia development office and the nonprofit corporation share in the development and funding of tourism promotion or development programs.

(c) All contracts and joint venture agreements must be approved by recorded vote of the commission. Contracts entered into pursuant to this section for longer than one fiscal year shall contain, in substance, a provision that the contract shall be considered canceled without further obligation on the part of the state if the Legislature or, where appropriate, the federal government shall fail to appropriate sufficient funds therefor or shall act to impair the contract or cause it to be canceled.
§SB-2-12. Tourism promotion fund created; use of funds.

There is hereby continued in the state treasury the special revenue fund known as the "tourism promotion fund" created under prior enactment of section nine, article one of this chapter.

(a) A minimum of five percent of the moneys deposited in the fund each year shall be used solely for direct advertising for West Virginia travel and tourism: Provided, That no less than twenty percent of these funds be expended with the approval of the director of the division of natural resources to effectively promote and market the state's parks, state forests, state recreation areas and wildlife recreational resources. Direct advertising means advertising which is limited to television, radio, mailings, newspaper, magazines and outdoor billboards, or any combination thereof;

(b) The balance of the moneys deposited in the fund shall be used for direct advertising within the state's travel regions as defined by the commission. The funds shall be made available to these districts beginning the first day of July, one thousand nine hundred ninety-five, according to legislative rules promulgated by the tourism commission: Provided, That emergency rules for the distribution of funds for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, are specifically authorized; and

(c) All advertising expenditures over twenty-five thousand dollars from the tourism promotion fund require prior approval by recorded vote of the commission.


Unless sooner terminated by law, the tourism commission shall terminate on the first day of July, one thousand nine hundred ninety-seven, in accordance with the provisions 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.


§20-5-10. 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.

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§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 of natural resources shall have within its jurisdiction and supervision the parks functions of the former division of tourism and parks, transferred to the division of natural resources pursuant to the provisions of section twelve,
article one, chapter five-b of this code enacted in the year
one thousand nine hundred ninety-four. The section of
parks and recreation shall be under the control of a chief,
to be appointed by and to serve at the will and pleasure of
the director, who shall be qualified by reason of excep­
tional training and experience in the field of public recre­
ation administration or natural resource management.

(b) The division of natural resources shall have the
duty and authority to administer those properties which
are a part of the state parks and public recreation system,
to which legal title has remained with the division of natu­
ral resources, while the section of parks and recreation was
part of the former division of tourism and parks.

(c) All existing contracts and obligations of the section
of parks and recreation, including those in the name of the
division of tourism and parks administered on behalf of
the section of parks and recreation, shall remain in full
force and effect and any existing contracts and obligations
relating to parks and recreation shall be performed by the
division of natural resources.

(d) The transfer, made pursuant to executive order, to
the division of natural resources of the unexpended bal­
ce existing on the thirtieth day of June, one thousand
nine hundred ninety-five, in any appropriation originally
made to the division of tourism and parks is hereby rati­
fied.

§20-5-2. Powers of the director with respect to the section of
parks and recreation.

The director of the division of natural resources shall
be responsible for the execution and administration of the
provisions herein as an integral part of the parks and rec­
reation program of the state and shall organize and staff
the section of parks and recreation for the orderly, effi­
cient and economical accomplishment of these ends. The
authority granted in the year one thousand nine hundred
ninety-four to the director of the division of natural re­
sources to employ up to six additional unclassified per­
sonnel to carry out the parks functions of the division of
natural resources is continued.

The director of the division of natural resources shall
further have the authority, power and duty to:

(a) Establish, manage and maintain the state's parks
and recreation system for the benefit of the people of this
state and do all things necessary and incidental to the
development and administration thereof;

(b) Acquire property for the state in the name of the
division of natural resources by purchase, lease or agree-
ment; retain, employ and contract with legal advisors and
consultants; or accept or reject for the state, in the name of
the division, gifts, donations, contributions, bequests or
devises of money, security or property, both real and per-
sonal, and any interest in such property, including lands
and waters, for state park or recreational areas for the
purpose of providing public recreation: Provided, That
the provisions of section twenty, article one of this chapter
are specifically made applicable to any acquisitions of
land: Provided, however; That any sale, exchange or trans-
fer of property for the purposes of completing land acqui-
sitions or providing improved recreational opportunities to
the citizens of the state shall be subject to the procedures
of article one-a of this chapter: Provided further, That no
sale of any park or recreational area property, including
lands and waters, used for purposes of providing public
recreation on the effective date of this article and no pri-
vatization of any park may occur without statutory author-
ity;

(c) Approve and direct the use of all revenue derived
from the operation of the state parks and public recreation
system for the operation, maintenance and improvement
of the system, individual projects of the system or for the
retirement of park development revenue bonds;

(d) Approve the use of no less than twenty percent of
the: (i) Funds appropriated for purposes of advertising
and marketing expenses related to the promotion and
(e) Issue park development revenue bonds as provided in this article;

(f) Provide for the construction and operation of cabins, lodges, resorts, restaurants and other developed recreational service facilities, subject to the provisions of section fifteen of this article and section twenty, article one of this chapter;

(g) Promulgate rules to control uses of the parks, subject to the provisions of chapter twenty-nine-a of this code: Provided, That the director shall not permit public hunting, the exploitation of minerals or the harvesting of timber for commercial purposes in any state park;

(h) Notwithstanding any provision of this code to the contrary, the director may, for amounts less than two hundred fifty dollars, exempt designated state parks from the requirement that all payments must be deposited in a bank within twenty-four hours;

(i) The director of the division of natural resources shall waive the use fee normally charged to an individual or group for one day's use of a picnic shelter or one week's use of a cabin in a state recreation area when the individual or group donates the materials and labor for the construction of the picnic shelter or cabin: Provided, That the individual or group was authorized by the director to construct the picnic shelter or cabin and that it was constructed in accordance with the authorization granted and the standards and requirements of the division pertaining to such construction. The individual or group to whom the
section, which shall include a centralized reservation and information system for state parks and recre-
ational facilities.

§20-5-3. Section of parks and recreation; purpose; powers
and duties generally.

The purposes of the section of parks and recreation
shall be to promote conservation by preserving and pro-
tecting natural areas of unique or exceptional scenic, sci-
cientific, cultural, archaeological or historic significance and
to provide outdoor recreational opportunities for the citi-
zens of this state and its visitors. It shall be the duty of the
section of parks and recreation to have within its jurisdic-
tion and supervision:

(a) All state parks and recreation areas, including all
lodges, cabins, swimming pools, motorboating and all
other recreational facilities therein, except the roads here-
tofore transferred pursuant to section one, article four,
chapter seventeen of this code to the state road system and
to the responsibility of the commissioner of highways with
respect to the construction, reconstruction and mainte-
nance of the roads or any future roads for public usage on
publicly owned lands for future state parks, state forests
and public hunting and fishing areas;

(b) The authority and responsibility to do the neces-
sary cutting and planting of vegetation along road
rights-of-way in state parks and recreational areas;

(c) The administration of all laws and regulations
relating to the establishment, development, protection, use
and enjoyment of all state parks and state recreational
facilities consistent with the provisions of this article;

(d) The continued operation and maintenance of the
Berkeley Springs historical state park, in Morgan County,
as a state recreational facility, designated the Berkeley
Springs sanitarium under prior enactment of this code;

(e) The continued operation and maintenance of that
portion of Washington Carver camp in Fayette County
formerly incorporated within the boundaries of Babcock
state park;

(f) The continued operation and maintenance of
Camp Creek state park as a state recreational facility, for-
ermerly delineated according to section three, article one-a,
chapter nineteen of this code;

(g) The continued operation and maintenance of
Moncove Lake state park as a state recreational facility,
formerly delineated pursuant to enactment of section
thirteen, article one, chapter five-b of this code in the year
one thousand nine hundred ninety;
(h) The continued protection, operation and maintenance of approximately seventy-five miles of right-of-way along the former Greenbrier subdivision of the Chessie railroad system between Caldwell in Greenbrier County and Cass in Pocahontas County, designated the Greenbrier river trail, including the protection of the trail from motorized vehicular traffic and operation for the protection of adjacent public and private property; and

(i) The continued protection, operation and maintenance of approximately sixty and fifty-seven one-hundredths miles of right-of-way of the CSX railway system between Walker in Wood County and Wilsonburg in Harrison County, designated the North Bend rail trail, including the protection of the trail from motorized vehicular traffic and operation for the protection of adjacent public and private property.

§20-5-4. Definitions; state parks and recreation system.

As used in this article, unless the context clearly requires otherwise:

"Bonds" shall mean bonds issued by the director.

"Cost of project" shall embrace the cost of construction, the cost of all land, property, material and labor which are deemed essential thereto, cost of improvements, financing charges, interest during construction and all other expenses, including legal fees, trustees', engineers' and architects' fees which are necessary or properly incidental to the project.

"Project" shall be deemed to mean collectively the acquisition of land, the construction of any buildings or other works, together with incidental approaches, structures and facilities, reasonably necessary and useful in order to provide new or improved recreational facilities.

"Recreational facilities" shall mean and embrace cabins, lodges, swimming pools, golf courses, restaurants, commissaries and other revenue producing facilities in any state park.
"Rent or rental" shall include all moneys received for the use of any recreational facility.

§20-5-5. Authority of director to issue park development revenue bonds; grants and gifts.

The director, with the approval of the governor, is hereby empowered to raise the cost of any project, as defined in this article, by the issuance of park development revenue bonds of the state, the principal of and interest on the bonds shall be payable solely from the special fund herein provided for the payment. The bonds shall be authorized by order of the director, approved by the governor, which shall recite an estimate by the director of the cost of the project, and shall provide for the issuance of bonds in an amount sufficient, when sold as hereinafter provided, to produce the cost, less the amount of any grant or grants, gift or gifts received, or in the opinion of the director expected to be received from the United States of America or from any other source. The acceptance by the director of any and all grants and gifts, whether in money or in land, labor or materials, is hereby expressly authorized. All bonds shall have and are hereby declared to have all the qualities of negotiable instruments under the provisions of article eight, chapter forty-six of this code. The director shall have the power:

(a) To issue negotiable bonds, security interests or notes and to provide for and secure the payment thereof and to provide for the rights of the holders thereof and to purchase, hold and dispose of any of its bonds, security interests or notes.

(b) To sell, at public or private sale, any bond or other negotiable instrument, security interests or obligation of the director in any manner and upon such terms as the director deems would best serve the purposes set forth herein.

(c) To issue its bonds, security interests and notes payable solely from the revenues or funds available to the director therefor; and the director may issue its bonds,
security interests or notes in such principal amounts as it shall deem necessary to provide funds for any purposes herein including:

(i) The payment, funding or refunding of the principal of, interest on or redemption premiums on any bonds, security interests or notes issued by it whether the bonds, security interests, notes or interest to be funded or refunded have or have not become due.

(ii) The establishment or increase of reserves to secure or to pay bonds, security interests, notes or the interest thereon and all other costs or expenses of the director incident to and necessary or convenient to carry out its purposes and powers. Any bonds, security interests or notes may be additionally secured by a pledge of any revenues, funds, assets or moneys of the special fund hereinafter provided.

(d) To issue renewal notes, or security interests, to issue bonds to pay notes or security interests and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured except that no such renewal notes shall be issued to mature more than ten years from date of issuance of the notes renewed, and no such refunding bonds shall be issued to mature more than twenty-five years from the date of original issuance.

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

(f) To accept gifts or grants or property, funds, security interests, money, materials, labor, supplies or services from the United States of America or from any governmental unit or any person, firm or corporation and to carry out the terms or provisions of, or make agreements with respect to, or pledge, any gifts or grants and to do any and all things necessary, useful, desirable or convenient 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-
(l) If the proceeds of such bonds, by error in calculation or otherwise, shall be less than the cost of the project, additional bonds may in like manner be issued to provide the amount of the deficiency and, unless otherwise provided for in the trust agreement hereinafter mentioned, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority as the bonds before issued.

(m) If the proceeds of bonds issued for the project shall exceed the cost thereof, the surplus shall be paid into a special fund to be established for payment of the principal and interest of the bonds as specified in the trust agreement provided for in the following section. The fund may be used for the purchase of any of the outstanding bonds payable from such fund at the market price, but not exceeding the price, if any, which bonds shall in the same year be redeemable, and all bonds redeemed or purchased shall forthwith be canceled and shall not again be issued. Prior to the preparation of definitive bonds, the director may, under like restrictions, issue temporary bonds with or without coupons exchangeable for definitive bonds upon the issuance of the latter. The revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specified and required herein or by the constitution of the state.

§20-5-6. Tax exemption.

The exercise of the powers granted to the director herein will be in all respects for the benefit of the people of the state, for the improvement of their health, safety, convenience and welfare and for the enhancement of their recreational opportunities and is a public purpose. As the operation and maintenance of park development projects will constitute the performance of essential government
functions, the director shall not be required to pay any taxes or assessments upon any park development projects or upon any property acquired or used by the director or upon the income therefrom, other than taxes collected from the consumer pursuant to article fifteen, chapter eleven of this code. The bonds and notes and all interest and income thereon shall be exempt from all taxation by this state or any county, municipality, political subdivision or agency thereof, except inheritance taxes.


The notes, bonds and security interests of the director are hereby made securities in which the state board of investments, all insurance businesses, all banking institutions, trust companies, building and loan associations, savings and loan associations may invest and upon which notes, security interests or bonds become subject to redemption plus accrued interest to such date. Upon the purchase, the notes, security interests or bonds shall be canceled.


The state of West Virginia shall not be liable on notes, security interests or bonds or other evidences of indebtedness of the director and the notes, security interests or bonds or other evidence of indebtedness shall not be a debt of the state of West Virginia and the notes, security interests or bonds or other evidence of indebtedness shall contain on the face thereof a statement to such effect.


The director may enter into an agreement or agreements with any trust company, or with any bank having the powers of a trust company, either within or outside the state, as trustee for the holders of bonds issued hereunder, setting forth therein the duties of the state and of the director in respect to acquisition, construction, improvement, maintenance, operation, repair and insurance of the pro-
8 project, 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 recrea-
tional facilities as security.
The director, with the approval of the governor, shall have authority to pledge all revenue derived from any project as security for any bonds issued to defray the cost of the project. In any case in which the director may deem it advisable, he or she shall also have the authority to pledge the revenue derived from any existing recreational facilities under his or her control, or any state park or forest, as additional security for the payment of any bonds issued under the provisions of this article to pay the cost of any park development project.

§20-5-12. Management and control of project.

The division shall properly maintain, repair, operate, manage and control the project, fix the rates of rental and establish bylaws and rules for the use and operation of the project and may make and enter into all contracts or agreements necessary and incidental to the performance of its duties and the execution of its powers hereunder.

§20-5-13. Provisions of constitution and law observed; what approval required.

It shall not be necessary to secure from any officer or board not named in this article any approval or consent, or any certificate or finding, or to hold an election, or to take any proceedings whatever, either for the construction of any project, or the improvement, maintenance, operation or repair thereof, or for the issuance of bonds hereunder, except as are prescribed by these provisions or are required by the constitution of this state.

Nothing contained herein shall be so construed or interpreted as to authorize or permit the incurring of state debt of any kind or nature as contemplated by the provisions of the constitution of the state in relation to state debt.

§20-5-14. Restaurants and other facilities.

The director may, on all areas under his or her jurisdiction and control, operate commissaries, restaurants and other establishments for the convenience of the public.
For these purposes the director may purchase equipment, 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.

When it is considered necessary by the director to enter into a contract with a person, firm, corporation, foundation or public agency for the operation of a commissary, restaurant, recreational facility or other establishment within the state parks and public recreation system, the contract shall be for a duration not to exceed ten years, but the contract may provide for an option to renew at the director's discretion for an additional term or terms not to exceed ten years at the time of renewal. Prior to initiating a contract for the operation of a state park lodge, cabin, campground, gift shop, golf facility, including pro shop operations, or ski facility, the director shall submit the specific location which would be subject to the contract to the Legislature for its approval and authorization: Provided, That for contracts for gift shops or golf facilities in specific locations operated under contract on the effective date of this section, and contracts for a duration of not more than one year which provide for options to renew for not more than five succeeding years, notice to the joint committee on government and finance, but not specific legislative authorization and approval, is required prior to execution of the contract.

Any contract entered into by the director shall provide an obligation upon the part of the operator that he or she maintain a level of performance satisfactory to the director and shall further provide that any contract may be terminated by the director in the event he or she determines that
§20-5-16. Authority to enter into contracts with third parties to construct lodge facilities.

Notwithstanding any other provision of this code to the contrary, in addition to all other powers and authority vested in the director, he or she is hereby authorized and empowered to enter into contracts with third parties for the construction and operation of recreational facilities at Chief Logan state park, Beech Fork state park, Tomlinson Run state park and Stonewall Jackson lake state park: Provided, That the term of the contracts may not exceed a period of twenty-five years, at which time the full title to the lodge facilities shall vest in the state: Provided, however, That contracts shall be presented to the joint committee on government and finance for review and comment prior to execution: Provided further, That the contract may provide for renewal for the purpose of permitting continued operation of the facilities at the option of director for a term or terms not to exceed ten years: And provided further, That no extension or renewal beyond the original twenty-five-year term may be executed by the director absent the approval of the joint committee on government and finance.

§20-5-17. Correlation of projects and services.

The director of the division of natural resources shall correlate and coordinate park and recreation programs, projects and developments with the functions and services of other offices and sections of the division and other agencies of the state government so as to provide, consistent with the provisions of this chapter, suitable and adequate facilities, landscaping, personnel and other services at and about all state parks and public recreation facilities under his or her jurisdiction.

§20-5-18. Discounts for West Virginia residents over the age of sixty-two.
The director shall provide to West Virginia citizens who are sixty-two years of age or older, and who document residency and age by a valid West Virginia driver's license, a fifty percent reduction in campground rental fees for each campsite to be used exclusively by said eligible camper: Provided, That the fifty percent reduction in campground rental fees shall only apply to those rentals occurring during the period of time beginning on the day after Labor Day and ending four days prior to Memorial day.

§20-5-19. Discounts for West Virginia residents who are totally and permanently disabled.

The director shall issue a discount card to West Virginia residents who are totally and permanently disabled which would provide a fifty percent reduction in campground rental fees for each campsite to be used exclusively by the eligible camper: Provided, That in order to be eligible for the reduction, the person shall document that he or she is a resident of this state and that he or she has a total and permanent disability. The director shall promulgate rules in accordance with article three, chapter twenty-nine-a of this code setting forth the documentation which is necessary to prove residency and total and permanent disability: Provided, however, That the fifty percent reduction in campground rental fees applies only to those rentals occurring during the period of time beginning on the day after Labor Day and ending 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.
§30-5-15. 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 practice of pharmacy is a privilege and not a natural or fundamental right of any individual. As a matter of public policy, it is necessary to protect the public through the enactment of this article and to regulate the granting of such privileges and their use. This article shall be liberally construed to carry out these purposes.

§30-5-1a. Statement of purpose.

1 It is the purpose of this article to promote, preserve and protect the public health, safety and welfare by the effective regulation of the practice of pharmacy; the licensure of pharmacists; the licensure, and regulation of all sites or persons who distribute, manufacture, or sell drugs
or devices used in the dispensing and administration of drugs or devices within this state.

§30-5-1b. Definitions.

The following words and phrases, as used in this article, shall have the following meanings, unless the context otherwise requires:

(a) "Administer" means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion or any other means.

(b) "Board of pharmacy" or "board" means the West Virginia state board of pharmacy.

(c) "Compounding" means:

(1) The preparation, mixing, assembling, packaging or labeling of a drug or device:

(A) As the result of a practitioner's prescription drug order or initiative based on the practitioner/patient/pharmacist relationship in the course of professional practice for sale or dispensing; or

(B) For the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale or dispensing;

(2) The preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.

(d) "Confidential information" means information maintained by the pharmacist in the patient record or which is communicated to the patient as part of patient counseling, or which is communicated by the patient to the pharmacist. This information is privileged and may be released only to the patient or to other members of the health care team and other pharmacists where, in the pharmacist's professional judgment, such release is necessary to the patient's health and well-being; to such other persons or governmental agencies authorized by law to receive such privileged information; as necessary for the limited
purpose of peer review and utilization review; as authorized by the patient or required by court order.

(e) "Deliver" or "delivery" means the actual, constructive or attempted transfer of a drug or device from one person to another, whether or not for a consideration.

(f) "Device" means an instrument, apparatus, implement or machine, contrivance, implant or other similar or related article, including any component part or accessory, which is required under federal law to bear the label, "Caution: Federal or state law requires dispensing by or on the order of a physician."

(g) "Dispense" or "dispensing" means the preparation and delivery of a drug or device in an appropriately labeled and suitable container to a patient or patient's representative or surrogate pursuant to a lawful order of a practitioner for subsequent administration to, or use by, a patient.

(h) "Distribute" means the delivery of a drug or device other than by administering or dispensing.

(i) "Drug" means:

(1) Articles recognized as drugs in the USP-DI, Facts and Comparisons, Physicians Desk Reference or supplements thereto, for use in the diagnosis, cure, mitigation, treatment or prevention of disease in human or other animals;

(2) Articles, other than food, intended to affect the structure or any function of the body of human or other animals; and

(3) Articles intended for use as a component of any articles specified in subsection (1) or (2) of this section.

(j) "Drug regimen review" includes, but is not limited to, the following activities:

(1) Evaluation of the prescription drug orders and patient records for:

   (A) Known allergies;
(B) Rational therapy-contraindications;
(C) Reasonable dose and route of administration; and
(D) Reasonable directions for use.

(2) Evaluation of the prescription drug orders and patient records for duplication of therapy.

(3) Evaluation of the prescription drug for interactions and/or adverse effects which may include, but are not limited to, any of the following:
(A) Drug-drug;
(B) Drug-food;
(C) Drug-disease; and
(D) Adverse drug reactions.

(4) Evaluation of the prescription drug orders and patient records for proper utilization, including over utilization and under utilization and optimum therapeutic outcomes.

(k) "Intern" means an individual who is:
(1) Currently registered by this state to engage in the practice of pharmacy while under the supervision of a licensed pharmacist and is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist; or

(2) A graduate of an approved college of pharmacy or a graduate who has established educational equivalency by obtaining a Foreign Pharmacy Graduate Examination Committee (FPGEC) certificate, who is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist; or

(3) A qualified applicant awaiting examination for licensure; or

(4) An individual participating in a residency or fellowship program.

(i) "Labeling" means the process of preparing and
affixing a label to a drug container exclusive, however, of a labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal law or regulation and state law or rule.

(m) "Mail order pharmacy" means a pharmacy, regardless of its location, which dispenses greater than ten percent prescription drugs via the mail.

(n) "Manufacturer" means a person engaged in the manufacture of drugs or devices.

(o) "Manufacturing" means the production, preparation, propagation or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes any packaging or repackaging of the substance(s) or labeling or relabeling of its contents and the promotion and marketing of such drugs or devices. Manufacturing also includes the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, practitioners or other persons.

(p) "Nonprescription drug" means a drug which may be sold without a prescription and which is labeled for use by the consumer in accordance with the requirements of the laws and rules of this state and the federal government.

(q) "Patient counseling" means the oral communication by the pharmacist of information, as defined in the rules of the board, to the patient, to improve therapy by aiding in the proper use of drugs and devices.

(r) "Person" means an individual, corporation, partnership, association or any other legal entity, including government.

(s) "Pharmaceutical care" is the provision of drug therapy and other pharmaceutical patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms or arresting or slowing of a disease process as
defined in the rules of the board.

(t) "Pharmacist" or "registered pharmacist" means an individual currently licensed by this state to engage in the practice of pharmacy and pharmaceutical care.

(u) "Pharmacist-in-charge" means a pharmacist currently licensed in this state who accepts responsibility for the operation of a pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs and who is personally in full and actual charge of such pharmacy and personnel.

(v) "Pharmacy" means any drugstore, apothecary or place within this state where drugs are dispensed and sold at retail or displayed for sale at retail and pharmaceutical care is provided; and any place outside of this state where drugs are dispensed and pharmaceutical care is provided to residents of this state.

(w) "Pharmacy technician" means registered supportive personnel who work under the direct supervision of a pharmacist who have passed an approved training program as described in this article.

(x) "Practitioner" means an individual currently licensed, registered or otherwise authorized by the jurisdiction in which he or she practices to prescribe and administer drugs in the course of professional practices, including allopathic and osteopathic physicians, dentists, physician's assistants, optometrists, veterinarians, podiatrists and nurse practitioners as allowed by law.

(y) "Preceptor" means an individual who is currently licensed as a pharmacist by the board, meets the qualifications as a preceptor under the rules of the board, and participates in the instructional training of pharmacy interns.

(z) "Prescription drug" or "legend drug" means a drug which, under federal law, is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(1) "Caution: Federal law prohibits dispensing without prescription";
(2) "Caution: Federal law restricts this drug to use by, or on the order of, a licensed veterinarian"; or a drug which is required by any applicable federal or state law or rule to be dispensed pursuant only to a prescription drug order or is restricted to use by practitioners only.

(aa) "Prescription drug order" means a lawful order of a practitioner for a drug or device for a specific patient.

(bb) "Prospective drug use review" means a review of the patient's drug therapy and prescription drug order, as defined in the rules of the board, prior to dispensing the drug as part of a drug regimen review.

(cc) "USP-DI" means the United States Pharmacopedia-Dispensing Information.

(dd) "Wholesale distributor" means any person engaged in wholesale distribution of drugs, including, but not limited to, manufacturers' and distributors' warehouses, chain drug warehouses and wholesale drug warehouses; independent wholesale drug trader; and retail pharmacies that conduct wholesale distributions.

§30-5-2. Board of pharmacy; appointment, qualifications and terms of members; compensation; powers and duties generally; meetings and notices.

(a) There shall be a state board of pharmacy, known as the "West Virginia board of pharmacy," which shall consist of five practicing pharmacists and two public members, who shall be appointed by the governor, by and with the advice and consent of the Senate. Any vacancy which occurs in the membership of the board for any reason, including expiration of term, removal, resignation, death, disability or disqualification shall be immediately filled by the governor as provided by this section. Nothing in this section shall require the governor to change the composition of the board prior to the usual expiration of any member's term. The governor may consider the diversity of pharmacy areas of practice when filling vacancies.

(b) Each pharmacist member of the board, at the time of his appointment, shall be a resident of this state, licensed and in good standing to engage in the practice of
pharmacy in this state for a period of at least five years prior to their appointment. The public members shall be residents of this state who have attained the age of eighteen years and may not be a past or present pharmacist, the spouse of a pharmacist, a person who has ever had any material financial interest in providing pharmacy services or who has engaged in any activity directly related to the practice of pharmacy.

(c) Each member of the board shall receive two hundred dollars for each day spent in attending to the duties of the board or of its committees, and shall be reimbursed for all actual and necessary expenses incurred in carrying out his or her duties.

(d) The members of the board in office on the date this section takes effect shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and have qualified. Board member terms shall be for five years with at least one pharmacist member's term expiring yearly. The governor may, with the advice and consent of the Senate, reappoint any member for additional consecutive terms. Members as of the first day of July, one thousand nine hundred ninety-five, are eligible for reappointment to additional terms regardless of the length of time they have previously served on the board.

(e) The board, in addition to the authority, powers and duties granted to the board by this chapter and chapter sixteen of this code, shall have the authority to:

(1) Regulate the practice of pharmacy;
(2) Regulate the employment of licensed interns in pharmacy;
(3) Appoint, within the limit of appropriations, inspectors who shall be pharmacists, and investigators, to act as agents of the board within the provisions of this chapter and chapter sixteen of this code and rules as the board shall promulgate;
(4) Adopt rules of professional conduct; and
(5) Hire an attorney, as may be necessary.

(f) A majority of the membership of the board constitutes a quorum for the transaction of business, and any motion is approved by a majority vote of a quorum. All board members shall be given advance notice of each board meeting.

(g) Meetings of the board shall be held in public session, except that the board may hold closed sessions to prepare, approve, grade or administer examinations. Disciplinary proceedings, prior to a finding of probable cause, as provided in section seven of this article shall be held in closed sessions, unless the party subject to discipline requests that the hearing be held in public sessions. All discussions or meetings of the board concerning personnel matters shall be held in closed session.

§30-5-2a. Records of board; expungement; examination notice; public information.

(a) The board shall maintain a permanent record of the names of all pharmacists, interns and pharmacy technicians lawfully practicing in this state, and of all persons applying for licensure to practice, along with an individual historical record for each such individual containing reports and all other information furnished to the board concerning any applicant, pharmacist, intern or pharmacy technician.

(b) Upon a determination by the board that any information submitted to it is without merit, the report shall be expunged from the individual’s historical record.

(c) Any licensee or registrant of the board or authorized representative thereof, has the right, upon request, to examine his or her own individual historical record maintained by the board pursuant to this article and to place into such record a statement regarding the correctness or relevance of any information in the historical record. These statements shall at all times be appended to and accompany any request for review or copies made of the portion of the record to which they refer.

(d) Orders of the board relating to disciplinary action
§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.

(a) It is unlawful for any person not a pharmacist, or who does not employ a pharmacist, to conduct any pharmacy, or store for the purpose of retailing, compounding or dispensing prescription drugs or prescription devices.

(b) It is unlawful for the proprietor of any store or pharmacy to permit any person not a pharmacist to compound or dispense prescriptions or prescription refills, or to retail or dispense the poisons and narcotic drugs named in sections two, three and six, article eight, chapter sixteen of this code: Provided, That a licensed intern may compound and dispense prescriptions or prescription refills under the direct supervision of a pharmacist: Provided, however, That registered pharmacy technicians may assist in the preparation and dispensing of prescriptions or prescription refills including, but not limited to, reconstitution of liquid medications, typing and affixing labels under the direct supervision of a licensed pharmacist.

(c) It is the duty of a pharmacist or employer who employs an intern to license the intern with the board within ninety days after employment. The board shall furnish proper forms for this purpose and shall issue a certificate to the intern upon licensure.

(d) The experience requirement for licensure as a pharmacist shall be computed from the date certified by the supervising pharmacist as the date of entering the internship. If the internship is not registered with the board of pharmacy, then the intern shall receive no credit for such experience when he or she makes application for examination for licensure as a pharmacist: Provided, That credit may be given for such unregistered experience if an appeal is made and evidence produced showing experience was obtained but not registered and that failure to
33 register the internship experience was not the fault of the intern.

35 (e) An intern having served part or all of his or her internship in a pharmacy in another state or foreign country shall be given credit for the same when the affidavit of his or her internship is signed by the pharmacist under whom he or she served, and it shows the dates and number of hours served in the internship and when the affidavit is attested by the secretary of the state board of pharmacy of the state or country where the internship was served.

43 (f) Up to one third of the experience requirement for licensure as a pharmacist may be fulfilled by an internship 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 a pharmacist, unless he or she employs a licensed pharmacist, or licensed or registered pharmacist, or the title of druggist or apothecary, or any other title or description of like import, or to label, mark, or advertise his or her or any other place of business as a pharmacy or drugstore or by the use of the words drug or medicines or any other compound or derivative of the same, or by any other word or sign indicating or intended to indicate that drugs or pharmaceutical supplies are either sold or offered for sale.

12 (b) It is unlawful for any person not legally registered as a pharmacy technician to take, use or exhibit the title of pharmacy technician, or any title or description of like import.

16 (c) Any person violating this section shall, upon conviction, be deemed guilty of a misdemeanor and fined not less than five hundred nor more than one thousand dollars.

§30-5-5. Qualifications for licensure as pharmacist; fees; certificates of licensure; rules for licensure; reciprocity; minimum standards.

1 (a) In order to be licensed as a pharmacist within the
meaning of this article, a person shall:

(1) Be eighteen years of age or older;

(2) Present to the board satisfactory evidence that he or she is a graduate of a recognized school of pharmacy as defined by the board of pharmacy;

(3) Present to the board satisfactory evidence that he or she has completed at least fifteen hundred hours of internship in a pharmacy under the instruction and supervision of a pharmacist;

(4) Pass an examination approved by the board of pharmacy; and

(5) Present to the board satisfactory evidence that he or she is a person of good moral character, has not been convicted of a felony involving controlled substances or violent crime, and is not addicted to alcohol or the use of controlled substances.

(b) An applicant for examination shall pay to the board a fee of one hundred twenty-five dollars with his or her application.

(c) The board shall issue certificates of licensure to all persons who successfully pass the required examination and are otherwise qualified and to all those whose certificates or licenses the board shall accept in lieu of an examination as provided in section six of this article.

(d) The board shall by rule stipulate the forms to be used for licensure application, the requirements for reciprocity and the required minimum score for passing of the licensure examination.

§30-5-Sa. Legislative findings; registration of pharmacy technicians; qualifications; training programs; rules and restrictions.

(a) The Legislature finds that it is in the best interests of the public health, safety and welfare that licensed pharmacists in this state be assisted with or relieved of certain tasks so that the pharmacist may counsel patients, improve pharmaceutical care and therapeutic outcomes. To achieve
this aim, the board shall recognize and register pharmacy technicians.

(b) On or after the first day of July, one thousand nine hundred ninety-six, any person practicing as a pharmacy technician in this state shall be registered with the board of pharmacy pursuant to the provisions of this section.

(c) In order to become registered as pharmacy technicians in this state, individuals shall:

(1) Be at least eighteen years old;
(2) Be a high school graduate or its equivalent;
(3) Present to the board satisfactory evidence that he or she is of good moral character, is not addicted to alcohol or controlled substances and is free of any felony convictions; and
(4) Satisfactorily complete a board-approved pharmacy technician training program.

(d) The pharmacy technician training program and its curriculum shall be designed to train individuals to perform nonprofessional functions as described in legislative rules promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(e) Pharmacy technicians shall be identified by a name tag and designation as pharmacy technician while working in a pharmacy within this state. A ratio of no more than four pharmacy technicians per on-duty pharmacist operating in any outpatient, mail order or institutional pharmacy shall be maintained.

§30-5-6. Reciprocal licensure of pharmacists from other states or countries.

(a) The board of pharmacy may by reciprocity license pharmacists in this state who have been legally registered or licensed pharmacists in another state: Provided, That the applicant for such licensure shall meet the requirements of the rules for reciprocity promulgated by the board in accordance with the provisions of chapter
twenty-nine-a of this code: Provided, however, That reciprocity is not authorized for pharmacists from another state where that state does not permit reciprocity to pharmacists licensed in West Virginia.

(b) The board may refuse reciprocity to pharmacists from another country unless the applicant qualifies under such rules as may be promulgated by the board for licensure of foreign applicants.

(c) Applicants for licensure under this section shall, with their application, forward to the secretary of the board of pharmacy a fee of two hundred fifty dollars. In the event the applicant desires to be examined other than at a regular meeting of the board the applicant shall submit to the board an additional fee of one hundred fifty dollars.

§30-5-7. Grounds for suspension or revocation of license or disciplinary proceedings; penalties and procedures; temporary suspensions; reporting of disciplinary action.

(a) The board shall have the power to withhold, revoke or suspend any license or any certificate issued under this article or to penalize or discipline any pharmacist or pharmacy after giving reasonable notice and an opportunity to be heard pursuant to the provisions of section one, article five, chapter twenty-nine-a of this code, any person who has:

(1) Become unfit or incompetent to practice pharmacy by reason of: (A) Alcohol or substance abuse; (B) insanity; or (C) any abnormal physical or mental condition which threatens the safety of persons to whom such person might sell or dispense prescriptions, drugs, or devices, or for whom he might manufacture, prepare or package, or supervise the manufacturing, preparation, or packaging of prescriptions, drugs or devices;

(2) Been convicted in any of the courts of this state, the United States of America, or any other state, of a felony or any crime involving moral turpitude which bears a 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 chapter sixteen of this code;

22 (4) Failed to comply with the rules of professional conduct adopted by the board pursuant to section two of this article;

23 (5) Knowledge or suspicion that a pharmacist, pharmacy technician or pharmacy intern is incapable of engaging in the practice of pharmacy with reasonable skill, competence and safety and has failed to report this information to the board;

24 (6) Committed fraud as a licensee in connection with the practice of pharmacy;

25 (7) Performed an act outside this state which would constitute a violation within this state; or

26 (8) Agreed to participate in a legend drug product conversion program promoted or offered by a manufacturer, wholesaler or distributor of such product for which the pharmacist or pharmacy received any form of financial remuneration, or agreed to participate in a legend drug program in which the pharmacist or pharmacy is promoted or offered as the exclusive provider of legend drug products or whereby in any way the public is denied, limited or influenced in selecting pharmaceutical service or counseling.

(b) Upon a finding of a violation of one or more of the above grounds for discipline by a pharmacist, intern or pharmacy technician, the board may impose one or more of the following penalties:

(1) Suspension of the offender's license or registration for a term to be determined by the board;

(2) Revocation of the offender's license or registration;

(3) Restriction of the offender's license or registration to prohibit the offender from performing certain acts or from engaging in the practice of pharmacy in a particular manner for a term to be determined by the board;
(4) Imposition of a fine not to exceed one thousand dollars for each offense;

(5) Refusal to renew the offender's license or registration;

(6) Placement of the offender on probation and supervision by the board for a period to be determined by the board.

(c) All final decisions of the board shall be subject to judicial review pursuant to the procedures of article five, chapter twenty-nine-a of this code.

(d) In the case of a pharmacy or wholesale distributor, the disciplinary order may be entered as to the corporate owner, if any, as well as to the pharmacist, officer, owner or partner of the pharmacy or wholesale distributor if it is found that such person or entity had knowledge of or knowingly participated in one or more of the violations set forth in this article or of article three, chapter sixty-a of this code.

(e) Notwithstanding the provisions of section eight, article one, chapter thirty of this code, if the board determines that the evidence in its possession indicates that a pharmacist's continuation in practice or unrestricted practice constitutes an immediate danger to the public, the board may, on a temporary basis and without a hearing, take any of the actions provided for in this section if proceedings for a hearing before the board are initiated simultaneously with the temporary action and begin within fifteen days of such action. The board shall render its decision within five days of the conclusion of a hearing conducted pursuant to the provisions of this section.

(f) In every disciplinary or licensure case considered by the board pursuant to this article, whether initiated by the board or upon complaint or information from any person or organization, the board shall make a preliminary determination as to whether probable cause exists to substantiate charges of disqualification due to any reason set forth in this section. If such probable cause is found to exist, all proceedings on such charges shall be open to the
public, who shall be entitled to all reports, records and
nondeliberative materials introduced at such hearing, in-
cluding the record of any final action taken: Provided,
That any medical records pertaining to a person who has
not expressly waived his or her right to the confidentiality
of such records shall not be open to the public.

(g) All disciplinary actions taken by the board shall be
reported to the national board of pharmacy, appropriate
federal agencies and to any other state boards with which
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.

(a) Every person, partnership, corporation, association,
insurance company, professional society or other organi-
ization providing professional liability insurance to a phar-
macist, pharmacist technician or intern in this state shall
submit to the board the following information within thir-
ty days from any judgment, dismissal or settlement of a
civil action or of any claim involving the insured: The date
of any judgment or settlement; the amount of any settle-
ment or judgment against the insured; and such other
information as the board may require.

(b) Within thirty days after a person known to be a
pharmacist, pharmacy intern, or pharmacy technician
licensed or otherwise lawfully practicing pharmacy in this
state or applying to be so licensed is convicted of any
crime under the laws of this state, or the laws of the United
States which involves drugs in any way, including any
controlled substance under state or federal law, the clerk
of the court of record in which the conviction was entered
shall forward to the board a certified true and correct
abstract of record of the convicting court. The abstract
shall include the name and address of such licensee, the
nature of the offense committed and the final judgment
and sentence of the court.

(c) Any person may report to the board relevant facts
about the conduct of a licensee of the board which in the
opinion of such person amounts to professional malpractice or professional incompetence.

(d) The board shall provide forms for filing reports pursuant to this section. Reports submitted in other forms shall be accepted by the board.

§30-5-7b. Voluntary agreements relating to alcohol or chemical dependency; confidentiality of same.

(a) In order to encourage voluntary reporting of alcohol or other chemical dependency impairment and in recognition of the fact that alcoholism and chemical dependency are illnesses, a pharmacist or pharmacy technician or other licensee or registrant or the board may enter into a voluntary agreement with the board reporting his or her participation in an alcohol or chemical dependency treatment program or reporting an alcohol or chemical dependency impairment to the board and seek treatment for his or her dependency. Pursuant to said agreement, the board shall impose limitations on the practice of said pharmacist, pharmacy technician or other licensee or registrant of the board.

(b) Any voluntary agreement entered into pursuant to this subsection may not be considered a disciplinary action or order by the board and shall not be public information if:

(1) Such voluntary agreement is the result of the pharmacist, pharmacy technician, or other licensee or registrant of the board reporting his or her participation in an alcohol or chemical dependency treatment program or reporting to the board his or her alcohol or chemical dependency impairment and requesting such an agreement for the purpose of seeking treatment; and

(2) The board has not received nor filed any written complaints regarding said pharmacist, pharmacy technician or other licensee or registrant of the board relating to an alcohol or chemical dependency impairment affecting the care and treatment of patients or customers, nor received any reports pursuant to section seven of this article relating to an alcohol or chemical dependency impair-
If any pharmacist, pharmacy technician or other licensee or registrant enters into a voluntary agreement with the board pursuant to this subsection and then fails to comply with or fulfill the terms of said agreement, the board shall initiate disciplinary proceedings pursuant to section seven of this article.

(d) If the board has not instituted any disciplinary proceedings as provided for in this article, any information received, maintained or developed by the board relating to the alcohol or chemical dependency impairment of any pharmacist or pharmacy technician, other licensee or registrant of the board and any voluntary agreement made pursuant to this subsection shall be confidential and not available for public information, discovery or court subpoena nor for introduction into evidence in any professional liability action or other action for damages arising out of the provision of or failure to provide health care services.

(e) In the board's annual report of its activities to the Legislature required under section eight of this article, the board shall include information regarding the success of the voluntary agreement mechanism established therein: Provided, That in making such report the board shall not disclose any personally identifiable information relating to any pharmacist or other licensee or registrant of the board participating in a voluntary agreement as provided herein.

(f) Notwithstanding any of the foregoing provisions, the board may cooperate with and provide documentation of any voluntary agreement entered into pursuant to this subsection to licensing boards in other jurisdictions, as may be appropriate.

(g) Any restrictions on the disclosure of confidential information does not apply to any investigation or proceeding by the board or by a hospital governing board or committee with respect to relevant medical records, while any of the aforesaid are acting within the scope of their authority as stated in law or in the hospital bylaws, rules, regulations or policies and procedures: Provided, That the
disclosure of any information pursuant to this provision shall not be considered a waiver of any such privilege in any other proceeding.

§30-5-8. Reports by secretary of board to secretary of state; "list of pharmacists."

The secretary of the board of pharmacy shall provide the secretary of state with a list of all pharmacists, pharmacy technicians and pharmacy interns in this state, giving the name of the person, his or her business address, and the date of his or her licensure registration. On or before the fifteenth day of September each year, the secretary of the board shall certify to the secretary of state all changes in said list required by the addition of new licensures, registrations, renewals, reported deaths, forfeitures of licenses or registrations or for other causes, occurring during the preceding year. The secretary of state shall enter in an appropriate book, known as "List of Pharmacists" the facts shown by such reports, which reports shall be filed and preserved in his or her office.

§30-5-9. Fees.

The board of pharmacy shall charge and collect the following fees, in addition to those provided in article one of this chapter and in sections five, fourteen and sixteen of this article: For renewing the licensure of a pharmacist, thirty dollars; to license an intern pharmacist, ten dollars plus five dollars for each of the remaining periods of his or her internship; to register a consultant pharmacist, twenty dollars for the initial application and ten dollars for each additional application; and to register a pharmacy technician, twenty-five dollars and ten dollars for each renewal.

§30-5-10. Annual renewal of license; fees and notices.

(a) Every licensed pharmacist, intern or pharmacy technician who desires to renew his or her license shall on or before the first day of July, one thousand nine hundred ninety-one, and annually thereafter apply to the state board of pharmacy for a renewal of his or her license, and shall transmit with his or her application the fee prescribed
in the preceding section of this article. Notification of the annual renewal shall be given by the board at least thirty days prior to said first day of July. Such notification shall be mailed to the last known address of each pharmacist or pharmacy technician as shown on record with the board.

(b) If any pharmacist or pharmacy technician fails for a period of sixty days after the first day of July of each year to apply to the board for a renewal of his or her license, the board shall send a second notification of the required annual renewal to the last known address of the pharmacist or pharmacy technician by certified mail, return receipt requested. If the pharmacist or pharmacy technician fails to apply to the board for a renewal of his or her license within thirty days after receipt of the second notification, his or her name shall be erased from the register of pharmacists and pharmacy technicians.

(c) In order for any pharmacist or pharmacy technician whose name has been erased from the register of the board pursuant to subsection (b) of this section to again become licensed, such pharmacist or pharmacy technician shall appear personally before the board, or an authorized committee of the board, to show cause for permitting the license to lapse. If such person submits to the board satisfactory reasons for allowing the license to lapse and satisfies the board as to his or her qualifications to practice the profession, such person shall be reinstated upon payment of a reinstatement fee of two hundred fifty dollars plus the renewal fee of thirty dollars.

§30-5-11. Certificate of licensure or permit shall be displayed.

Every certificate of registration or licensure to practice as a pharmacist, intern or pharmacy technician, and every renewal of such certificate or permit, shall be conspicuously displayed in the pharmacy or place of business of which the pharmacist, intern or pharmacy technician or other person to whom it is issued is the owner or manager, or in which he or she is employed.

§30-5-12. Responsibility for quality of drugs dispensed; exception; falsification of labels; deviation from prescription.
(a) All persons, whether licensed pharmacists or not, shall be responsible for the quality of all drugs, chemicals and medicines they may sell or dispense, with the exception of those sold in or dispensed unchanged from the original retail package of the manufacturer, in which event the manufacturer shall be responsible.

(b) Except as provided in section twelve-b of this article, the following acts shall be prohibited: (1) The falsification of any label upon the immediate container, box and/or package containing a drug; (2) the substitution or the dispensing of a different drug in lieu of any drug prescribed in a prescription without the approval of the practitioner authorizing the original prescription: Provided, That this shall not be construed to interfere with the art of prescription compounding which does not alter the therapeutic properties of the prescription or appropriate generic substitute; (3) the filling or refilling of any prescription for a greater quantity of any drug or drug product than that prescribed in the original prescription without a written order or an oral order reduced to writing, or the refilling of a prescription without the verbal or written consent of the practitioner authorizing the original prescription.

§30-5-12b. Definitions; selection of generic drug products; exceptions; records; labels; manufacturing standards; rules; notice of substitution; complaints; notice and hearing; immunity.

(a) As used in this section:

(1) "Brand name" means the proprietary or trade name selected by the manufacturer and placed upon a drug or drug product, its container, label or wrapping at the time of packaging.

(2) "Generic name" means the official title of a drug or drug combination for which a new drug application, or an abbreviated new drug application, has been approved by the United States food and drug administration and is in effect.

(3) "Substitute" means to dispense without the prescriber's express authorization a therapeutically equivalent
(4) "Equivalent" means drugs or drug products which are the same amounts of identical active ingredients and same dosage form, and which will provide the same therapeutic efficacy and toxicity when administered to an individual and is approved by the United States food and drug administration.

(5) "Practitioner" means a physician, an authorized Type A physician assistant at the direction of his or her supervising physician in accordance with the provisions of section sixteen, article three of this chapter, osteopath, dentist, veterinarian, podiatrist, optometrist or any other person duly licensed to practice and to prescribe drugs under the laws of this state.

(b) A pharmacist who receives a prescription for a brand name drug or drug product shall substitute a less expensive equivalent generic name drug or drug product unless in the exercise of his or her professional judgment the pharmacist believes that the less expensive drug is not suitable for the particular patient: Provided, That no substitution may be made by the pharmacist where the prescribing practitioner indicates that, in his or her professional judgment, a specific brand name drug is medically necessary for a particular patient.

(c) A written prescription order shall permit the pharmacist to substitute an equivalent generic name drug or drug product except where the prescribing practitioner has indicated in his or her own handwriting the words "Brand Medically Necessary." The following sentence shall be printed on the prescription form: "This prescription may be filled with a generically equivalent drug product unless the words 'Brand Medically Necessary' are written, in the practitioner's own handwriting, on this prescription form.": Provided, That "Brand Medically Necessary" may be indicated on the prescription order other than in the prescribing practitioner's own handwriting unless otherwise required by federal mandate.

(d) A verbal prescription order shall permit the pharmacist to substitute an equivalent generic name drug or drug product except where the prescribing practitioner
shall indicate to the pharmacist that the prescription is "Brand Necessary" or "Brand Medically Necessary." The pharmacist shall note the instructions on the file copy of the prescription or chart order form.

(e) No person may by trade rule, work rule, contract, or in any other way prohibit, restrict, limit or attempt to prohibit, restrict or limit the making of a generic name substitution under the provisions of this section. No employer or his or her agent may use coercion or other means to interfere with the professional judgment of the pharmacist in deciding which generic name drugs or drug products shall be stocked or substituted: Provided, That this section shall not be construed to permit the pharmacist to generally refuse to substitute less expensive therapeutically equivalent generic drugs for brand name drugs, and that any pharmacist so refusing shall be subject to the penalties prescribed in section twenty-two, article five, chapter thirty of this code.

(f) A pharmacist may substitute a drug pursuant to the provisions of this section only where there will be a savings to the buyer. Where substitution is proper pursuant to this section, or where the practitioner prescribes the drug by generic name, the pharmacist shall, consistent with his or her professional judgment, dispense the lowest retail cost, effective brand which is in stock.

(g) All savings in the retail price of the prescription shall be passed on to the purchaser; these savings shall be equal to the difference between the retail price of the brand name product and the customary and usual price of the generic product substituted therefor: Provided, That in no event shall such savings be less than the difference in acquisition cost of the brand name product prescribed and the acquisition cost of the substituted product.

(h) Each pharmacy shall maintain a record of any substitution of an equivalent generic name drug product for a prescribed brand name drug product on the file copy of a written or verbal prescription or chart order. Such record shall include the manufacturer and generic name of the drug product selected.
(i) All drugs shall be labeled in accordance with the instructions of the practitioner.

(j) Unless the practitioner directs otherwise, the prescription label on all drugs dispensed by the pharmacist shall indicate the generic name using abbreviations if necessary and either the name of the manufacturer or packager, whichever is applicable in the pharmacist's discretion. The same notation will be made on the original prescription retained by the pharmacist.

(k) A pharmacist may not dispense a product under the provisions of this section unless the manufacturer has shown that the drug has been manufactured with the following minimum good manufacturing standards and practices by:

1. Labeling products with the name of the original manufacturer and control number;
2. Maintaining quality control standards equal to or greater than those of the United States Food and Drug Administration;
3. Marking products with identification code or monogram; and
4. Labeling products with an expiration date.

(l) The West Virginia board of pharmacy shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code which establish a formulary of generic type and brand name drug products which are determined by the board to demonstrate significant biological or therapeutic inequivalence and which, if substituted, would pose a threat to the health and safety of patients receiving prescription medication. The formulary shall be promulgated by the board within ninety days of the date of passage of this section, and may be amended in accordance with the provisions of chapter twenty-nine-a of this code.

(m) No pharmacist shall substitute a generic named therapeutically equivalent drug product for a prescribed brand name drug product if the brand name drug product
or the generic drug type is listed on the formulary established by the West Virginia board of pharmacy pursuant to this article, or is found to be in violation of the requirements of the United States Food and Drug Administration.

(n) Any pharmacist who substitutes any drug shall, either personally or through his or her agent, assistant or employee, notify the person presenting the prescription of such substitution. The person presenting the prescription shall have the right to refuse the substitution. Upon request the pharmacist shall relate the retail price difference between the brand name and the drug substituted for it.

(o) Every pharmacy shall post in a prominent place that is in clear and unobstructed public view, at or near the place where prescriptions are dispensed, a sign which shall read: "West Virginia law requires pharmacists to substitute a less expensive generic named therapeutically equivalent drug for a brand name drug, if available, unless you or your physician direct otherwise." The sign shall be printed with lettering of at least one and one-half inches in height with appropriate margins and spacing as prescribed by the West Virginia board of pharmacy.

(p) The West Virginia board of pharmacy shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code setting standards for substituted drug products, obtaining compliance with the provisions of this section and enforcing the provisions of this section.

(q) Any person shall have the right to file a complaint with the West Virginia board of pharmacy regarding any violation of the provisions of this article. Such complaints shall be investigated by the board of pharmacy.

(r) Fifteen days after the board has notified, by registered mail, a person, firm, corporation or copartnership that such person, firm, corporation or copartnership is suspected of being in violation of a provision of this section, the board shall hold a hearing on the matter. If, as a result of the hearing, the board determines that a person, firm, corporation or copartnership is violating any of the provisions of this section, it may, in addition to any penalties prescribed by section twenty-two of this article, sus-
pend or revoke the permit of any person, firm, corporation or copartnership to operate a pharmacy.

(s) No pharmacist complying with the provisions of this section shall be liable in any way for the dispensing of a generic named therapeutically equivalent drug, substituted under the provisions of this section, unless the generic named therapeutically equivalent drug was incorrectly substituted.

(t) In no event where the pharmacist substitutes a drug under the provisions of this section shall the prescribing physician be liable in any action for loss, damage, injury or death of any person occasioned by or arising from the use of the substitute drug unless the original drug was incorrectly prescribed.

(u) Failure of a practitioner to specify that a specific brand name is necessary for a particular patient shall not constitute evidence of negligence unless the practitioner had reasonable cause to believe that the health of the patient required the use of a certain product and no other.

§30-5-13. Each pharmacy to have USP-DI.

Every pharmacy as defined in this article shall own and have in the pharmacy at all times in text or electronic form, a recent edition of the USP-DI and any supplements. No license or renewal shall be issued until a USP-DI is in the pharmacy.

§30-5-14. Pharmacies to be registered; permit to operate; fees; pharmacist to conduct business.

(a) The board of pharmacy shall require and provide for the annual registration of every pharmacy doing business in this state. Any person, firm, corporation or partnership desiring to operate, maintain, open or establish a pharmacy in this state shall apply to the board of pharmacy for a permit to do so. The application for such permit shall be made on a form prescribed and furnished by the board of pharmacy, which, when properly executed, shall indicate the owner, manager, trustee, lessee, receiver, or other person or persons desiring such permit, as well as the location of such pharmacy, including street and number,
and such other information as the board of pharmacy may require. If it is desired to operate, maintain, open or establish more than one pharmacy, separate application shall be made and separate permits or licenses shall be issued for each.

(b) Every initial application for a permit shall be accompanied by the required fee of one hundred fifty dollars. The fee for renewal of such permit or license shall be seventy-five dollars annually.

(c) If an application is approved, the secretary of the board of pharmacy shall issue to the applicant a permit or license for each pharmacy for which application is made. Permits or licenses issued under this section shall not be transferable and shall expire on the thirtieth day of June of each calendar year, and if application for renewal of permit or license is not made on or before that date, or a new one granted on or before the first day of August, following, the old permit or license shall lapse and become null and void and shall require an inspection of the pharmacy and a fee of one hundred fifty dollars plus one hundred fifty dollars for the inspection.

(d) Every such place of business so registered shall employ a pharmacist in charge and operate in compliance with the general provisions governing the practice of pharmacy and the operation of a pharmacy.

(e) The provisions of this section shall have no application to the sale of nonprescription drugs which are not required to be dispensed pursuant to a practitioner's prescription.


(a) Every pharmacy at all times shall be under the direction and supervision of a licensed pharmacist who shall be designated by the owner of the pharmacy as the pharmacist-in-charge. This designation must be filed with the board within thirty days of the designation.

(b) The pharmacist-in-charge is responsible for the pharmacy's compliance with state and federal pharmacy laws and regulations and for maintaining records and
inventory.

(c) It is a violation of this section if the owner of a pharmacy fails to designate a pharmacist-in-charge or permits the practice of pharmacy without having designated a pharmacist-in-charge, or fails to notify the board of pharmacy if the designated pharmacist-in-charge leaves the employ of the pharmacy.

(d) Before a permit is issued to operate a pharmacy, or renewed, the application shall designate the pharmacist-in-charge. The designated pharmacist-in-charge shall be present when a new store is to be inspected.

(e) A pharmacist-in-charge shall not hold such designated position at more than one pharmacy, whether within or without the state of West Virginia. The board of pharmacy shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code relative to pharmacies which are operated over forty hours a week.

(f) An interim pharmacist-in-charge may be designated for a period not to exceed sixty days. The request for an interim pharmacist-in-charge shall detail the circumstances which warrant such a change. This change in designation shall be filed with the board within thirty days of the designation.

(g) The board of pharmacy shall furnish the form which designates a change of the pharmacist-in-charge and every such application shall be subject to a fee of ten dollars.

§30-5-15. Professional and technical equipment required for pharmacy or drugstore; penalties and fines.

(a) Every pharmacy shall be equipped with proper pharmaceutical utensils so that prescriptions can be properly filled and compounded. The board of pharmacy shall by rule prescribe the minimum equipment which a pharmacy shall possess.

(b) Any person violating this section is guilty of a misdemeanor and shall be fined not less than two hundred fifty dollars nor more than one thousand dollars, and no
§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.

(a) No drugs or medicines, or toilet articles, dentifrices, or cosmetics, shall be manufactured, made, produced, packed, packaged or prepared within the state, except under the personal supervision of a pharmacist or such other person as may be approved by the board of pharmacy after an investigation and determination by the board that they are qualified by scientific or technical training and/or experience to perform such duties of supervision as may be necessary to protect the public health and safety.

(b) No person shall manufacture, make, produce, pack, package or prepare any such articles without first obtaining a permit to do so from the board of pharmacy. The permit shall be subject to such rules with respect to sanitation and/or equipment, as the board of pharmacy may from time to time adopt for the protection of the public health and safety.

(c) Any person, firm, corporation, partnership, company, cooperative society or organization who offers for sale, sells, offers or exposes for sale through the method of distribution any legend drugs shall be subject to this article.

(d) The application for any permit required by this section shall be made on a form to be prescribed and furnished by the board of pharmacy and shall be accompanied by the following fees: For a distributor, one hundred fifty dollars, for a manufacturer, five hundred dollars, which amounts shall also be paid as the fees for each annual renewal of such permits. Separate applications shall be made and separate permits issued for each separate place of manufacture, distribution, making, producing, packing, packaging or preparation.

(e) The following fees shall be charged for a permit to
handle controlled substances: For a hospital or clinic, fifty dollars; for extended care facilities, twenty-five dollars; for a nursing home, twenty-five dollars; for a teaching institution, twenty-five dollars; for a researcher, twenty-five dollars; for a medical examiner, twenty-five dollars; and for a pharmacy or drugstore, fifteen dollars, which amounts shall also be paid for each annual renewal of such permits.

(f) Permits issued under the provisions of this section shall be posted in a conspicuous place in the factory or place for which issued; such permits shall not be transferable, and shall expire on the thirtieth day of June following the day of issue and shall be renewed annually. Nothing in this section shall be construed to apply to those operating registered pharmacies.

(g) Any person, firm, corporation, partnership, company, cooperative society or organization violating any of the provisions of this section and any permittee hereunder who shall violate any of the conditions of this permit or any of the rules adopted by the board of pharmacy shall, upon conviction, be deemed guilty of a misdemeanor and fined not more than fifty dollars for each offense. Each and every day such violation continues shall constitute a separate and distinct offense. Upon conviction of a permittee, his permit shall also immediately be revoked and become null and void.

(h) Any person, firm, corporation, partnership, company, cooperative society, organization or any permittee who is convicted of two or more successive violations of the provisions of this section or of the rules adopted by the board of pharmacy shall at the discretion of the board of pharmacy have such permit permanently revoked, and the board of pharmacy shall refuse to issue further permits to such person, firm, corporation, partnership, company, cooperative society, organization or permittee.

§30-5-16b. Partial filling of prescriptions.

The partial filling of a prescription for a controlled substance listed in Schedule II is permissible if the pharmacist is unable to supply the full quantity called for in a written or emergency oral prescription and he makes a
notation of the quantity supplied on the face of the written
prescription or on the written record of the emergency
oral prescription. The remaining portion of the prescrip-
tion may be filled within seventy-two hours of the first
partial filling: Provided, That if the remaining portion is
not or cannot be filled within the seventy-two hour period,
the pharmacist shall so notify the prescribing individual
practitioner. No further quantity may be supplied beyond
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.

(a) As used in this section, "long-term care facility" or
"LTCF" means any nursing home, personal care home, or
residential board and care home as defined in section two,
article five-c, chapter sixteen of this code which provides
extended health care to resident patients: Provided, That
the care or treatment in a household, whether for compen-
sation or not, of any person related by blood or marriage,
within the degree of consanguinity of second cousin to the
head of the household, or his or her spouse, may not be
deemed to constitute a nursing home, personal care home
or residential board and care home within the meaning of
this article. This section shall not apply to:

(1) Hospitals, as defined under section one, article
five-b, chapter sixteen of this code or to extended care
facilities operated in conjunction with a hospital;

(2) State institutions as defined in section six, article
one, chapter twenty-seven or in section three, article one,
chapter twenty-five, all of this code;

(3) Nursing homes operated by the federal govern-
ment;

(4) Facilities owned or operated by the state govern-
ment;

(5) Institutions operated for the treatment and care of
alcoholic patients;

(6) Offices of physicians; or
(7) Hotels, boarding homes or other similar places that furnish to their guests only a room and board.

(b) As used in this section, "terminally ill" means that an individual has a medical prognosis that his life expectancy is six months or less.

(c) Schedule II prescriptions for patients in a LTCF and for terminally ill patients shall be valid for a period of sixty days from the date of issue unless terminated within a shorter period by the discontinuance of the medication.

(d) A prescription for a Schedule II controlled substance written for a patient in a LTCF or for a terminally ill patient may be filled in partial quantities, including, but not limited to, individual dosage units. The total quantity of Schedule II controlled substances dispensed in all partial filling shall not exceed the total quantity prescribed.

(1) If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the prescribing practitioner prior to partially filling the prescription.

(2) Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient.

(e) The pharmacist shall record on the prescription that the patient is "terminally ill" or a "LTCF patient". A prescription that is partially filled and does not contain the notation "terminally ill" or "LTCF patient" shall be deemed to have been filled in violation of section three hundred eight, article three, chapter sixty-a of this code.

(f) For each partial filling, the dispensing pharmacist shall record on the back of the prescription, or on another appropriate record which is readily retrievable, the following information:

(1) The date of the partial filling;

(2) The quantity dispensed;

(3) The remaining quantity authorized to be dispensed; and
(4) The identification of the dispensing pharmacist.

(g) Information pertaining to current Schedule II prescriptions for terminally ill and LTCF patients may be maintained in a computerized system if such a system has the capability to permit either by display or printout, for each patient and each medication, all of the information required by this section as well as the patient's name and address, the name of each medication, original prescription number, date of issue, and prescribing practitioner information. The system shall also allow immediate updating of the prescription record each time a partial filling of the prescription is performed and immediate retrieval of 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.

(a) The board of pharmacy shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code not inconsistent with law, as are necessary to carry out the purposes and enforce the provisions of this article. The board may revoke any permit or license issued under the provisions of this article at any time when examination or inspection of the pharmacy discloses that such place of business is not being conducted according to law.

(b) The board of pharmacy shall have the power and authority to employ field agents, chemists, clerical help, hearing examiners and other qualified personnel as may be necessary to carry out the purposes and enforce the provisions of this article.

§30-5-21. Limitations of article.

(a) Nothing in this article shall be construed to prevent, restrict or in any manner interfere with the sale of non-narcotic nonprescription drugs which may be lawfully sold without a prescription in accordance with the United States food, drug, and cosmetic act, or the laws of this state, nor shall any rule be adopted by the board which shall require the sale of nonprescription drugs by a licensed pharmacist or in a pharmacy, or which shall pre-
vent, restrict, or otherwise interfere with the sale or distribution of such drugs by any retail merchant. The sale or distribution of nonprescription drugs shall not be deemed to be improperly engaging in the practice of pharmacy.

(b) Nothing in this article shall be construed to interfere with any legally qualified practitioner of medicine, dentistry or veterinary medicine, who is not the proprietor of the store for the dispensing or retailing of drugs, and who is not in the employ of such proprietor, in the compounding of his own prescriptions, or to prevent him from supplying to his patients such medicines as he may deem proper, if such supply is not made as a sale.

§30-5-22. Offenses; penalties.

(a) Any person who violates any of the provisions of section three of this article is guilty of a misdemeanor, and, upon conviction, shall, for each offense, be fined not less than two hundred fifty dollars nor more than one thousand dollars, or confined in the county jail not to exceed six months, or both fined and imprisoned, in the discretion of the court, and each day such violation shall continue shall be deemed a separate offense.

(b) Any person who violates any of the provisions of section twelve is guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than fifty nor more than one hundred fifty dollars for each offense.

(c) Any person, except for the board of pharmacy or board member acting within the scope of his or her responsibilities or duties as such member, who violates any of the provisions of section twelve-b is guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than fifty nor more than one thousand dollars for each offense.

(d) Any person, firm, partnership or corporation who violates any of the provisions of section fourteen is guilty of a misdemeanor, and, upon conviction, for the first offense shall be fined not to exceed one hundred dollars, or shall be imprisoned in the county jail not to exceed six months, or both fined and imprisoned, in the discretion of
the court. Each and every day that the violation continues
shall constitute a separate offense.

(e) Any person, firm, partnership or corporation who
violates any of the provisions of section eighteen is guilty
of a misdemeanor, and, upon conviction, shall be fined not
to exceed fifty dollars for the first offense, and upon con-
viction of a second offense shall be fined not less than
fifty nor more than five hundred dollars, or shall be im-
prisoned in the county jail not to exceed thirty days, or
both fined and imprisoned. Each and every day that the
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.

(a) The members of the board when acting in good
faith and without malice shall enjoy immunity from indi-
vidual civil liability while acting within the scope of their
duties as board members.

(b) Any licensee of this board who reports or other-
wise provides evidence of the negligence, impairment or
incompetence of another member of this profession to the
board or to any peer review organization, shall not be
liable to any person for making such a report if such re-
port is made without actual malice and in the reasonable
belief that such report is warranted by the facts known to
him or her at the time.

(c) Within thirty days of the dismissal, settlement, adju-
dication or other termination of any claim or cause of
action asserted against any professional reporting under
the provisions of this article the person or persons filing
such claim or cause of actions shall submit to the board
the following information:

(1) The names of the parties involved;

(2) The name of the court in which the action was
filed, if applicable;

(3) The basis and nature of the claim or cause of ac-
tion; and
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.

In order to provide for the regulation of land surveying in this state, no person shall engage in, offer to engage in, or hold himself out to the public as being engaged in, the practice of land surveying in this state (except for the persons exempted under the provisions of section seven of this article), unless and until he shall first obtain a license to engage in the practice of land surveying in accordance with the provisions of this article, which license remains unexpired, unsuspended and unrevoked.

Any firm, association, partnership or corporation offering surveying services or advertising as offering land surveying services must maintain a licensee on their company staff by means of ownership interest or full-time employee of the company.


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

(a) "Applicant" means any person making application for an original or renewal license under the provisions of this article;

(b) "Licensee" means any person holding a license issued under the provisions of this article;

(c) "Board" means the West Virginia state board of examiners of land surveyors created under the provisions of this article;

(d) "Practice of land surveying" means the rendering
or offering to render for a fee, salary or other compensation, monetary or otherwise, for the public generally, any of the following services:

(1) The location, relocation, establishment, reestablishment or retracement of any property line or boundary of any parcel of land or of any road or utility right-of-way, easement or alignment;

(2) The performance of any survey for the division, subdivision or resubdivision of any tract of land;

(3) The determination of the position of any monument or reference point which marks a property line boundary or corner, or setting, resetting or replacing any such monument or reference point, by the use of the principles of land surveying;

(4) The determination of the configuration or contour of the earth's surface or the position of fixed objects thereon or related thereto, by means of measuring lines and angles, whether directly, indirectly, by conventional methods or GPS, and applying the principles of mathematics;

(5) The performance of cadastral surveying, underground surveying, surface mine surveying or hydrographic surveying;

(6) The preparation of subdivision maps; and

(7) The preparation of maps or drawings showing any of the above;

(e) "Professional surveyor" means any person who engages in the practice of land surveying;

(f) "Direct supervision" means the responsible licensee shall be in direct control of all field and office operations, including research, evaluation of all data and decisions relative to the final output data/material, i.e., plats, plans, descriptions, etc., that could affect the general public;

(g) "Global positioning system (GPS)" means any measurement of elevations or positions either absolute or
relative which utilizes the observation of artificial satellites;

(h) "Mortgage/loan inspection survey" means a survey in which property lines and corners have not been established.

§30-13A-4. Powers and duties of board; funds.

(a) The board shall have the power and duty to:

(1) Examine applicants and determine their eligibility for a license to engage in the practice of land surveying;

(2) Prepare, conduct and grade an apt and proper written, oral or written and oral examination of applicants for a license and determine the satisfactory passing score thereon;

(3) Promulgate reasonable rules implementing the provisions of this article and the powers and duties conferred upon the board hereby, all of which reasonable rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(4) Issue, renew, deny, suspend or revoke licenses to engage in the practice of land surveying in accordance with the provisions of this article;

(5) Investigate alleged violations of the provisions of this article, reasonable rules promulgated hereunder and orders and final decisions of the board and take appropriate disciplinary action against any licensee for the violation thereof or institute appropriate legal action for the enforcement of the provisions of this article, reasonable rules promulgated hereunder and orders and final decisions of the board or take such disciplinary action and institute such legal action;

(6) Keep accurate and complete records of its proceedings, certify the same as may be appropriate and prepare, from time to time, a list showing the names and addresses of all licensees;

(7) Take such other action as may be reasonably nec-
(8) Establish standards to evaluate surveying curricula as it relates to the practice of land surveying under the provisions of this article and to determine the amount of experience required under section five of this article which may be substituted for a particular curriculum.

(b) All moneys paid to the board shall be accepted by a person designated by the board and deposited by him with the treasurer of the state and credited to an account to be known as the "board of examiners of land surveyors fund". All of the reasonable compensation of the members of the board, the reimbursement of all reasonable and necessary expenses actually incurred by such members and all other costs and expenses incurred by the board in the administration of this article shall be paid from such fund, and no part of the state's general revenue fund shall be expended for this purpose.

§30-13A-5. Qualifications of applicants for licenses; surveyor-in-training applications; fees; examinations.

(a) To be eligible for a license to engage in the practice of land surveying, the applicant must:

(1) Be at least eighteen years of age;

(2) Be of good moral character;

(3) Have been a resident of the United States for one year immediately preceding the date of application;

(4) Not have been convicted of a crime involving moral turpitude;

(5) On and after the first day of July, one thousand nine hundred ninety-five, six years or more of experience under the direct supervision of a licensee or a person authorized in another state or country to engage in the practice of land surveying shall be required by those applicants who are graduates of a surveying curriculum of two
scholastic years or more. Eight years of experience under
the supervision of a person authorized to practice land
surveying in this state, or a person authorized in another
state or country to engage in the practice of land surveying,
shall be required for those applicants who are not
graduates of a surveying curriculum; and

(6) Have passed the examination prescribed by the
board, which examination shall cover the basic subject
matter of land surveying and land surveying skills and

(b) Any applicant for any such license shall submit an
application therefor on forms provided by the board.
Such application shall be verified and shall contain a state-
ment of the applicant's education and experience, the
names of five persons for reference (at least three of
whom shall be licensees or persons authorized in another
state or country to engage in the practice of land surveying,
who have knowledge of his work) and such other
information as the board may from time to time by rea-

(c) An applicant shall pay to the board with his appli-
cation an examination fee for the purpose of covering the
cost of the examination as determined by the board by

(d) Examinations shall be held at least once each year
at such time and place as the board shall determine. The
scope of the examination and methods of procedure shall
be determined by the board. An applicant who fails to
pass all or any part of an examination may reapply at any
time and shall furnish additional information as requested
by the board. The cost of reexamination will be based on
the cost of the examination as determined by the board by

(e) The board shall offer a surveyor-in-training (SIT)
examination to applicants who meet the requirements of
subdivisions (1), (2), (3) and (4), subsection (a) of this
section, and are graduates of a surveying curriculum of
two or more years which has been approved by the board of examiners of land surveyors. The examination shall include an eight-hour portion of fundamentals in science, mathematics and surveying. Applicants must pass the other portions of the surveyor-in-training examination and complete the work experience and other requirements of this section before they are allowed to take the second eight-hour examination which consists of principles and practices.

§30-13A-7. Exemption from regulation and licensing.

The following persons are exempt from regulation and licensing under the provisions of this article and any reasonable rules promulgated hereunder and may engage in the practice of land surveying without a license issued under the provisions of this article and any such reasonable rules:

(a) Any professional engineer authorized to practice the profession of engineering as provided in article thirteen of this chapter may apply within one year after the effective date of this section and if such person meets the requirements of subdivisions (1), (2), (3) and (4), subsection (a), section five of this article, he or she is eligible for a license without examination. Any applicant for any such license shall submit an application and proof of surveying experience as specified in said section;

(b) Any employee of a proprietorship, partnership, association, corporation or other business entity which is engaged in the practice of land surveying in this state: Provided, That the work of any such employee is done under the supervision of and certified by a licensed employee of the proprietorship, partnership, association, corporation or other business entity;

(c) Any employee of a person, firm, association or corporation, when such employee is engaged in the practice of land surveying exclusively for the person, firm, association or corporation by which employed, or, if a corporation, its parents, affiliates or subsidiaries, and such person, firm, association or corporation does not hold
himself or itself out to the public as being engaged in the business of land surveying;

(d) Any employee or officer of the United States, this state or any political subdivision thereof, when such employee is engaged in the practice of land surveying exclusively for such governmental unit.


No plat, document, plan, map, drawing, exhibit, sketch or pictorial representation intended to be used in the transfer of real property shall be filed by any clerk of a county commission or accepted by any public official of this state unless the seal required by section eleven of this article has been affixed thereto, except that any document, plan, map, drawing, exhibit, sketch or pictorial representation, prepared by a person exempted from the regulation and licensing requirements of this article, as provided in section seven of this article, shall not be required to have the seal required by section eleven of this article affixed thereto. If a document, plan, plat, map, drawing, exhibit, sketch or pictorial representation has been altered from its original form, it shall not be filed by any clerk of a county or accepted by any public official of this state. Nothing in this section shall prevent a document prepared prior to the twenty-fifth day of May, one thousand nine hundred sixty-nine, from being recorded without such seal. If a seal of such exempt person is not affixed to said document, plan, plat, map, drawing, exhibit, sketch or pictorial representation, a certificate shall be placed thereon by the exempt person, stating upon what the exemption is claimed. Said certificate may be in a form similar to the following:

"I certify that I am engaged in surveying exclusively for ___________________________ and believe I am exempt from regulations and licensing under West Virginia Code 30-13A-7

______________________________
Signature"

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.

(a) The client discussion prior to the survey should
8 cover the purpose of survey, scope of services, disputes
9 with adjoiners fees and contract.

(b) The record search should include the record de-
10 scription based on current and prior deeds, conveyance
11 from common grantor, or if necessary original survey or
12 grant. It should also include descriptions of adjoining
13 properties, other sources of information or resolution of
14 conflicts in descriptions. All records of information
15 sources used will be retained as a permanent record.

(c) The field survey will consist of a field search for
16 controlling evidence, a discussion of evidence with the
17 owner, adjoiners or others having knowledge of the
18 boundaries and the location of evidence by traverse meth-
19 ods. The surveyor will use methods and equipment suit-
20 able for the purpose of the survey and the field notes will
21 be retained as a permanent record.

(d) Distance will be measured in feet or meters, or
22 fractions thereof, and angles will be measured in degrees
23 or parts thereof. These will be measured to a precision
24 that will produce the desired level of accuracy. Areas will
25 be measured to a precision consistent with the purpose of
26 the survey. All measuring devices will be checked period-
27 ically for accuracy and condition.

(e) Monumentation is required for all new or reestab-
28 lished corners, or reference monument for inaccessible
29 corners, and is encouraged at intervisible points between
30 corners. Artificial or set monuments will be made of du-
31 rable ferrous material and set firmly in the ground. Pipes
32 will have a minimum inside diameter of one inch, while
33 rebars will have a minimum outside diameter of one-half
inch and both will have a minimum length of thirty inches. Other markers shall have a minimum cross-sectional area of three-tenths square inch and will be of durable material, identifiable and unique. Natural objects chosen for corners shall be durable, unique and easily identifiable.

(f) A plat will be prepared for all boundary surveys, shall show the results of the field survey and will be delivered to the client. Plats will be to a scale large enough to show significant details. Information on plats will include when applicable north arrows and basis of bearings, date of survey, measured length and direction of each boundary line by distance, bearing and quadrant and evidence of possession on or near the property line.

The description of all corners or reference monuments, and whether found (fd) or set, area of the parcel and of significant parts, including streets, alleys and nonlotted area of subdivision, state, county and district or municipality will be shown on the plat. The subdivision name, lot, block and plat reference will also be shown on subdivision or lot surveys.

The tax map, parcel number, name of current and/or past owners for subject property and adjoiners, current conveyance reference for subject property and adjoiners will be shown. Name, address, license number, signature, seal of surveyor, overlaps and gaps in record lines, former deed or grant lines as needed, ties to significant objects and general location information will also be included.

(g) A description will be prepared for each boundary survey and will include the state, county, district or municipality and watershed or topographic location. Lot and block numbers will be shown for new platted subdivisions, but retracement surveys for lots and other surveys will require a metes and bounds description. The description will also include the point of beginning, the description of monumentation at each corner and objects encountered along the line, the length and direction of each line, and the radius, chord bearing and distance of a curved boundary.
The description will also show the intent with regard to adjoiner, physical evidence or record monument along the line. The area of the parcel, reference to plat and surveyor preparing description and the reference to conveyance by which the current owner claims title, including grantor, grantee, date and place.

(h) The report of survey will be used when the plat and description do not adequately address all matters considered by the surveyor in performing the survey and will be provided to the client with a plat and description.

The report will include all unusual circumstances surrounding the survey, weight given to conflicting evidence and encroachments, overlaps or gaps and how they were resolved, and the names of adjoiners contacted and the information they supplied.

(i) A mortgage/loan inspection survey in which boundaries on a property have not been surveyed in accordance with the methods set forth by the board, then the plat must be stamped "a mortgage inspection survey only, not a boundary survey". The surveyor must notify a landowner or other person commissioning their services if a 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.

(a) For the purpose of carrying out the provisions of this article, there is hereby created a West Virginia board of social work examiners, consisting of seven members who shall be appointed by the governor, subject to the following requirements:

(1) No person may be excluded from serving on the board by reason of race, sex or national origin;

(2) One member shall be an independent clinical social worker, two members shall be certified social workers, one member shall be a graduate social worker and two members shall be social workers. All such members must be licensed under the provisions of this article in accordance with their respective titles. In addition, there shall be one member of the board chosen from the general public: Provided, That those members who are appointed by the governor to serve as the first board after the effective date of this article shall be persons eligible for the licensing required under this article: Provided, however, That the member from the general public shall never be required to be eligible for licensing;

(3) The members of the first board to serve after the effective date of this article shall be appointed within ninety days thereof;

(4) The term of office for each member of the board shall be three years: Provided, That one of the members of the first board to serve after the effective date of this
article shall serve a term of two years, three of them shall
serve a term of three years and the remaining three shall
serve a term of four years; and

(5) The governor shall, whenever there is a vacancy on
the board due to circumstances other than the expiration
of the term of a member, appoint another member with
the same qualifications as the member who has vacated to
serve the duration of the unexpired term.

For the purpose of accepting nominations for the
replacement of a member, the governor shall cause a no-
tice of the vacancy to be published at least thirty days
prior to an announcement of the replacement member, as
a Class I-0 legal advertisement, in accordance with the
provisions of section two, article three, chapter fifty-nine
of this code. The publication area shall be statewide.

If the governor fails to make appointment in ninety
days after expiration of any term, the board shall make the
necessary appointment. Each member shall hold office
until the expiration of the term for which such member is
appointed and until a successor shall have been duly ap-
pointed and qualified.

(b) Any members of the board may be removed from
office for cause, in accordance with procedures set forth in
this code for the removal of public officials from office.

(c) The board shall pay each member the same com-
pensation as is paid to members of the Legislature for
their interim duties as recommended by the citizens legis-
lative compensation commission and authorized by law
for each day or portion thereof engaged in the discharge
of official duties and shall reimburse each member for
actual and necessary expenses incurred in the discharge of
official duties: *Provided, That* such compensation and
such expenses shall not exceed the amount received by the
board from licensing fees and penalties imposed under
subdivision (4), subsection (e) of this section.

(d) The board shall hold an annual election for the
purpose of electing a chairman, vice chairman and secre-
The requirements for meetings and management of the board shall be established in regulations promulgated by the board as required by this article.

(e) In addition to the duties set forth in other provisions of this article, the board shall:

(1) Recommend to the Legislature any proposed modifications to this article;

(2) Report to county prosecutors any suspected violations of this article: Provided, That no report shall be made until the board has given the suspected violator ninety days written notice of the suspected violation and the violator has, within such ninety-day period, been afforded an opportunity to respond to the board with respect to the allegation;

(3) Publish an annual report and a roster listing the names and addresses of all persons who have been licensed in accordance with the provisions of this article as an independent clinical social worker, certified social worker, graduate social worker or social worker;

(4) Establish a fee schedule by legislative rule, pursuant to the provisions of chapter twenty-nine-a of this code, which schedule may include fees for the initial examination, license fee, license renewal, license replacement, reciprocal license, license classification change, continuing education provider approval and monitoring, mailing lists and requests for information and reports; fees for requests for information and reports shall not be greater than the cost of personnel, time and supplies incurred by the board and shall not be applied to the annual report;

(5) Establish standards and requirements by legislative rule, pursuant to the provisions of chapter twenty-nine-a of this code, for continuing education. In establishing these requirements the board shall consult with professional groups and organizations representing all levels of practice provided for in this article and the board shall consider recognized staff development programs, continuing education programs offered by colleges and universities
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having social work programs approved or accredited by the council on social work education, and continuing education programs offered by recognized state and national social work bodies: Provided, That such standards and requirements for continuing education shall not be construed to alter or affect in any way the standards and requirements for licensing as set forth elsewhere in this article;

(6) Establish standards and requirements for the practice of social work and the differentiation of qualifications, education, training, experience, supervision, responsibilities, rights, duties and privileges at the independent clinical social worker, certified social worker, graduate social worker and social worker license levels. In establishing these standards and requirements the board shall consult with professional groups and organizations representing all levels of practice provided for in this article. Standards and requirements may include, but are not limited to, practice standards, practice parameters, quality indicators, minimal standards of acceptance, advanced training and certification and continuing education: Provided, That such standards and requirements for practice may not be construed to alter or affect in any way the standards and requirements for licensing as set forth elsewhere in this article;

(7) Conduct its proceedings in accordance with provisions of article nine-a, chapter six of this code; and

(8) Employ, direct and define the duties of administrative clerical support staff.

After having conducted a preliminary performance review through its joint committee on government operations, pursuant to article ten, chapter four of this code, the Legislature hereby finds and declares that the board of social work examiners be continued and reestablished. Accordingly, notwithstanding the provisions of said article, the board of social work examiners shall continue to exist until the first day of July, one thousand nine hundred ninety-eight.
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.
§30-34-10. Prohibitions and penalties.
§30-34-11. Grandfather clause.
§30-34-1. License required to practice.

In order to protect the life, health and safety of the public, any person practicing or offering to practice as a respiratory care technician or respiratory therapist is required to submit evidence that he or she is qualified to practice, and is licensed as provided in this article. After the thirtieth day of June, one thousand nine hundred ninety-six, it shall be unlawful for any person not licensed under the provisions of this article to practice as a respiratory care technician or respiratory therapist in this state, to deliver any portion of the description of services or scope of practice, or to use any title, sign, card or device to indicate that he or she is a respiratory care technician or respiratory therapist. The provisions of this article are not intended to limit, preclude or otherwise interfere with the practice of other health care providers including those health care providers working in any setting and licensed by appropriate agencies or boards of the state of West Virginia whose practices and training may include elements of the same nature as the practice of a licensed respiratory care technician or a licensed respiratory therapist.

§30-34-2. Definitions.

(a) "Board" means the West Virginia board for respiratory care;

(b) "Formal training" means a supervised, structured educational activity that includes preclinical didactic and laboratory activities and clinical activities. The training must be approved by an accrediting agency recognized by the board. It must include an evaluation of competence through standardized testing mechanisms that the board determines to be both valid and reliable;

(c) "Graduate respiratory care technician" means an individual who has graduated from a respiratory care
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.
§30-34-10. Prohibitions and penalties.
§30-34-11. Grandfather clause.
§30-34-1. License required to practice.

In order to protect the life, health and safety of the public, any person practicing or offering to practice as a respiratory care technician or respiratory therapist is required to submit evidence that he or she is qualified to practice, and is licensed as provided in this article. After the thirtieth day of June, one thousand nine hundred ninety-six, it shall be unlawful for any person not licensed under the provisions of this article to practice as a respiratory care technician or respiratory therapist in this state, to deliver any portion of the description of services or scope of practice, or to use any title, sign, card or device to indicate that he or she is a respiratory care technician or respiratory therapist. The provisions of this article are not intended to limit, preclude or otherwise interfere with the practice of other health care providers including those health care providers working in any setting and licensed by appropriate agencies or boards of the state of West Virginia whose practices and training may include elements of the same nature as the practice of a licensed respiratory care technician or a licensed respiratory therapist.

§30-34-2. Definitions.

(a) "Board" means the West Virginia board for respiratory care;

(b) "Formal training" means a supervised, structured educational activity that includes preclinical didactic and laboratory activities and clinical activities. The training must be approved by an accrediting agency recognized by the board. It must include an evaluation of competence through standardized testing mechanisms that the board determines to be both valid and reliable;

(c) "Graduate respiratory care technician" means an individual who has graduated from a respiratory care
12 technician education program and who is scheduled to
take the next available examination administered by the
state or a national organization approved by the board;

(d) "Graduate respiratory care therapist" means an
individual who has graduated from a respiratory therapist
educational program and is scheduled to take the next
available examination administered by the state or a na-
tional organization approved by the board;

(e) "Practice of respiratory care" means the practice of
respiratory care, and any part of respiratory care, by per-
sons licensed under the provisions of this article and shall
be limited to that which has been learned through formal
or special training including performance evaluation to
evaluate competence. The practice of respiratory care
may be performed in any clinic, hospital, skilled nursing
facility, private dwelling or other place deemed appropri-
ate or necessary by the board in accordance with the pre-
scription or verbal orders of a licensed physician or other
legally authorized person with prescriptive authority, and
/or under the direction of a qualified medical director.
Practice of respiratory care includes, but is not limited to:

(1) The administration of pharmacological, diagnostic
and therapeutic agents related to respiratory care proce-
dures necessary to implement a treatment, disease preven-
tion, pulmonary rehabilitative or diagnostic regimen pre-
scribed by a physician;

(2) Transcription and implementation of written or
verbal orders of a physician or other legally authorized
person with prescriptive authority, pertaining to the prac-
tice of respiratory care;

(3) Observing and monitoring signs and symptoms,
general behavior, general physical response to respiratory
care treatment and diagnostic testing, including determina-
tion of whether such signs, symptoms, reactions, behavior
or general response exhibit abnormal characteristics;

(4) Based on observed abnormalities, appropriate
reporting, referral or implementation of respiratory care
protocols or changes in treatment pursuant to the written
(5) The initiation of emergency procedures under the regulations of the board or as otherwise permitted in this article;

(f) "Qualified medical director" means the medical director of any inpatient or outpatient respiratory care service, department or home care agency. The medical director shall be a licensed physician who is knowledgeable in the diagnosis and treatment of respiratory problems. This physician shall be responsible for the quality, safety and appropriateness of the respiratory services provided and require that respiratory care be ordered by a physician, or other legally authorized person with prescriptive authority, who has medical responsibility for the patient. The medical director shall be readily accessible to the respiratory care practitioners and assure their competency;

(g) "Respiratory care" means the allied health profession responsible for the direct and indirect services in the treatment, management, diagnostic testing and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system, under a qualified medical director. Respiratory care includes inhalation therapy and respiratory therapy;

(h) "Respiratory care education program" means a course of study leading to eligibility for registry or certification in respiratory care and the program is approved by the board;

(i) "Respiratory therapist" means an individual who has successfully completed an accredited training program, and who has successfully completed an examination for respiratory therapists administered by the state or a national organization approved by the board and who is licensed by the board as a licensed respiratory therapist;

(j) "Respiratory care technician" means an individual who has successfully completed an accredited training program and who has successfully completed a certifica-
tion examination for respiratory care technicians administered by the state or a national organization approved by the board, and who is licensed by the board as a licensed respiratory care technician; and

(k) "Student respiratory care therapist or student respiratory care technician" means an individual enrolled in a respiratory educational program and whose sponsoring educational institution assumes responsibility for the supervision of, and the services rendered by, the student respiratory care practitioner while he or she is functioning in a clinical training capacity.

§30-34-3. Board of respiratory care.

(a) There is hereby created the West Virginia board of respiratory care. The board shall consist of seven members, appointed by the governor with the advice and consent of the Senate, and shall consist of one lay citizen member; one practicing physician member currently licensed in West Virginia with board certification, clinical training and experience in the management of pulmonary disease; and five members licensed under the provisions of this article and engaged in the practice of respiratory care for the five years immediately preceding their appointment. One of the respiratory practitioners appointed shall be employed full time in home respiratory care by a home medical equipment supplier. All appointees shall be citizens of the United States and residents of this state. The West Virginia society for respiratory care or its successor organization shall make recommendations to the governor regarding individuals to be considered for initial and subsequent appointments.

(b) The members of the board shall each serve terms that commence on the first day of July, one thousand nine hundred ninety-five. Of the initial appointments to the board, one physician and one respiratory care practitioner shall serve for two-year terms, one public member and two respiratory care practitioners shall serve for three-year terms, and two respiratory care practitioners shall serve for four-year terms. Thereafter, each appointment shall be for a four-year term commencing upon the expiration of the term of his or her previous term or of his or her predeces-
sor's term. No member may be appointed for more than three consecutive terms. Vacancies shall be appointed in a like manner for the balance of an unexpired term.

(c) The West Virginia medical association, or other organizations if requested by the governor, may submit the names of three physicians qualified to serve in that designated position on the board.

(d) The governor may remove any member from the board for neglect of any duty required by law or for incompetence or unethical or dishonorable conduct.

§30-34-4. Organization and meetings of board; quorum; expenses.

(a) The board shall meet at least twice a year and elect annually a chairperson and a vice chairperson from its members. The board may hold other meetings during the year as the chairperson or board deem necessary to transact its business.

(b) A majority, including one officer, constitutes a quorum at any meeting, but a majority of the board is required to take action by vote. The board members shall receive travel and other necessary expenses actually incurred while engaged in board activities up to a maximum of two hundred dollars per board meeting. All reimbursement of expenses shall be paid out of the board of respiratory care fund created by the provisions of this article.

§30-34-5. Board responsibilities.

The board shall:

(a) Provide public notice to all state hospitals and to all persons currently practicing as respiratory care practitioners that a license shall be required to continue practicing as a respiratory care technician or respiratory therapist, after the thirtieth day of June, one thousand nine hundred ninety-six;

(b) Examine, license and renew the licenses of duly qualified applicants;

(c) Maintain a current registry of persons licensed to
practice respiratory care under this article which shall contain information on the licensee's place of employment, address, license number and the date of licensure;

(d) Cause the prosecution of all persons violating this article, incurring any expenses necessary;

(e) Keep a record of all proceedings of the board and make it available to the public for inspection during reasonable business hours;

(f) Conduct hearings on charges that subject a licensee to disciplinary action and on the denial, revocation or suspension of a license;

(g) Maintain an information registry of persons whose licenses have been suspended, revoked or denied. The information shall include the individual's name, social security number, type and cause of action, date of board action, type of penalty incurred and the length of penalty. This information shall be available for public inspection during reasonable business hours and supplied to similar boards in other states upon request;

(h) Establish rules pursuant to the provisions of chapter twenty-nine-a of this code regarding relicensure and continuing education requirements. Continuing education requirements shall be established pursuant to a recognized respiratory care education program such as, but not limited to, the program established by the American association for respiratory care;

(i) Maintain continuing education records; and

(j) Approve the training, continuing education and competency evaluation methods for respiratory care practitioners to perform entry level and advanced procedures in the art and techniques of respiratory care.

§30-34-6. Powers of the board; fund.

(a) The board may:

1 (1) Adopt rules pursuant to article three, chapter twenty-nine-a of this code, as may be necessary to enable it to effect the provisions of this article;
(2) Employ such personnel as necessary to perform the functions of the board, including an administrative secretary, and pay all personnel from the board of respiratory care fund;

(3) Establish relicensure requirements, rules of probation for licensees, and other procedures as deemed appropriate;

(4) Secure the services of resource consultants, as deemed necessary by the board, who shall receive travel and other necessary expenses, consistent with state laws and policies, while engaged in consultative service to the board and who shall be reimbursed exclusively from the board of respiratory care fund;

(5) Fix appropriate and reasonable fees for mandatory licensure, which shall be no greater than two hundred dollars for initial licensure or one hundred fifty dollars for annual license renewal. All fees shall be reviewed periodically and modified as necessary.

(b) The board shall designate one person to accept and deposit moneys paid to the board. The money so collected shall be deposited with the treasurer of the state and credited to an account to be known as the "board of respiratory care fund." Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, That for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. No part of the state's general revenue fund shall be expended to carry out the purposes of this article.

(c) The board may contract with other state boards or state agencies to share offices, personnel and other administrative functions as authorized under this article.

§30-34-7. Issuance of license; renewal of license; renewal fee; display of license.
(a) When the board finds that an applicant meets all of the requirements of this article for a license to engage in the practice of respiratory care, it shall forthwith issue to that person a license. Otherwise, the board shall deny the application. The application is to be submitted with a license fee of two hundred dollars. If any application is rejected, the board shall return the fee less any actual costs incurred in processing the application.

(b) Every licensee shall renew his or her license on or before the first day of January of each year by payment of a fee established by the board which shall be no greater than one hundred fifty dollars. Any license that is not so renewed shall automatically lapse. A license which has lapsed may be renewed within five years of its expiration date by meeting the requirements set forth by the board and payment of a fee equal to that established for the initial license. After the expiration of such five-year period, a license may be renewed only by complying with the provisions relating to the issuance of an original license.

(c) A person currently licensed to practice pursuant to this article may apply for an inactive status by providing written notice to the board and ceasing to engage in the practice of respiratory care in this state: Provided, That the inactive status is granted for no longer than five years. The board shall maintain a list of licensees on inactive status. Any person granted inactive status is not subject to the payment of any fees otherwise required by the board. Prior to engaging in the practice of respiratory care, the person shall submit to the board an application for the renewal of the license and payment of a renewal fee for the current year.

(d) The board may deny any application for renewal of a license for any reason which would justify the denial of an original application for a license as specified by provisions of this article.

(e) The board shall prescribe the form of licenses.


(a) Upon payment of the proper fees, an applicant for
a license to practice respiratory care shall submit to the board written evidence, verified by oath, that the applicant:

(1) Has completed an approved respiratory care educational program;

(2) Passed an examination, except where otherwise provided in this article. This examination may be administered by the state or by a national agency approved by the board. The board shall set the passing score for the examination.

(b) The board may also issue a license to practice respiratory care by endorsement to an applicant who is currently licensed to practice respiratory care under the laws of another state, territory or country if the qualifications of the applicant are deemed by the board to be equivalent to, or greater than, those required in this state.

(c) The board may also issue a license to practice respiratory care by endorsement to respiratory therapists and respiratory care technicians holding credentials conferred by the National Board for Respiratory Care, Inc., or its successor organizations, if the credentials have not been suspended or revoked. Applicants applying under the conditions of this section shall be required to certify under oath that their credentials have not been suspended or revoked.

(d) If an applicant fails to complete the requirements for licensure within ninety days from the date of filing, the application is deemed to be abandoned.


Upon payment of the proper fee the board may issue a temporary permit to practice respiratory care for a period of six months under the following conditions:

(a) The applicant is currently practicing, or has practiced within the last twelve months in another state, territory or country, and is completing the requirements for licensing in this state: Provided, That the applicant provides written evidence, verified by oath of that practice;

(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.

It shall be a misdemeanor for any person, including
any corporation or association, to:

(a) Sell or fraudulently obtain or furnish any respira-
tory care provider license or record or aid or abet therein;

(b) Practice as a respiratory care provider under cover
of any diploma, license or record illegally or fraudulently
obtained or signed or issued or under fraudulent represen-
tation;

(c) Practice as a respiratory care provider unless duly
licensed to do so under the provisions of this article;

(d) Use in connection with his or her name any desig-
nation tending to imply that he or she is licensed to prac-
tice as a respiratory care provider unless duly licensed so
to practice under the provisions of this article;

(e) Practice as a respiratory care provider during the
time his or her license issued under the provisions of this
article is suspended or revoked;

(f) Conduct a respiratory care provider licensing pro-
gram for the preparation of respiratory care provider
unless such program has been accredited by the board; or

(g) Otherwise violate any provisions of this article.

Upon conviction, each misdemeanor shall be punish-
able by a fine of not less than twenty-five nor more than
two hundred fifty dollars.

§30-34-11. Grandfather clause.

(a) After the establishment of the board of respiratory
care, a license shall be issued to applicants who, on the
effective date of this article, have passed the National
Board of Respiratory Care, Inc., entry-level or registry
examinations, or their equivalent as approved by the board.

(b) Applicants who have not passed either of these national examinations or their equivalent on the effective date of this article and who, through written evidence and verified by oath, demonstrate that they have been functioning for two years in the capacity of a respiratory care provider as defined by this article shall be issued a temporary license to practice respiratory care. A temporary license issued pursuant to this section shall be renewed at intervals prescribed by the board. A temporary license shall not be valid after the first day of June, one thousand nine hundred ninety-seven. Persons holding a temporary license shall be issued a license to practice only after achieving a passing score on a licensure exam administered or approved by the board.

(c) Any person issued a license pursuant to this section shall be required to pay the license or renewal fees established in section seven of this article.

§30-34-12. Professional identification.

(a) A person holding a license to practice respiratory care as a technician in this state may use the title "licensed respiratory care technician" and the abbreviation "LRCT".

(b) A person holding a license to practice respiratory care as a respiratory therapist in this state may use the title "licensed respiratory therapist" and the abbreviation "LRT".

(c) A licensee shall either show his or her license or provide a copy thereof within twenty-four hours of a request from an employer or the board.


The board may revoke, suspend or refuse to renew any license, or place on probation, or otherwise reprimand a licensee or permit holder, or deny a license to an applicant if it finds that the person:

(a) Is guilty of fraud or deceit in procuring or attempting to procure a license or renewal of a license to
1356 PROFESSIONS AND OCCUPATIONS [Ch. 196

practice respiratory care;
(b) Is unfit or incompetent by reason of negligence, habits or other causes of incompetence;
(c) Is habitually intemperate in the use of alcoholic beverages;
(d) Is addicted to or has improperly obtained, possessed, used or distributed habit-forming drugs or narcotics;
(e) Is convicted of a felony that materially affects the person's ability to safely practice respiratory care;
(f) Is guilty of dishonest or unethical conduct as determined by the board of respiratory care;
(g) Has practiced respiratory care after his or her license or permit has expired, been suspended or revoked;
(h) Has practiced respiratory care under cover of any permit or license illegally or fraudulently obtained or issued; or
(i) Has violated or aided or abetted others in violation of any provision of this article.

§30-34-14. Due process procedure.
(a) Upon filing with the board a written complaint charging a person with being guilty of any of the acts described in section thirteen of this article, the administrative secretary or other authorized employee of the board shall provide a copy of the complaint or list of allegations to the person about whom the complaint was filed. That person will have twenty days thereafter to file a written response to the complaint. The board shall thereafter, if the allegations warrant, make an investigation. If the board finds reasonable grounds for the complaint, a time and place for a hearing shall be set, notice of which shall be served on the licensee, permit holder or applicant at least fifteen calendar days in advance of the hearing date. The notice shall be by personal service or by certified or registered mail sent to the last known address of the person.
(b) The board may petition the circuit court for the county within which the hearing is being held to issue subpoenas for the attendance of witnesses and the production of necessary evidence in any hearing before it. Upon request of the respondent or of his or her counsel, the board shall petition the court to issue subpoenas in behalf of the respondent. The circuit court upon petition may issue such subpoenas as it deems necessary.

(c) Unless otherwise provided in this article, hearing procedures shall be promulgated in accordance with, and a person who feels aggrieved by a decision of the board may take an appeal pursuant to, the administrative procedures in this state as provided in chapter twenty-nine-a of this code.


(a) A person may not practice respiratory care or represent himself or herself to be a respiratory care practitioner unless he or she is licensed under this article except as otherwise provided by this article.

(b) This article does not prohibit:

(1) The practice of respiratory care which is an integral part of the program of study by students enrolled in respiratory care education programs accredited by organizations approved by the board. Students enrolled in respiratory care education programs shall be identified as "student RCP" and may only provide respiratory care under clinical supervision;

(2) Self-care by a patient, or gratuitous care by a friend or family member who does not represent or hold himself out to be a respiratory care practitioner;

(3) Respiratory care services rendered in the course of an emergency;

(4) Persons in the military services or working in federal facilities providing respiratory care services when functioning in the course of their assigned duties; and

(5) The respiratory care practitioner from performing advances in the art and techniques of respiratory care
learned through formalized or specialized training approved by the board.

(c) Nothing in this article is intended to limit, preclude or otherwise interfere with the practices of other persons and health care providers licensed by appropriate agencies of the state.

(d) Nothing in this article shall prohibit home medical equipment dealers from delivering and instructing persons in the operation of home medical respiratory equipment, or from receiving requests for changes in equipment and settings from physicians or other authorized individuals.

(e) An individual who passes an examination that includes content in one or more of the functions included in this article is not prohibited from performing such procedures for which he or she was tested, so long as the testing body offering the examination is approved by the board.

§30-34-16. Practice of medicine prohibited.

1. Nothing in this article may be construed to permit the 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; provid-
ing a mechanism for county commission to be exempt from participating; providing for the termination of the West Vir-
ginia 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 LE­
GAL ADVICE.

§7-4-6. West Virginia prosecuting attorneys institute.

(a) There is hereby created the West Virginia prosecut-
ing attorneys institute, a public body whose membership shall consist of the fifty-five elected county prosecuting attorneys in the state. The institute shall meet at least once each calendar year and the presence of twenty-eight of the fifty-five prosecutors at any meeting constitutes a quorum for the conduct of the institute's business.

(b) There is hereby created the executive council of the West Virginia prosecuting attorneys institute which shall consist of five prosecuting attorneys elected by the membership of the West Virginia prosecuting attorneys institute at its annual meeting and two persons appointed annually by the county commissioner's association of West Virginia. The executive council shall elect one member of the council to serve as chairman of the institute for a term of one year without compensation. The executive council shall serve as the regular executive body of the institute.

(c) There is hereby created the position of executive director of the West Virginia prosecuting attorneys institute to be employed by the executive council of the institute. The executive director of the West Virginia prosecuting attorneys institute shall serve at the will and pleasure of the executive council of the institute at an annual salary of fifty thousand dollars per year. The executive director shall be licensed to practice law in the state of West Virgin-
ia and shall devote full time to his or her official duties and may not engage in the private practice of law.

(d) The duties and responsibilities of the institute, as implemented by and through its executive council and its executive director, shall include the following:

(1) To provide for special prosecuting attorneys to pursue a criminal matter in any county upon the request of a circuit court judge of that county and upon the approval of the executive council;

(2) To establish and to implement general and specialized training programs for prosecuting attorneys and their professional staffs;

(3) To provide materials for prosecuting attorneys and their professional staffs, including legal research, technical assistance and technical and professional publications;

(4) To compile and disseminate information on behalf of prosecuting attorneys and their professional staffs on current developments and changes in the law and the administration of criminal justice;

(5) To establish and to implement uniform reporting procedures for prosecuting attorneys and their professional staffs in order to maintain and to provide accurate and timely data and information relative to criminal prosecutorial matters;

(6) To accept and expend funds, grants and gifts and accept services from any public or private source;

(7) To enter into agreements and contracts with public or private agencies or educational institutions;

(8) To identify experts and other resources for use by prosecutors in criminal matters;

(9) To make recommendations to the Legislature or the supreme court of appeals of the state of West Virginia on measures required, or procedural rules to be promulgated, to make uniform the processing of juvenile cases in the fifty-five counties of the state; and
(10) To develop a written handbook for prosecutors and their assistants to use which delineates relevant information concerning the elements of various crimes in West Virginia and other information as the institute deems appropriate.

(e) Each prosecuting attorney is subject to appointment by the institute to serve as a special prosecuting attorney in any county where the prosecutor for that county or his or her office has been disqualified from participating in a particular criminal case. The circuit judge of any county of this state, who disqualifies the prosecutor or his or her office from participating in a particular criminal case in that county, shall seek the appointment by the institute of a special prosecuting attorney to substitute for the disqualified prosecutor. The executive director of the institute shall, upon written request to the institute by any circuit judge as a result of disqualification of the prosecutor or for other good cause shown, and upon approval of the executive council, appoint a prosecuting attorney to serve as a special prosecuting attorney. The special prosecuting attorney appointed shall serve without any further compensation other than that paid to him or her by his or her county, except that he or she is entitled to be reimbursed for his or her legitimate expenses associated with travel, mileage and room and board from the county to which he or she is appointed as a prosecutor. The county commission in which county he or she is special prosecutor is responsible for all expenses associated with the prosecution of the criminal action.

(f) The executive director of the institute shall maintain an appointment list that shall include the names of all fifty-five prosecuting attorneys and that shall also include the names of any assistant prosecuting attorney who wishes to serve as a special prosecuting attorney upon the same terms and conditions as set forth in this section. The executive director of the institute, with the approval of the executive council, shall appoint special prosecuting attorneys from the appointment list for any particular matter giving due consideration to the proximity of the proposed special prosecuting attorney's home county to the county requesting a special prosecutor and giving due consider-
ation to the expertise of the special prosecuting attorney.

(g) Commencing on the first day of July, one thousand nine hundred ninety-six, each county commission shall pay, on a monthly basis, a special prosecution premium to the treasurer of the state for the funding of the West Virginia prosecuting attorneys institute. The monthly premiums shall be paid according to the following schedule:

**MONTHLY PREMIUMS**

Assessed Valuation of Property of All Classes in the County

<table>
<thead>
<tr>
<th>Category</th>
<th>Minimum</th>
<th>Maximum</th>
<th>Premium</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>$1,500,000,000</td>
<td>Unlimited</td>
<td>$400</td>
</tr>
<tr>
<td>B</td>
<td>$1,000,000,000</td>
<td>$1,499,999,000</td>
<td>$375</td>
</tr>
<tr>
<td>C</td>
<td>$800,000,000</td>
<td>$999,999,000</td>
<td>$350</td>
</tr>
<tr>
<td>D</td>
<td>$700,000,000</td>
<td>$799,999,000</td>
<td>$325</td>
</tr>
<tr>
<td>E</td>
<td>$600,000,000</td>
<td>$699,999,000</td>
<td>$300</td>
</tr>
<tr>
<td>F</td>
<td>$500,000,000</td>
<td>$599,999,000</td>
<td>$250</td>
</tr>
<tr>
<td>G</td>
<td>$400,000,000</td>
<td>$499,999,000</td>
<td>$200</td>
</tr>
<tr>
<td>H</td>
<td>$300,000,000</td>
<td>$399,999,000</td>
<td>$150</td>
</tr>
<tr>
<td>I</td>
<td>$200,000,000</td>
<td>$299,999,000</td>
<td>$100</td>
</tr>
<tr>
<td>J</td>
<td>-0-</td>
<td>$199,999,000</td>
<td>$50</td>
</tr>
</tbody>
</table>

Upon receipt of a premium, the treasurer shall deposit the premium into a special revenue fund to be known as the "West Virginia Prosecuting Attorneys Institute Fund". All costs of operating the West Virginia prosecuting attorneys institute shall be paid from the West Virginia prosecuting attorneys institute fund upon proper authorization by the executive council or by the executive director of the institute and subject to annual appropriation by the Legislature of the amounts contained within the fund.

(h) (1) A county shall be exempted from the requirements of subsection (g) of this section if the county commission of the county votes on or before the thirty-first day of December, one thousand nine hundred ninety-five, to exclude that county from participation in the West Virginia prosecuting attorneys institute. On or before the
thirtieth day of September, one thousand nine hundred ninety-five, the chair of the executive council of the prosecuting attorneys institute shall notify each county commission by registered mail, return receipt requested, that the county commission will be subject to said subsection if the county does not vote to be exempted. The vote shall be during a regular public meeting of the county commission. The meeting shall be scheduled and notice of the meeting shall be provided in accordance with the provisions of article nine-a, chapter six of this code. If any county commission votes to exclude its county pursuant to the provisions of this subsection, the county, its county prosecutor and assistant prosecutors and its circuit judges are prohibited from utilizing any of the services provided by the prosecuting attorneys institute unless those services are paid for by the county on an actual cost basis, including fees, expenses and other costs as determined and approved by the executive counsel of the prosecuting attorneys institute. Nothing contained within this subsection prohibits the use by a circuit court of the procedures provided in section eight, article seven of this chapter if the county commission of the county in which the subject prosecution has been brought has voted, pursuant to the provisions of this subsection, to exclude that county from the provisions of subsection (g) of this section.

(2) After a county commission votes to exempt the county from the provisions of subsection (g) of this section, it may not participate in the prosecuting attorneys institute nor be required to pay the premiums under said section unless the county commission votes at a later meeting to participate.

(i) The West Virginia prosecuting attorneys institute shall continue to exist until the first day of July, one thousand nine hundred ninety-eight, unless continued by an act of the Legislature. The institute shall annually by the first day of the regular legislative session provide the joint committee on government and finance with a report setting forth the activities of the institute and suggestions for legislative action.
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 compensation out of the county treasury in amounts and according to the schedule hereafter set forth for each class of county as determined by the provisions of section three of this article: Provided, That as to any county having a tribunal in lieu of a county commission, the county commissioners of the county may be paid less than the minimum compensation limits of the county commission for the particular class of such county.
The compensation hereinabove provided shall be paid on and after the first day of January, one thousand nine hundred eighty-five, to each county commissioner. Within each county, every county commissioner whose term of office commenced prior to the first day of January, one thousand nine hundred eighty-five, shall receive the same annual compensation as commissioners commencing a term of office on or after that date by virtue of the new duties imposed upon county commissioners pursuant to the provisions of chapter fifteen, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-three.

(2) For the purpose of determining the compensation to be paid to the elected county officials of each county, the following compensations for each county office by class are hereby established and shall be used by each county commission in determining the compensation of each of their county officials other than compensation of members of the county commission:

<table>
<thead>
<tr>
<th>Class</th>
<th>Sheriff</th>
<th>County Clerk</th>
<th>Circuit Clerk</th>
<th>Assessor</th>
<th>Prosecuting Attorney</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$24,200</td>
<td>$31,300</td>
<td>$31,300</td>
<td>$24,200</td>
<td>$41,500</td>
</tr>
<tr>
<td>II</td>
<td>$24,200</td>
<td>$28,000</td>
<td>$28,000</td>
<td>$24,200</td>
<td>$39,500</td>
</tr>
<tr>
<td>III</td>
<td>$24,200</td>
<td>$28,000</td>
<td>$28,000</td>
<td>$24,200</td>
<td>$30,000</td>
</tr>
<tr>
<td>IV</td>
<td>$22,300</td>
<td>$24,000</td>
<td>$24,000</td>
<td>$22,300</td>
<td>$26,500</td>
</tr>
<tr>
<td>V</td>
<td>$20,400</td>
<td>$22,000</td>
<td>$22,000</td>
<td>$20,400</td>
<td>$23,500</td>
</tr>
<tr>
<td>VI</td>
<td>$17,200</td>
<td>$17,200</td>
<td>$17,200</td>
<td>$17,200</td>
<td>$17,000</td>
</tr>
</tbody>
</table>
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 attorney of a Class II county shall devote full time to his or her public duties to the exclusion of any other employment: Provided, That any public official, whose term of office begins when his or her county's classification imposes no restriction on his or her outside activities, shall not be restricted on his or her outside activities during the remainder of the term for which he or she is elected. The compensation hereinabove provided shall be paid on and after the first day of January, one thousand nine hundred eighty-five, to each elected county official.

In the case of a county that has a joint clerk of the county commission and circuit court, the compensation of the joint clerk shall be fixed in an amount twenty-five percent higher than the compensation would be fixed for the county clerk if it had separate offices of county clerk and circuit clerk.

The Legislature finds, as a fact, that the duties imposed upon county clerks by the provisions of chapter sixty-four, acts of the Legislature, regular session, one thousand nine hundred eighty-two, and by chapter fifteen, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-three, constitute new and additional duties for county clerks and as such justify the additional compensation provided in this section without violating the provisions of section thirty-eight, article VI of the constitution of West Virginia.

The Legislature further finds as a fact that the duties imposed upon circuit clerks by the provisions of chapters sixty-one and one hundred eighty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-one, and by chapter sixty, acts of the Legislature, regular session, one thousand nine hundred eighty-three, eighty-one, and by chapter sixty, acts of the Legislature, constitute new and additional duties for circuit clerks and
as such justify the additional compensation provided by 
this section without violating the provisions of section 
thirty-eight, article VI of the constitution of West Virginia. 

(b) Prior to the primary election in the year one thou-
sand nine hundred ninety-two, and for the fiscal year 
beginning on the first day of July, one thousand nine 
hundred ninety-two, or for any subsequent fiscal year if 
the approval set out herein is not granted for any fiscal 
year, and at least thirty days prior to the meeting to ap-
prove the county budget, the commission shall provide 
otice to the public of the date and time of the meeting 
and that the purpose of the meeting of the county com-
m ission is to decide upon their budget certification to the 
tax department. Upon submission by the county commis-
sion to the chief inspector division of the department of 
tax and revenue of a proposed annual budget which con-
tains anticipated receipts into the county's general revenue 
 fund, less anticipated moneys from the unencumbered 
 fund balance, equal to anticipated receipts into the coun-
ty's general revenue fund, less anticipated moneys from 
the unencumbered fund balance and any federal or state 
special grants, for the immediately preceding fiscal year, 
plus such additional amount as is necessary for payment 
of the increases in the salaries set out herein and related 
employment taxes over that paid for the immediately 
preceding fiscal year, and upon approval thereof by the 
chief inspector, which approval shall not be granted for 
any proposed annual budget containing anticipated re-
c eipts which are unreasonably greater or lesser than that of 
the immediately preceding fiscal year, for the purpose of 
determining the compensation to be paid to the elected 
county officials of each county office by class are hereby 
established and shall be used by each county commission 
in determining the compensation of each of their county 
officials: Provided, That as to any county having a tribu-
nal in lieu of a county commission, the county commis-
sioners of the county may be paid less than the minimum 
compensation limits of the county commission for the 
particular class of the county.
If the approval set out hereinabove is granted, the compensation hereinabove provided shall be paid on and after the first day of January, one thousand nine hundred ninety-three, to each county commissioner. Within each county, every county commissioner shall receive the same annual compensation by virtue of the new duties imposed upon county commissioners pursuant to the provisions of chapter one hundred seventy-two, acts of the Legislature, second regular session, one thousand nine hundred ninety, and chapter five, acts of the Legislature, third extraordinary session, one thousand nine hundred ninety.

### OTHER ELECTED OFFICIALS

<table>
<thead>
<tr>
<th>Class</th>
<th>Sheriff</th>
<th>County Clerk</th>
<th>Circuit Clerk</th>
<th>Assessor</th>
<th>Prosecuting Attorney</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>$29,040</td>
<td>$37,560</td>
<td>$37,560</td>
<td>$29,040</td>
<td>$59,500</td>
</tr>
<tr>
<td>Class II</td>
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<td>$33,600</td>
<td>$33,600</td>
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<td>$59,500</td>
</tr>
<tr>
<td>Class III</td>
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<td>$29,040</td>
<td>$36,000</td>
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<tr>
<td>Class IV</td>
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<td>$31,800</td>
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<tr>
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<td>$26,400</td>
<td>$24,480</td>
<td>$28,200</td>
</tr>
<tr>
<td>Class VI</td>
<td>$24,480</td>
<td>$26,400</td>
<td>$26,400</td>
<td>$24,480</td>
<td>$28,200</td>
</tr>
</tbody>
</table>

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...
attorney of a Class II county shall devote full time to his or her public duties to the exclusion of any other employment: Provided, That any public official, whose term of office begins when his or her county's classification imposes no restriction on his or her outside activities, shall not be restricted on his or her outside activities during the remainder of the term for which he or she is elected. If the approval set out hereinabove is granted, the compensation hereinabove provided shall be paid on and after the first day of January, one thousand nine hundred ninety-three, to each elected county official.

In the case of a county that has a joint clerk of the county commission and circuit court, the compensation of the joint clerk shall be fixed in an amount twenty-five percent higher than the compensation would be fixed for the county clerk if it had separate offices of county clerk and circuit clerk.

Prior to the primary election in the year one thousand nine hundred ninety-two, in the case of a Class III, Class IV or Class V county which has a part-time prosecuting attorney, the county commission may find that such facts and circumstances exist that require the prosecuting attorney to devote full time to his or her public duties for the four-year term, beginning the first day of January, one thousand nine hundred ninety-three. If the county commission makes such a finding, it may by proper order adopted and entered, require the prosecuting attorney who takes office on the first day of January, one thousand nine hundred ninety-three, to devote full time to his or her public duties and the county commission shall then compensate said prosecuting attorney at the same rate of compensation as that of a prosecuting attorney in a Class II county.

For any county: (1) Which on and after the first day of July, one thousand nine hundred ninety-four, is classified as a Class II county; and (2) which prior to such date was classified as a Class III, Class IV or Class V county and 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.
Any officer or employee of the state of West Virginia may authorize that a voluntary deduction from his net wages be made for the payment of membership dues or fees to an employee association. Voluntary deductions may also be authorized by an officer or employee for any supplemental health and life insurance premium, subject to prior approval by the auditor. Such deductions shall be authorized on a form provided by the auditor of the state of West Virginia and shall state (a) the identity of the employee; (b) the amount and frequency of such deductions; and (c) the identity and address of the association or insurance company to which such dues shall be paid. Upon execution of such authorization and its receipt by the office of the auditor, such deductions shall be made in the manner specified on the form and remitted to the designated association or insurance company on the tenth day of each month: Provided, That such deductions shall be made either once or twice monthly at the option of the employee. Deduction authorizations may be revoked at any time thirty days prior to the date on which the deduction is regularly made and on a form to be provided by the office of the state auditor: Provided, however, That nothing in this section shall interfere with or remove any existing arrangement for dues deduction between an employer or any political subdivision of the state and its 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.]
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.

The division of personnel after consultation with other state agencies shall establish a program under which annual leave accrued or accumulated by an employee of an agency may, if voluntarily agreed to by the employee, be transferred to the annual leave account of another designated employee if the other employee requires additional leave because of a medical emergency. The annual leave program shall be established by legislative rule pursuant to the provisions of chapter twenty-nine-a of this code. The division of personnel shall file such legislative rule no later than the fifteenth day of July, one thousand nine hundred ninety-five. The division shall prepare an annual status report to be presented to the joint committee on government and finance no later than the fifth day of January each year. A "medical emergency" means a medical condition of an employee or a family member of the employee that is likely to require the prolonged absence of the employee from duty and which will result in a substantial loss of income to the employee because of the unavailability of paid leave. As used in this section, "employee" includes employees in the classified and classified-exempt service and employees exempt from coverage who are under this article entitled to annual leave as a benefit of employment: Provided, That none of the leave so transferred may be used to qualify for or add to service for any retirement system administered by the state 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, unless a different meaning is clearly indicated by the context, shall have the following meanings:

4 (1) "Advisory board" means the public employees insurance agency advisory board created by this article.

6 (2) "Agency" means the public employees insurance agency created by this article.

8 (3) "Director" means the director of the public employees insurance agency, created by this article.

10 (4) "Employee" means any person, including elected officers, who works regularly full time in the service of the
state of West Virginia and, for the purpose of this article
only, the term "employee" also means any person, includ-
ing elected officers, who works regularly full time in the
service of a county board of education; a county, city or
town in the state; any separate corporation or instrumen-
tality established by one or more counties, cities or towns,
as permitted by law; any corporation or instrumentality
supported in most part by counties, cities or towns; any
public corporation charged by law with the performance
of a governmental function and whose jurisdiction is co-
extensive with one or more counties, cities or towns; any
comprehensive community mental health center or com-
prehensive mental retardation facility established, operated
or licensed by the secretary of health and human resour-
ces pursuant to section one, article two-a, chapter
twenty-seven of this code, and which is supported in part
by state, county or municipal funds; any person who
works regularly full time in the service of the university of
West Virginia board of trustees or the board of directors
of the state college system; and any person who works
regularly full time in the service of a combined
city-county health department created pursuant to article
two, chapter sixteen of this code. On and after the first
day of January, one thousand nine hundred ninety-four,
and upon election by a county board of education to
allow elected board members to participate in the public
employees insurance program pursuant to this article, any
person elected to a county board of education shall be
deemed to be an "employee" during the term of office of
the elected member: Provided, That the elected member
shall pay the entire cost of the premium if he or she elects
to be covered under this act. Any matters of doubt as to
who is an employee within the meaning of this article shall
be decided by the director.

(5) "Employer" means the state of West Virginia, its
boards, agencies, commissions, departments, institutions or
spending units; a county board of education; a county,
city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive community mental health center or comprehensive mental retardation facility established, operated or licensed by the secretary of health and human resources pursuant to section one, article two-a, chapter twenty-seven of this code, and which is supported in part by state, county or municipal funds; and a combined city-county health department created pursuant to article two, chapter sixteen of this code. Any matters of doubt as to who is an "employer" within the meaning of this article shall be decided by the director. The term "employer" shall not include within its meaning the national guard.

(6) "Finance board" means the public employees insurance agency finance board created by this article.

(7) "Retired employee" shall mean an employee of the state who retired after the twenty-ninth day of April, one thousand nine hundred seventy-one, and an employee of the university of West Virginia board of trustees or the board of directors of the state college system or a county board of education who retires on or after the twenty-first day of April, one thousand nine hundred seventy-two, and all additional eligible employees who retire on or after the effective date of this article and meet the minimum eligibility requirements for their respective state retirement system: Provided, That for the purposes of this article such employees who are not covered by a state retirement system shall, in the case of education employees, meet the minimum eligibility requirements of the state teachers retirement system, and in all other cases, meet the minimum eligibility requirements of the public employees retirement system.
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 established, shall be continued and hereafter shall be known as the West Virginia state police. Wherever the words "department of public safety" or "division of public safety" appear in this code, they shall mean the West Virginia state police. The governor shall nominate, and by and with the advice and consent of the Senate, appoint a superintendent to be the executive and administrative head of the department. Notwithstanding any provision of this code to the contrary, the superintendent shall be paid an annual salary of sixty thousand dollars. The superintendent shall hold the rank of colonel and is entitled to all rights, benefits and privileges of regularly enlisted members. On the date of his or her appointment, the superintendent shall be at least thirty years of age. Before entering upon the discharge of the duties of his or her office, he or she shall execute a bond in the penalty of ten thousand dollars,
payable to the state of West Virginia and conditioned upon the faithful performance of his or her duties. Such bond both as to form and security shall be approved as to form by the attorney general, and to sufficiency by the governor.

Before entering upon the duties of his or her office the superintendent shall subscribe to the oath hereinafter provided. The headquarters of the department shall be 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.

(a) The West Virginia division of public safety shall have the mission of statewide enforcement of criminal and traffic laws with emphasis on providing basic enforcement and citizen protection from criminal depredation throughout the state and maintaining the safety of the state's public streets, roads and highways.
(b) The superintendent and each of the officers and members of the division are hereby empowered:

1. To make arrests anywhere within the state of any persons charged with the violation of any law of this state, or of the United States, and when a witness to the perpetration of any offense or crime, or to the violation of any law of this state, or of the United States, to make arrests without warrant; to arrest and detain any persons suspected of the commission of any felony or misdemeanor whenever a complaint is made and a warrant is issued thereon for the arrest, and the person arrested shall be immediately brought before the proper tribunal for examination and trial in the county where the offense for which the arrest has been made was committed;

2. To serve criminal process issued by any court or magistrate anywhere within this state: Provided, That they may not serve civil process; and

3. To cooperate with local authorities in detecting crime and in apprehending any person or persons engaged in or suspected of the commission of any crime, misdemeanor or offense against the law of this state, or of the United States, or of any ordinance of any municipality in this state; and to take affidavits in connection with any application to the division of highways, division of motor vehicles and division of public safety of West Virginia for any license, permit or certificate that may be lawfully issued by these divisions of state government.

(c) Members of the division of public safety are hereby designated as forest patrolmen and game and fish wardens throughout the state to do and perform any duties and exercise any powers of forest patrolmen and game and fish wardens, and may apprehend and bring before any court or magistrate having jurisdiction of these matters, anyone violating any of the provisions of chapters twenty, sixty and sixty-one of this code. The division of public safety is at any time subject to the call of the West Virginia alcohol beverage control commissioner to aid in
apprehending any person violating any of the provisions of chapter sixty of this code. They shall serve and execute warrants for the arrest of any person and warrants for the search of any premises issued by any properly constituted authority, and shall exercise all of the powers conferred by law upon a sheriff. They may not serve any civil process or exercise any of the powers of such officer in civil matters.

(d) Any member of the division of public safety knowing or having reason to believe that any person has violated the law may make complaint in writing before any court or officer having jurisdiction and procure a warrant for the offender, execute the warrant and bring the person before the proper tribunal having jurisdiction. The member shall make return on all warrants to the tribunals and his or her official title shall be "member of the division of public safety". Members of the division of public safety may execute any summons or process issued by any tribunal having jurisdiction requiring the attendance of any person as a witness before the tribunal and make return thereon as provided by law. Any return by a member of the division of public safety showing the manner of executing the warrant or process has the same force and effect as if made by a sheriff.

(e) Each member of the division of public safety, when called by the sheriff of any county, or when directed by the governor by proclamation, has full power and authority within the county, or within the territory defined by the governor, to direct and command absolutely the assistance of any sheriff, deputy sheriff, chief of police, policeman, game and fish warden and peace officer of the state, or of any county or municipality therein, or of any able-bodied citizen of the United States, to assist and aid in accomplishing the purposes expressed in this article. When called, any officer or person is, during the time his or her assistance is required, for all purposes a member of the division of public safety and subject to all the provisions of this article.
(f) The superintendent may also assign members of the division to perform police duties on any turnpike or toll road, or any section of any turnpike or toll road, operated by the West Virginia parkways, economic development and tourism authority: Provided, That the authority shall reimburse the division of public safety for salaries paid to the members and shall either pay directly or reimburse the division for all other expenses of the group of members in accordance with actual or estimated costs determined by the superintendent.

(g) The division of public safety may develop proposals for a comprehensive county or multicounty plan on the implementation of an enhanced emergency service telephone system and may cause a public meeting on the proposals, all as set forth in section six-a, article six, chapter twenty-four of this code.

(h) The superintendent may also assign members of the division to administer tests for the issuance of commercial drivers' licenses, operator and junior operator licenses as provided for in section seven, article two, chapter seventeen-b of this code: Provided, That the division of motor vehicles shall reimburse the division of public safety for salaries and employee benefits paid to the members, and shall either pay directly or reimburse the division for all other expenses of the group of members in accordance with actual costs determined by the superintendent.

(i) The superintendent shall be reimbursed by the division of motor vehicles for salaries and employee benefits paid to members of the division of public safety and shall either be paid directly or reimbursed by the division of motor vehicles for all other expenses of the group of members in accordance with actual costs determined by the superintendent, for services performed by the members relating to the duties and obligations of the division of motor vehicles set forth in chapters seventeen, seventeen-a, seventeen-b, seventeen-c and seventeen-d of this code.
(j) By the first day of July, one thousand nine hundred ninety-three, the superintendent shall establish a network to implement reports of the disappearance of children by local law-enforcement agencies to local school division superintendents and the state registrar of vital statistics. The network shall be designed to establish cooperative arrangements between local law-enforcement agencies and local school divisions concerning reports of missing children and notices to law-enforcement agencies of requests for copies of the cumulative records and birth certificates of missing children. The network shall also establish a mechanism for reporting the identities of all missing children to the state registrar of vital statistics.

(k) The superintendent may at his or her discretion and upon the written request of the West Virginia alcohol beverage control commissioner assist the commissioner in the coordination and enforcement of article sixteen, chapter eleven of this code and chapter sixty of this code.

(l) Notwithstanding the provisions of article one-a, chapter twenty of this code, the superintendent of the division of public safety may sell any surplus real property to which the division of public safety or its predecessors retain title, and deposit the net proceeds into a special revenue account to be utilized for the purchase of additional real property and for repairs to or construction of detachment offices or other facilities required by the division of public safety. There is hereby created a special revolving fund in the state treasury which shall be designated as the "surplus real property proceeds fund". The fund shall consist of all money received from the sale of surplus real property owned by the division of public safety. Moneys deposited in the fund shall only be available for expenditure upon appropriation by the Legislature: Provided, That amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this subsection may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.
(m) Notwithstanding any other provision of this code, the agency for surplus property is hereby empowered to transfer funds generated from the sale of vehicles, other equipment and commodities belonging to the division of public safety to a special revenue account within the division of public safety surplus transfer account. Moneys deposited in the fund shall only be available for expenditure upon appropriation by the Legislature: Provided, That amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this subsection may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. Any funds transferred to this account may be utilized by the superintendent to defray the cost of normal 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.

(a) The head of any law-enforcement agency as defined in section three of this article may temporarily provide assistance and cooperation to another agency of the state criminal justice system or to a federal law-enforcement agency in investigating crimes or possible criminal activity if requested to do so in writing by the head of another law-enforcement agency or federal law-enforcement agency. Such assistance may also be provided upon the request of the head of the law-enforcement agency or federal law-enforcement agency without first being reduced to writing in emergency situations involving the imminent risk of loss of life or serious bodily injury. The assistance may include, but is not limited to, entering into a multijurisdictional task force agreement to integrate federal, state, county and municipal law-enforcement agencies or any combination thereof, for the purpose of enhancing interagency coordination, intelligence gathering, facilitating multijurisdictional investigations, providing criminal justice enforcement personnel of the law-enforcement agency to work temporarily with personnel of another agency, including in an undercover capacity, and making available equipment, training, technical assistance and information systems for the more efficient investigation, apprehension and adjudication of persons who violate the criminal laws of this state or the United States, and to assist the victims of such crimes. When providing the assistance under the provisions of this article, a head of a law-enforcement agency shall comply with all applicable statutes, ordinances, rules, policies or guidelines officially adopted by the state or the governing body of the city or county by which he is employed, and any conditions or restrictions included therein.

(b) While temporarily assigned to work with another law-enforcement agency or agencies, criminal justice enforcement personnel shall have the same jurisdiction, powers, privileges and immunities, including those relating to the defense of civil actions, as such criminal justice enforcement personnel would enjoy if actually employed by the agency to which they are assigned, in addition to
any corresponding or varying jurisdiction, powers, privileges and immunities conferred by virtue of their continued employment with the assisting agency.

(c) While assigned to another agency or to a multijurisdictional task force, criminal justice enforcement personnel shall be subject to the lawful operational commands of the superior officers of the agency or task force to which they are assigned, but for personnel and administrative purposes, including compensation, they shall remain under the control of the assisting agency. These assigned personnel shall continue to be covered by all employee rights and benefits provided by the assisting agency, including workers' compensation, to the same extent as though such personnel were functioning within the normal scope of their duties.

(d) No request or agreement between the heads of law-enforcement agencies made or entered into pursuant to the provisions of this article shall remain in force and effect for a period of more than twelve months unless renewed in writing by the parties thereto nor shall any request or agreement made or entered into pursuant to the provisions of this article have force or effect until a copy of said request or agreement is filed with the office of the circuit clerk of the county or counties in which the law-enforcement agencies involved operate. Upon filing, the requests or agreements may be sealed, subject to disclosure pursuant to an order of a circuit court directing disclosure for good cause. Nothing in this article shall be construed to limit the authority of the head of a law-enforcement agency to withdraw from any agreement at any time.

(e) Nothing contained in this article shall be construed so as to grant, increase, decrease or in any manner affect the civil service protection or the applicability of civil service laws as to any criminal justice enforcement personnel or agency operating under the authority of this article, nor shall this article in any way reduce or increase the jurisdiction or authority of any criminal justice enforcement personnel or agency, except as specifically provided herein.
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.

For the purposes of this article:

(a) The term "auctioneer" means and includes a person who sells goods or real estate at public auction for another on commission or for other compensation. The term "auctioneer" does not include: (1) Persons conducting sales at auctions conducted by or under the direction of any public authority or pursuant to any judicial order or direction or to any sale required by law to be at auction; (2) the owner of any real or personal property when personally sold at auction by such owner and such owner has not personally conducted an auction within the previous twelve-month period; (3) persons conducting sales pursuant to a deed of trust or other security agreement; (4) fiduciaries of estates when selling real or personal property of such estate; (5) persons conducting sales on behalf of charitable, religious, fraternal or other nonprofit organizations; and (6) persons properly licensed pursuant to the provisions of article twelve, chapter forty-seven of this code when conducting an auction, any portion of which contains any leasehold or any estate in land whether corporeal or incorporeal, freehold or nonfreehold, when such person is retained to conduct an auction by a receiver or trustee in bankruptcy, a fiduciary acting under the authority of a deed of trust or will, or a fiduciary of a decedent's estate: Provided, That nothing contained in this article exempts persons conducting sales at public markets from the provisions of article two-a of this chapter, where the sale is confined solely to livestock, poultry and other agriculture and horticulture products.

(b) The term "public auction" means any public sale of real or personal property when offers or bids are made by prospective purchasers and the property sold to the highest bidder.

(c) The term "commissioner" means the commissioner of agriculture of West Virginia.

(d) The term "department" means the West Virginia
CHAPTER 47. REGULATION OF TRADE.

ARTICLE 12. REAL ESTATE COMMISSION, BROKERS AND SALESPERSONS.

§47-12-2. Definitions and exceptions.

(a) The term "real estate broker" within the meaning of this article includes all persons, partnerships, associations and corporations, foreign and domestic, who for a fee, commission or other valuable consideration or who with the intention or expectation of receiving or collecting the same, lists, sells, purchases, exchanges, rents, manages, leases or auctions any real estate or the improvements thereon, including options, or who negotiates or attempts to negotiate any such activity; or who advertises or holds himself, herself, itself or themselves out as engaged in such activities; or who directs or assists in the procuring of a purchaser or prospect calculated or intended to result in a real estate transaction. The term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots, or other parcels of real estate, at a stated salary or upon a fee, commission or otherwise to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell, manage, exchange, lease, offer, attempt or agree to negotiate the sale, exchange or lease of any such lot or parcel of real estate.

(b) The term "real estate" as used in this article includes leaseholds as well as any and every interest or estate in land, whether corporeal or incorporeal, freehold or nonfreehold, and whether said property is situated in this state or elsewhere.

(c) The term "associate broker" means any person who for compensation or other valuable consideration is employed by a broker to perform all the functions authorized by a broker's license only for and on behalf of such employing broker including, but not limited to, authority
to supervise other salespersons employed by a broker and manage an office on behalf of a broker.

(d) The term "real estate salesperson" means and includes any person employed or engaged by or on behalf of a licensed real estate broker to do or deal in any activity as included in this section, for compensation or otherwise.

(e) One act in consideration of or with the expectation or intention of or upon the promise of receiving compensation by fee, commission or otherwise, in the performance of any act or activity contained in this section, constitutes such persons, partnerships, association or corporation, a real estate broker and make him or her, them or it subject to the provisions and requirements of this article.

(f) The term "real estate broker" or "real estate salesperson" shall not include any person, partnership, association or corporation who, as a bona fide owner or lessor, performs any aforesaid act:

(1) With reference to property owned or leased by him or her to the regular employees thereof, where such acts are performed in the regular course of or as an incident to the management of, such property and the investment therein;

(2) Nor shall this article be construed to include attorneys-at-law, except that attorneys-at-law shall be required to submit to the written examination required under section seven of this article in order to qualify for a broker's license: Provided, That an attorney-at-law who is licensed as a real estate broker prior to the effective date of this section is exempt from the written examination required under section seven of this article;

(3) Nor any person holding in good faith a duly executed power of attorney from the owner authorizing the final consummation and execution for the sale, purchase, lease or exchange of real estate;

(4) Nor to the acts of any person while acting as a
receiver, trustee, administrator, executor, guardian or
under the order of any court or while acting under
authority of a deed of trust or will;

(5) Nor shall this article apply to public officers while
performing their duties as such;

(6) Nor shall this article apply to the acquisition or
disposition of coal, oil or gas leasehold or coal, oil or gas
interests;

(7) Nor to persons properly licensed pursuant to the
provisions of article two-c, chapter nineteen of this code
when conducting an auction, any portion of which
contains any leasehold or estate in land, when such person
is retained to conduct an auction by a receiver or trustee in
bankruptcy, a fiduciary acting under the authority of a
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, parish, congregation or branch of any religious sect, society or denomination within this state may take and hold at any one time for each church, parish or congregation not to exceed ten acres of land in any incorporated city, town or village, and not to exceed sixty 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 Nonprofit 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.
In this article:

(1) "Member" means a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association.

(2) "Nonprofit association" means an unincorporated organization consisting of two or more members joined by mutual consent for a common, nonprofit purpose. However, joint tenancy, tenancy in common, or tenancy by the entireties does not by itself establish a nonprofit association, even if the coowners share use of the property for a nonprofit purpose.

(3) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency or
instrumentality or any other legal or commercial entity.

(4) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

§36-11-2. Supplementary general principles of law and equity.

Principles of law and equity supplement this article unless displaced by a particular provision of it.

§36-11-3. Territorial application.

Real and personal property in this state may be acquired, held, encumbered and transferred by a nonprofit association, whether or not the nonprofit association or a member has any other relationship to this state.

§36-11-4. Real and personal property; nonprofit association as legatee, devisee or beneficiary.

(a) A nonprofit association in its name may acquire, hold, encumber or transfer an estate or interest in real or personal property.

(b) A nonprofit association may be a legatee, devisee or beneficiary of a trust or contract.

§36-11-5. Statement of authority as to real property.

(a) A nonprofit association may execute and record a statement of authority to transfer an estate or interest in real property in the name of the nonprofit association.

(b) An estate or interest in real property in the name of a nonprofit association may be transferred by a person so authorized in a statement of authority recorded in the office in the county in which a transfer of the property would be recorded.

(c) A statement of authority must set forth:

(1) The name of the nonprofit association;

(2) The address in this state, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this state, its
address out of state;

(3) The name or title of a person authorized to transfer an estate or interest in real property held in the name of the nonprofit association; and

(4) The action, procedure or vote of the nonprofit association which authorizes the person to transfer the real property of the nonprofit association and which authorizes the person to execute the statement of authority.

(d) A statement of authority must be executed in the same manner as a deed by a person who is not the person authorized to transfer the estate or interest.

(e) A filing officer may collect a fee for recording a statement of authority in the amount authorized for recording a transfer of real property.

(f) An amendment, including a cancellation, of a statement of authority must meet the requirements for execution and recording of an original statement. Unless canceled earlier, a recorded statement of authority or its most recent amendment is canceled by operation of law five years after the date of the most recent recording.

(g) If the record title to real property is in the name of a nonprofit association and the statement of authority is recorded in the office of the county in which a transfer of real property would be recorded, the authority of the person named in a statement of authority is conclusive in favor of a person who gives value without notice that the person lacks authority.


(a) A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties and liabilities in contract and tort.

(b) A person may not be liable for a breach of a nonprofit association's contract merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association or is a person considered to be a member by the nonprofit association.
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
years or longer, a person in possession or control of personal property of the nonprofit association may transfer the property:

(1) If a document of a nonprofit association specifies a person to whom transfer is to be made under these circumstances, to that person; or

(2) If no person is so specified, to a nonprofit association or nonprofit corporation pursuing broadly similar purposes, or to a government or governmental subdivision, agency or instrumentality.

§36-11-10. Appointment of agent to receive service of process.

(a) A nonprofit association shall file in the office of the secretary of state a statement appointing an agent authorized to receive service of process.

(b) A statement appointing an agent must set forth:

(1) The name of the nonprofit association;

(2) The address in this state, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this state, its address out of state; and

(3) The name of the person in this state authorized to receive service of process and the person's address, including the street address, in this state.

(c) A statement appointing an agent must be signed and acknowledged by a person authorized to manage the affairs of a nonprofit association. The statement must also be signed and acknowledged by the person appointed agent, who thereby accepts the appointment. The appointed agent may resign by filing a resignation in the office of the secretary of state and giving notice to the nonprofit association.

(d) A filing officer may collect a fee for filing a statement appointing an agent to receive service of process, an amendment, or a resignation in the amount charged for filing similar documents.
(e) An amendment to a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement.

§36-11-11. Claim not abated by change of members or officers.

A claim for relief against a nonprofit association does not abate merely because of a change in its members or persons authorized to manage the affairs of the nonprofit association.

§36-11-12. Venue.

For purposes of venue, a nonprofit association is a resident of a county in which it has an office or where it conducts its business or activities, or where any of its officers or managers reside.

§36-11-13. Summons and complaint; service on whom.

In an action or proceeding against a nonprofit association a summons and complaint must be served on an agent authorized by appointment to receive service of process, an officer, managing or general agent or a person authorized to participate in the management of its affairs. If none of them can be served, service may be made on a member.

§36-11-14. Uniformity of application and construction.

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.


This article may be cited as the Uniform Unincorporated Nonprofit Association Act.

§36-11-16. Transition concerning real and personal property.

(a) If, before the effective date of this article, an estate or interest in real or personal property was purportedly transferred to a nonprofit association, on the effective date of this article the estate or interest vests in the nonprofit association unless the parties have treated the transfer as ineffective.
(b) If, before the effective date of this article, the transfer vested the estate or interest in another person to hold the estate or interest as a fiduciary for the benefit of the nonprofit association, its members, or both, on or after the effective date of this article the fiduciary may transfer the estate or interest to the nonprofit association in its name, or the nonprofit association, by appropriate proceedings, may require that the estate or interest be transferred to it in its name.

§36-11-17. Savings clause.

This article does not affect an action or proceeding commenced or right accrued before this article takes effect.

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 appraisement 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 appraisement 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 state who, in the ordinary course of his or her business, gives an opinion to a potential seller or third party as to the recommended listing price of real estate or an opinion to a potential purchaser or third party as to the recommended purchase price of real estate, when this opinion as to the listing price or the purchase price is not to be referred to as an appraisal, no opinion is rendered as to the value of the real estate and no fee is charged;

(b) A casual or drive-by inspection of real estate in connection with a consumer loan secured by the said real
estate, when the inspection is not referred to as an appraisal, no opinion is rendered as to the value of the real estate and no fee is charged for the inspection;

(c) An employee who renders an opinion as to the value of real estate for his full-time employer, for the employer's internal use only and performed in the regular course of the employee's position, when the opinion is not referred to as an appraisal and no fee is charged;

(d) Appraisals of personal property, including, but not limited to, jewelry, household furnishings, vehicles and manufactured homes not attached to real estate;

(e) Any officer or employee of the United States, or of the state of West Virginia or a political subdivision thereof, when the employee or officer is performing his official duties: Provided, That such individual does not furnish advisory service for compensation to the public or act as an independent contracting party in West Virginia or any subdivision thereof in connection with the appraisal of real estate or real property: Provided, however, That this exception shall not apply with respect to federally related transactions as defined in Title XI of the United States Code, entitled "Financial Institutions Reform, Recovery, and Enforcement Act of 1989"; and

(f) Any evaluation of the value of real estate serving as collateral for a loan made by a financial institution insured by the federal deposit insurance corporation: Provided, That: (1) The amount of the loan is equal to or less than two hundred fifty thousand dollars; (2) the evaluation is used solely by the lender in its records to document the collateral value; (3) the evaluation clearly indicates on its face that it is for the lender's internal use only; (4) the evaluation shall not be labeled an "appraisal"; and (5) the evaluation be on a form approved by the board. Individuals performing these evaluations may be compensated for their services. The lender shall notify its customer if it intends to use an unlicensed evaluator and give that customer the opportunity to elect an evaluation, by a certified or licensed appraiser, the cost of which shall be paid as
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.

(a) There is hereby created the West Virginia real estate appraiser licensing and certification board which consists of nine members appointed by the governor with the advice and consent of the Senate. Each member shall be a resident of the state of West Virginia. Four members shall be real estate appraisers having at least five years' experience in appraisal as a principal line of work immediately preceding their appointment, two members shall be selected from financial institutions having at least five years' experience in real estate lending, and three members who shall not be engaged in the practice of real estate appraisal, real estate brokerage or sales or have any financial interest in such practices. No member of the board may concurrently be a member of the West Virginia real estate commission. No more than two appraiser members may be appointed from each congressional district.

(b) Appointments shall be for a three-year term, except of the members first appointed, three shall serve for two years and one for one year. Each real estate appraiser appointed after the first day of January, one thousand nine hundred ninety-one, shall have appraisal as their principal work and must be a state certified real estate appraiser under this article at the time of appointment and during the term of appointment. No member appointed shall serve for more than six consecutive years. Before entering upon the performance of his duties, each member shall subscribe to the oath required by section five, article four of the Constitution of this state. The governor shall, within sixty days following the occurrence of a vacancy on the board, fill the same by appointing a person for the unexpired term of, and meeting the same requirements for membership as, the person vacating said office. Any
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33 member may be removed by the governor in case of in-
34 competency, neglect of duty, gross immorality or malfia-
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 em-
ployees; 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.

(a) The board of trustees shall credit each member with the prior service and contributing service to which he or she is entitled based upon such rules and regulations as the board of trustees shall from time to time adopt: Provided, That in no case shall less than ten days of service rendered by a member in any calendar month be credited as a month of service; nor shall less than ten months of service rendered in any calendar year be credited as a year of service; nor shall more than one year of service be credited any member for all service rendered by him or her in any calendar year; nor shall any member who was not in the employ of a political subdivision within a period of thirty years immediately preceding the date the political subdivision became a participating public employer be credited with prior service: Provided, however, That said member is not required to have been employed by a participating public employer of this state within a period of fifteen years subsequent to the date that participating public employer elected to become a participating employer.

(b) The board of trustees shall grant service credit to employees of boards of health, the clerk of the House of Delegates and the clerk of the state Senate, or to any former and present member of the state teachers retirement system who have been contributing members for more than three years, for service previously credited by the state teachers retirement system and shall require the transfer of the member's contributions to the system and shall
also require a deposit, with interest, of any withdrawals of contributions any time prior to said member's retirement. Repayment of withdrawals shall be as directed by the board of trustees.

(c) Court reporters who are acting in an official capacity, although paid by funds other than the county commission or state auditor, may receive prior service credit for such time as served in such capacity.

(d) Employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions may receive service credit for the time as served in that capacity in accordance with subsection (a) of this section: Provided, That employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for at least sixty days for its regular sessions or during the interim between regular sessions and who have been or are so employed during regular sessions or during the interim between sessions for at least seven consecutive legislative sessions may receive service credit for one-half year for each year served, which shall be used for the purpose of calculating that member's retirement annuity, notwithstanding any other provision of this section: Provided, however, That for the purposes of calculating the amount of service credit an employee has served to become entitled to voluntary retirement shall be calculated as provided in subsection (a) of this section.

(e) Former justices of the peace and constables shall be entitled to credit for retirement purposes for those years of service as a justice of the peace or constable: Provided, That they have a minimum of five years contributing service and they compensate the retirement fund in an amount equal to the amount which they would have contributed for a like period of time, according to a formula determined by the retirement board, plus an amount equal to the determined employer's contribution for the same period. For purposes of calculating the contributions, the salary for constables shall be deemed to be five
thousand dollars per year and the salary for justices of the peace shall be deemed to be seven thousand five hundred dollars per year. In addition, they shall deposit the compounded yearly interest on the aggregate of the employee and employer contributions at a rate or rates to be determined by the retirement board: Provided, however, That those former justices of the peace and constables who elect to seek credit under this subsection shall be allowed until the thirtieth day of June, one thousand nine hundred ninety-five, to compensate the retirement fund as provided herein.

§5-10-48. Reemployment after retirement; option for holder of elected public office.

(a) In the event a retirant becomes employed by a participating public employer, payment of his or her annuity shall be suspended during the period of his or her reemployment and he or she shall become a contributing member to the retirement system. If his or her reemployment is for a period of one year or longer, his or her annuity shall be recalculated and he or she shall be granted an increased annuity due to such additional employment, said annuity to be computed according to section twenty-two of this article. A retirant may accept temporary employment from a participating employer so long as he or she does not receive compensation in excess of ten thousand dollars.

(b) In the event a retirant is elected to a public office or appointed to hold an elected public office, he or she has the option, notwithstanding subsection (a) of this section, to either:

(1) Continue to receive payment of his or her annuity while holding such public office, in addition to the salary he or she may be entitled to as such office holder; or

(2) Suspend the payment of his or her annuity and become a contributing member of the retirement system as provided in subsection (a) of this section.
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.


Prior to the effective date of his or her retirement, but not thereafter except upon the death of a spouse, a member may elect to receive his or her annuity as a straight life annuity payable throughout his or her life, or he or she may elect to receive the actuarial equivalent, at the time, of his or her straight life annuity in a reduced annuity payable throughout his or her life, and nominate a beneficiary, in accordance with option A or B set forth below:

Option A — Joint and survivor annuity. — Upon the death of a retirant, who elected option A, his or her reduced annuity shall be continued throughout the life of and paid to the beneficiary, having an insurable interest in the retirant's life, whom the retirant nominated by written designation duly executed and filed with the board of
trustees prior to the effective date of his or her retirement;

or

Option B — Modified joint and survivor annuity. —

Upon the death of a retirant who elected option B, one half of his or her reduced annuity shall be continued throughout the life of and paid to the beneficiary, having an insurable interest in the retirant's life, whom the retirant nominated by written designation duly executed and filed with the board of trustees prior to the effective date of his or her retirement.

Upon the death of a spouse, a retirant may elect any of the retirement options offered by the provisions of this section in an amount adjusted on a fair basis to be of equal actuarial value as the annuity prospectively in effect relative to the surviving member at the time the new option 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.

(a) The state of West Virginia for its public employees and county board of education for its teachers shall pick-up and pay the contributions which such employees are required by law to make to the retirement system in which they are a member for all compensation earned by its member employees after the thirtieth day of June, one thousand nine hundred eighty-six. Any political subdivision that is a participating public employer in the West Virginia public employees retirement system shall pick-up and pay the contributions which such employees are required by law to make to the retirement system in which they are members for all compensation earned by its member employees after the first day of January, one thousand nine hundred ninety-five. Any election made by a political subdivision to pick-up and pay employee contributions prior to the first day of January, one thousand nine hundred ninety-five, shall remain in effect and not be altered or amended by the amendments made to this section during the regular legislative session, one thousand nine hundred ninety-five.

(b) When the participating public employer picks up and pays the contributions of its member employees, the contributions shall be treated as employer contributions in determining the tax treatment thereof under article twenty-one, chapter eleven of this code, and the federal Internal Revenue Code of 1986, as amended, and the contributions shall not be included in the gross income of the employee in determining his or her tax treatment under said article, and the federal Internal Revenue Code of 1986, as amended, until they are distributed or made available to the employee or his or her beneficiary. The participating public employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee, by effecting an equal cash reduction in the gross salary of the employee, or by an off-set against future salary increases, or by a combination of reduction in gross salary and off-set against future salary increases.
(c) When employee contributions are picked up and paid by the participating public employer, they shall be treated by the board of trustees in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions are picked up by the participating public employer.

(d) The amount of employee contributions picked up by the participating public employer shall be paid to the retirement system in such manner and form, and in such frequency, as the board of trustees may require and shall be accompanied by such supporting data as the board of trustees shall from time to time prescribe. When paid to the retirement system, each of said amounts shall be credited to the deposit fund account of the member for whom the contribution was picked up and paid by the participating 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.]
§5-10D-2. Chairman and vice chairman; executive secretary; employees; treasurer; legal advisor; actuary.

1. (a) The secretary of the department of administration shall call the first meeting of the consolidated public retirement board no later than the fifteenth day of January, one thousand nine hundred ninety-one.

2. (b) The board shall elect from its own number a chairman and vice chairman.

3. (c) The board shall appoint an executive secretary of the retirement systems. The executive secretary shall be the chief administrative officer of all the systems and he or she shall not be a member of the board. He or she shall perform such duties as are required of him or her in this article and as the board from time to time delegates to him or her. The compensation of the executive secretary shall be fixed by the board subject to the approval of the governor. The executive secretary shall, with the approval of the board of trustees, employ such administrative, technical and clerical employees as are required in the proper operation of the systems.

4. (d) Notwithstanding the provisions of section two, article three of this chapter, the board shall employ and be represented by an attorney licensed to practice law in the state of West Virginia who is not a member of any of the retirement systems administered by the board.

5. (e) An actuary, employed by the state or the board pursuant to section four of this article, shall be the actuarial consultant to the board.

6. (f) Prior to the first day of July, one thousand nine hundred ninety-one, the expenses of the board for the administration of the teachers' defined contribution retirement system created pursuant to article seven-b, chapter eighteen of this code shall be paid by the teachers retirement system created pursuant to article seven-a of said 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.
(a) Any other provision of this code notwithstanding, there is hereby created in the state treasury the "industrial access road fund", hereinafter referred to as "the fund". There shall be deposited into the fund three fourths of one percent of all state tax collections which are otherwise specifically dedicated by the provisions of this code to the state road fund or such percentage of those tax collections that will produce three million dollars for each fiscal year. At the end of each fiscal year, all unused moneys in the fund shall revert to the state road fund.

(b) The moneys in the fund shall be expended by the division of highways for constructing and maintaining industrial access roads within counties and municipalities to industrial sites on which manufacturing, distribution, processing or other economic development activities, including publicly owned airports, are already constructed or are under firm contract to be constructed. In the event there is no industrial site already constructed or for which the construction is under firm contract, a county or municipality may guarantee to the division of highways by bond or other acceptable device that an industrial site will be constructed and if no industrial site acceptable to the division of highways is constructed within the time limits of the bond, such bond shall be forfeited.

§17-3A-2. Division of highways to determine construction of industrial access roads.

In determining whether or not to construct or improve any industrial access road and in determining the nature of the road to be constructed, the division of highways shall base its decision on the costs of the industrial access road in relation to the volume and nature of the traffic to be generated as a result of developing the industrial site within the total industrial area. In making a decision on any industrial site, the total volume of traffic to be generated shall be considered in regard to the overall cost of the project. The division of highways shall consult and work in cooperation with the West Virginia development office in determining the use of industrial access road funds.
Prior to a formal request for the use of moneys from the fund to provide access to new or expanding industrial sites, the location of the industrial access road shall be submitted for approval of the division of highways. The division of highways shall consider the cost of the industrial access road as it relates to the project’s location and as it relates to the possibility of future extensions of the road to serve other possible industrial sites as well as the future development of the surrounding area.

Prior to the allocation of moneys from the fund for the construction or maintenance of an industrial access road to an industry proposing to locate or expand in a county or municipality, the governing body of the county or municipality shall, by resolution, request moneys from the fund and shall be responsible for the preliminary negotiations with the industries and other interested parties. The division of highways shall be available for consultation with the governing bodies of the counties or municipalities and other interested parties and may prepare surveys, plans, engineering studies and cost estimates for the proposed industrial access road.

§17-3A-4. Restrictions on use of fund.

(a) The fund may not be used for the adjustment of utilities or for the construction of industrial access roads to schools, hospitals, libraries, armories, shopping centers, apartment buildings, government installations or similar facilities, whether public or private. The fund may not be used to construct industrial access roads on private property.

(b) Moneys from the fund may not be allocated until the governing body of the county or municipality certifies to the division of highways that the industrial site is constructed and operating or is under firm contract to be constructed or operated, or upon the presentation of acceptable surety in accordance with section one of this article.

(c) Not more than three hundred thousand dollars of
unmatched moneys from the fund may be allocated for use in any one county in any fiscal year. The maximum amount of unmatched moneys which may be allocated from the fund is ten percent of the fair market value of the designated industrial establishment. The amount of unmatched funds allocated may be supplemented with additional matched moneys from the fund, in which case the matched moneys allocated from the fund may not exceed one hundred fifty thousand dollars, to be matched equally from sources other than the fund. The amount of matched moneys which may be allocated from the fund over and above the unmatched funds may not exceed five percent of the fair market value of the designated industrial site.

(d) Funds may only be allocated to those items of construction and engineering which are essential to providing an adequate facility to serve the anticipated traffic. Funds may not be allocated for items such as storm sewers, curbs, gutters and extra pavement width unless necessary to extend or connect an existing access road.

§17-3A-5. Disbursements from fund.

Any claim of a contractor or others, not otherwise provided for, for labor done or for materials, services or supplies furnished to the division of highways pursuant to the provisions of this article shall be audited by the commissioner of the division of highways. If the commissioner determines that the claim is valid and correct, the commissioner shall issue a requisition of the division upon the state auditor therefore showing the nature of the claim and specifying whether the claim is for labor done or materials, services or supplies furnished for the construction or maintenance of state roads, or for other purposes, and the auditor shall issue his or her warrant upon the state treasurer therefore. The treasurer shall issue the warrant to the person, firm or corporation entitled thereto out of the funds in the treasury provided for that purpose. The cost 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.

The Legislature, acting through the joint committee on government and finance, shall cause an annual audit to be made by a resident independent certified public accountant of all books, accounts and records relating to all receipts and expenditures of the fund. The commissioner shall make available to the independent auditor or auditors performing the audit all of the division's books, accounts and records pertaining to all moneys received and expended. The auditor or auditors performing the audit shall make available annually the audit report with copies thereof to the members of the Legislature, the governor, the commissioner of the division of highways, the secretary of state, the state treasurer, the attorney general and the state auditor. The audit report shall be available to the public in the office of the secretary of state.

The Legislature, acting through the joint committee on government and finance, shall obtain the services of a resident independent certified public accountant for this purpose, the cost of which shall be payable out of funds appropriated by the Legislature. Any audits of the funds which have been made by any official auditing agency of the United States government shall be accepted in lieu of 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.

(a) The commissioner of the division of highways shall determine if the design, construction and safety specifications of a portion of state route 61 and county route 72, located in Kanawha County, which is eighty-five hundredths of a mile in length, and its extension to state route 3 atOrgas in Boone County, meet the specifications required by the commissioner to designate the road an industrial road.

(b) After the determination as required by subsection (a) is made and all modifications and repairs necessary to meet the specifications of the division of highways are completed, the commissioner may designate that portion of state route 61 and county route 72, located in Kanawha County, which is eighty-five hundredths of a mile in length, and its extension to state route 3 at Orgas in Boone County, an industrial road.

(c) Notwithstanding the provisions of any other section of this article, the commissioner may set the gross weight limitations applicable to that portion of state route 61 and county route 72 designated an industrial road not to exceed eighty thousand pounds.
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.

(a) The following securities are exempt from sections 301 and 403:

1. Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing;

2. Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized
as a valid obligation by the issuer or guarantor;

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution or trust company organized and supervised under the laws of any state;

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state and authorized to do business in this state;

(6) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association or similar association organized and supervised under the laws of this state;

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility or holding company which is: (A) Subject to the jurisdiction of the interstate commerce commission; (B) a registered holding company under the Public Utility Holding Company Act of 1935, or a subsidiary of such a company within the meaning of that act; (C) regulated in respect of its rates and charges by a governmental authority of the United States or any state; or (D) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(8) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, or the Midwest Stock Exchange, any other stock exchange approved by the commissioner, the National Association of Securities Dealers Automated Quotation/National Market System
(NASDAQ/NMS), or any other market system approved by the commissioner, any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so listed or approved, or any warrant or right to purchase or subscribe to any of the foregoing, except that the commissioner may adopt and promulgate rules pursuant to chapter twenty-nine-a of this code which, after notice to such exchange or market system and an opportunity to be heard, remove any such exchange or market system from this exemption if the commissioner finds that the listing requirements or market surveillance of such exchange or market system are such that the continued availability of such exemption for such exchange or market system is not in the public interest and that removal is necessary for the protection of investors;

(9) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purposes, or as a chamber of commerce or trade or professional association, and no part of the net earnings of which inures to the benefit of any person, private stockholder or individual;

(10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within twelve months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;

(11) Any investment contract issued in connection with an employees' stock purchase, savings, pension, profit-sharing or similar benefit plan if the commissioner is notified in writing thirty days before the inception of the plan or, with respect to plans which are in effect on the effective date of this chapter, within sixty days thereafter (or within thirty days before they are reopened if they are closed on the effective date of this chapter); and
(12) Any security issued by an agricultural cooperative association operating in this state and organized under article four, chapter nineteen of this code, or by a foreign cooperative association organized under the laws of another state and duly qualified to transact business in this state.

(b) The following transactions are exempt from sections 301 and 403:

(1) Any isolated nonissuer transaction, whether effected through a broker-dealer or not;

(2) Any nonissuer distribution of an outstanding security if: (A) A recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations; or (B) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest or dividends on the security;

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the commissioner may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate
or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(6) Any transaction by an executor, administrator, sheriff, marshal, constable, receiver, trustee in bankruptcy, guardian or conservator, and any transaction constituting a judicial sale;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(9) Any transaction pursuant to an offer directed by the offeror to not more than ten persons (other than those designated in subdivision (8) above) in this state during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in this state, if: (A) The seller reasonably believes that all the buyers in this state (other than those designated in subdivision (8) above) are purchasing for investment; and (B) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in subdivision (8) above); but the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the conditions in clauses (A) and (B) with or without the substitution of a limitation on remuneration;

(10) Any offer or sale of a preorganization certificate or subscription if: (A) No commission or other remuneration is paid or given directly or indirectly for soliciting
any prospective subscriber; (B) the number of subscribers
does not exceed ten; and (C) no payment is made by any
subscriber;

(11) Any transaction pursuant to an offer to existing
security holders of the issuer, including persons who at the
time of the transaction are holders of convertible
securities, nontransferable warrants or transferable
warrants exercisable within not more than ninety days of
their issuance, if: (A) No commission or other remun-
eration (other than a standby commission) is paid or given
directly or indirectly for soliciting any security holder in
this state; or (B) the issuer first files a notice specifying the
terms of the offer and the commissioner does not by order
disallow the exemption within the next five full business
days;

(12) Any offer (but not a sale) of a security for which
registration statements have been filed under both this
chapter and the Securities Act of 1933 if no stop order or
refusal order is in effect and no public proceeding or
examination looking toward such an order is pending
under either chapter.

(13) A security issued by an issuer registered as an
open-end management investment company or unit
investment trust under section (8) of the Investment
Company Act of 1940 if:

(A) (i) The issuer is advised by an investment adviser
that it is a depository institution exempt from registration
under the Investment Company Act of 1940, or that is
currently registered as an investment adviser, and has been
registered, or is affiliated with an adviser that has been
registered, as an investment adviser under the Investment
Advisers Act of 1940, for at least three years next
preceding an offer or sale of a security claimed to be
exempt under this paragraph; and the adviser has acted, or
is affiliated with an investment adviser that has acted, as
investment adviser to one or more registered investment
companies for at least three years next preceding an offer
or sale of a security claimed to be exempt under this paragraph; or

(ii) The issuer has a sponsor that has at all times throughout the three years before an offer or sale of a security claimed to be exempt under this paragraph sponsored one or more registered investment companies or unit investment trusts the aggregate total assets of which have exceeded one hundred million dollars.

(B) The division has received prior to any sale exempted herein:

(i) A notice of intention to sell which has been executed by the issuer which sets forth the name and address of the issuer and the title of the securities to be offered in this state;

(ii) A filing fee equal to one twentieth of one percent of the maximum aggregate offering price, but such fee shall not be less than fifty nor greater than fifteen hundred dollars, for open-end management companies; or

(iii) A filing fee equal to one twentieth of one percent of the maximum aggregate offering price, but such fee shall not be less than fifty nor greater than fifteen hundred dollars, for unit investment trusts.

(C) A separate notice and fee shall be required for each portfolio, series or class of an open-end management company.

(D) For the purpose of this subsection, an investment adviser is affiliated with another investment adviser if it controls, is controlled by or is under common control with the other investment adviser.

(c) The commissioner may by order deny or revoke any exemption specified in subdivision (9) or (11) of subsection (a) or in subsection (b) of this section with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all
interested parties, opportunity for hearing, and written
findings of fact and conclusions of law, except that the
commissioner may by order summarily deny or revoke
any of the specified exemptions pending final determina-
tion of any proceeding under this subsection. Upon the
entry of a summary order, the commissioner shall prompt-
dly notify all interested parties that it has been entered and
of the reasons therefor and that within fifteen days of the
receipt of a written request the matter will be set down for
hearing. If no hearing is requested and none is ordered
by the commissioner, the order will remain in effect until
it is modified or vacated by the commissioner. If a hear-
ing is requested or ordered, the commissioner, after notice
of and opportunity for hearing to all interested persons,
may modify or vacate the order or extend it until final
determination. No order under this subsection may oper-
ate retroactively. No person may be considered to have
violated section 301 or 403 by reasons of any offer or sale
effected after the entry of an order under this subsection if
he sustains the burden of proof that he did not know, and
in the exercise of reasonable care could not have known,
of the order.

(d) In any proceeding under this chapter, the burden
of proving an exemption or an exception from a defini-
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 implementa-
tion 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.

(a) Effective the first day of June, one thousand nine
hundred ninety-four, it shall be unlawful to deposit
lead-acid batteries in a solid waste facility in West Virginia;
effective the first day of June, one thousand nine hundred
ninety-six, it shall be unlawful to deposit tires in a solid
waste facility in West Virginia; and effective the first day
of January, one thousand nine hundred ninety-seven, it
shall be unlawful to deposit yard waste, including grass
clippings and leaves, in a solid waste facility in West Vir-
ginia: Provided, That such prohibitions do not apply to a
facility designed specifically to compost such yard waste
or otherwise recycle or reuse such items: Provided, how-
ever, That reasonable and necessary exceptions to such
prohibitions may be included as part of the rules promul-
gated pursuant to subsection (c) of this section.

(b) No later than the first day of May, one thousand
nine hundred ninety-five, the solid waste management
board shall design a comprehensive program to provide
for the proper handling of yard waste and lead-acid bat-
teries. No later than the first day of May, one thousand
nine hundred ninety-four, a comprehensive plan shall be
designed in the same manner to provide for the proper
handling of tires.

(c) No later than the first day of August, one thousand
nine hundred ninety-five, the division of environmental
protection shall promulgate rules, in accordance with
chapter twenty-nine-a of this code, as amended, to imple-
ment and enforce the program for yard waste and lead-acid batteries designed pursuant to subsection (b) of this section. No later than the first day of August, one thousand nine hundred ninety-four, the division of environmental protection shall promulgate rules, in accordance with chapter twenty-nine-a of said code, as amended, to implement and enforce the program for tires designed pursuant to subsection (b) of this section.

(d) For the purposes of this section, "yard waste" means grass clippings, weeds, leaves, brush, garden waste, shrub or tree prunings and other living or dead plant tissues, except that, such materials which, due to inadvertent contamination or mixture with other substances which render the waste unsuitable for composting, shall not be considered to be yard waste: Provided, That the same or similar waste generated by commercial agricultural enterprises is excluded.

(e) In promulgating the rules required by subsections (b) and (c) of this section, yard waste, as described in subsection (d) of this section, the division shall provide for the disposal of yard waste in a manner consistent with one or any combination of the following:

(1) Disposal in a publicly or privately operated commercial or noncommercial composting facility.

(2) Disposal by composting on the property from which domestic yard waste is generated or on adjoining property or neighborhood property if consent is obtained from the owner of the adjoining or neighborhood property.

(3) Disposal by open burning where such activity is not prohibited by this code, rules promulgated hereunder or municipal or county codes or ordinances.

(4) Disposal in a publicly or privately operated land-
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.

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.

(a) No person may drive a vehicle on a highway at a speed greater than is reasonable and prudent under the existing conditions and the actual and potential hazards. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highways in compliance with legal requirements and the duty of all persons to use due care.

(b) Where no special hazard exists that requires lower speed for compliance with subsection (a) of this section, the speed of any vehicle not in excess of the limits specified in this section or established as hereinafter authorized is lawful, but any speed in excess of the limits specified below in this subsection or established as hereinafter authorized is unlawful.

(1) Fifteen miles per hour in a school zone during school recess or while children are going to or leaving school during opening or closing hours. A school zone is all school property including school grounds and any street or highway abutting such school grounds and extending one hundred twenty-five feet along such street or highway from the school grounds. Such speed restriction does not apply to vehicles traveling on a controlled-access highway which is separated from the school or school grounds by a fence or barrier approved by the state road commissioner;

(2) Twenty-five miles per hour in any business or residence district;

(3) Fifty-five miles per hour on open country highways, except as otherwise provided by this chapter.

The speeds set forth in this section may be altered as authorized in sections two and three of this article.
(c) The driver of every vehicle shall, consistent with the requirements of subsection (a) of this section, drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(d) The speed limit on controlled-access highways and interstate highways, where no special hazard exists that requires a lower speed, shall be not less than fifty-five miles per hour and the speed limits specified in subsection (b) of this section do not apply.

(e) Any person who violates the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars: Provided, That any person who violates the provisions of this section after having been previously convicted under the provisions of this section for a prior offense which occurred within the preceding one-year period, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two hundred dollars: Provided, however, That any person who violates the provisions of this section after having been previously convicted under the provisions of this section for two or more prior offenses which occurred within the preceding two-year period, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars or confined in jail for not more than six months, or both: Provided further, That any person who violates subdivision (1), subsection (b) of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or shall be fined not less than one hundred dollars nor more than five hundred dollars and confined in jail for not more than six months, or both, for a violation of said subdivision after having been previously convicted for one or more violations of said subdivision which occurred within the preceding two-year period.
(f) If an owner or driver is arrested under the provisions of this section for the offense of driving above the posted speed limit on a controlled access highway or interstate highway, and if the evidence shall show that the motor vehicle was being operated at less than ten miles per hour above said speed limit, then, upon conviction thereof, such person shall be fined not more than five dollars, plus court costs.

If an owner or driver is convicted under the provisions of this section for the offense of driving above the speed limit on a controlled access highway or interstate highway of this state, and if the evidence shall show that the motor vehicle was being operated at less than ten miles per hour above said speed limit, then notwithstanding the provisions of section four, article three, chapter seventeen-b of this code, a certified abstract of the judgment on such conviction shall not be transmitted to the division of motor vehicles.

If an owner or driver is convicted in another state for the offense of driving above the maximum speed limit on a controlled access highway or interstate highway, and if the maximum speed limit in such other state is less than the maximum speed limit for a comparable controlled access highway or interstate highway in this state, and if the evidence shall show that the motor vehicle was being operated at less than ten miles per hour above what would be the maximum speed limit for a comparable controlled access highway or interstate highway in this state, then notwithstanding the provisions of section four, article three, chapter seventeen-b of this code, a certified abstract of the judgment on such conviction shall not be transmitted to the division of motor vehicles, or, if transmitted, shall not be recorded by the division, unless within a reasonable time after conviction, the person convicted has failed to pay all fines and costs imposed by the other state.

§17C-6-3a. Minimum speed regulations.

(a) No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.
(b) Whenever the commissioner or local authorities within their respective jurisdiction determine on the basis of an engineering and traffic investigation that slow speeds on any part of the highway consistently impede the normal and reasonable movement of traffic, the commissioner or such local authority may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law.

(c) Any person who violates the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars: Provided, That any person who violates the provisions of this section after having been previously convicted under the provisions of this section for a prior offense which occurred within the preceding one-year period, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two hundred dollars: Provided, however, That any person who violates the provisions of this section after having been previously convicted under the provisions of this section for two or more prior offenses which occurred within the preceding two-year period, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars or confined in jail for not more than six months, or both.

ARTICLE 19. PARTIES, PROCEDURE ON ARREST AND REPORTS IN CRIMINAL CASES.

§17C-19-2. Offenses by persons owning or controlling vehicles; owner present in vehicle to be arrested rather than driver for certain traffic violations.

It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law.

If the owner of a motor vehicle is present in the vehicle at a time when another driver is operating the vehicle upon the highways of this state: (1) With defective or improper equipment in violation of the provisions of article fifteen of this chapter; (2) in violation of the weight,
height, length or width provisions of article seventeen of
this chapter; (3) with improper registration in violation of
the provisions of article three, chapter seventeen-a of this
code; or (4) with an expired vehicle inspection decal or
certificate in violation of the provisions of article sixteen
of this chapter, the owner rather than the driver shall be
arrested for any violation enumerated herein in lieu of an
arrest of the driver. If the owner of the vehicle is not pres­
ent therein, then the driver shall be arrested for any viola­
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.]
(a) There is hereby established the state depository library clearinghouse which shall be under the direction of the state library commission.

(b) As used in this section, the following terms have the following meanings:

(1) "Public document" means any document, report, directive, bibliography, rule, newsletter, pamphlet, brochure, periodical, request for proposal, or other publication, whether in print or an unprinted format, that is paid for, in whole or in part, by funds appropriated by the Legislature and may be subject to distribution to the public;

(2) "Depository library" means a library designated to collect, catalog, maintain and make available all or particular selected state publications to the general public; and

(3) "State agency" means any state office, whether legislative, executive or judicial, including, but not limited to, any constitutional officer, department, division, bureau, board, commission or other agency which expends state appropriated funds.

(c) The state library commission shall establish a state depository library clearinghouse to receive and distribute all state public documents to the depository libraries around the state.

(d) The commission shall designate a state library staff member as director of the state publications clearinghouse for librarians. The director shall hold a graduate degree in library science from an accredited institution of higher learning. The clearinghouse shall establish requirements for eligibility to become and remain a depository library.

(e) In designating a library as a depository library the clearinghouse shall consider the geography of the state and the existing federal depository libraries. West Virginia University library, Marshall University library and the state department of archives shall be designated as complete
depository libraries that shall receive two copies of all
public documents. The clearinghouse shall also, pursuant
to the requirements it establishes hereunder, designate
other libraries around the state as depository libraries,
upon request from a library.

(f) Each state agency shall designate one person as its
documents officer while notifying the clearinghouse of his
or her identity. The documents officer shall, prior to the
public release of any state public document, deposit with
the clearinghouse a minimum of fifteen copies as required
to meet the needs of the depository library system. If
fewer than forty copies of a public document are pro-
duced, no more than two such copies are required to be
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 perform-
ance 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 perfor-
manence audits.

§4-10-5. Termination of agencies or boards following preliminary perfor-
manence reviews.
§4-10-4. Termination of departments, agencies or boards following performance audits.

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

1. (1) On the first day of July, one thousand nine hundred ninety-five: Division of tourism.

2. (2) On the first day of July, one thousand nine hundred ninety-six: Division of personnel; division of corrections; division of environmental protection; division of highways; division of labor; division of rehabilitation services; school building authority; workers' compensation; office of judges of workers' compensation; West Virginia parkways, economic development and tourism authority.

3. (3) On the first day of July, one thousand nine hundred ninety-seven: Department of health and human resources; tourism functions within the West Virginia development office; West Virginia development office; purchasing division within the department of administration; division of culture and history.

4. (4) On the first day of July, two thousand one: Division of natural resources.

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

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

1. (1) On the first day of July, one thousand nine hundred ninety-five: Commission on charitable organizations; information system advisory commission; West Virginia labor-management council; rural health initiative advisory panel.

*Clerk's Note: This section was also amended by S. B. 567 (Chapter 88), which passed prior to this act.*
(2) On the first day of July, one thousand nine hundred ninety-six: U.S. geological survey program and whitewater commission within the division of natural resources; state geological and economic survey; unemployment compensation; board of investments; state building commission; parks functions of the division of natural resources; public employees insurance agency advisory board; juvenile facilities review panel; West Virginia cable television advisory board; emergency medical services advisory council; office of water resources within the division of environmental protection; West Virginia state police; human rights commission; board of examiners in counseling.

(3) On the first day of July, one thousand nine hundred ninety-seven: The driver's licensing advisory board; West Virginia health care cost review authority; governor's cabinet on children and families; oil and gas conservation commission; child support enforcement division; West Virginia commission for national and community service; West Virginia contractors' licensing board.

(4) On the first day of July, one thousand nine hundred ninety-eight: State lottery commission; the following divisions or programs of the department of agriculture: Meat inspection program and soil conservation committee; women's commission; state board of risk and insurance management; board of examiners of land surveyors; commission on uniform state laws; council of finance and administration; forest management review commission; West Virginia's membership in the interstate commission on the Potomac River basin; legislative oversight commission on education accountability; board of examiners in speech pathology and audiology; board of social work examiners; family law masters system.

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

(6) On the first day of July, two thousand: Family protection services board; environmental quality board;
West Virginia's membership in the Ohio River valley water sanitation commission; ethics commission; oil and gas inspectors' examining board; veterans' council; West Virginia's membership in the southern regional education board.

(7) On the first day of July, two thousand one:
Marketing and development division of the department of agriculture; real estate commission; board of architects; public employees insurance agency; public employees insurance agency finance board; center for professional 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.
"The state office building commission of West Virginia," heretofore created, shall continue in existence but on
and after the ninth day of February, one thousand nine
hundred sixty-six, shall be known and designated as "The
state building commission of West Virginia" and shall
continue as a body corporate and as an agency of the state
of West Virginia. On and after the date aforesaid, the
commission shall consist of the governor, attorney general,
state treasurer and four additional members to be appoint-
ed by the governor by and with the advice and consent of
the Senate. The terms of office for said members to be
appointed by the governor shall be four years, except that
the terms of office of the first four members so appointed
by the governor shall be for one, two, three and four years,
respectively. No more than three of such members so
appointed by the governor shall be members of the same
political party, nor shall any of said members be members
or employees of the executive, legislative or judicial
branches of government of West Virginia or any political
subdivision thereof. The governor shall be chairman of
the commission. The secretary of state shall be a member
of the commission and serve as its secretary, but shall not
have the right to vote upon matters before the commis-
sion. All members of the commission shall be citizens and
residents of this state. The members of the commission
shall be paid or reimbursed for their necessary expenses
incurred under this article, but shall receive no compensa-
tion for their services as members or officers of the com-
misson: Provided, That each member of the commission
appointed by the governor shall, in addition to such reim-
bursement for necessary expenses, receive an amount not
to exceed the same compensation as is paid to members of
the Legislature for their interim duties as recommended
by the citizens legislative compensation commission and
authorized by law for each day or substantial portion
thereof that he is engaged in the work of the commission.
Such expenses and per diem shall be paid solely from
funds provided under the authority of this article, and the
commission shall not proceed to exercise or carry out any
authority or power herein given it to bind said commission.
beyond the extent to which money has been provided under the authority of this article. On or before the fifteenth day of each month, the commission shall prepare and transmit to the president and minority leader of the Senate and the speaker and the minority leader of the House of Delegates a report covering the activities of the said commission for the preceding calendar month.

Pursuant to the provisions of article ten, chapter four of this code, the Legislature hereby finds and declares that the state building commission should be continued and reestablished. Accordingly, notwithstanding the provisions of article ten, chapter four of this code, the state building commission shall continue to exist until the first 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.
(a) The public employees insurance agency, heretofore created, is continued, and shall consist of the director, the finance board, the advisory board and such employees as may be authorized by law. The director shall be appointed by the governor, with the advice and consent of the Senate. He or she shall serve at the will and pleasure of the governor, unless earlier removed from office for cause as provided by law. The director shall have at least three years experience in health insurance administration prior to appointment as director. The director shall receive an annual salary established by the governor not to exceed fifty-five thousand dollars and actual expenses incurred in the performance of official business. The director shall employ such administrative, technical and clerical employees as shall be required for the proper administration of the insurance programs herein provided. The director shall perform such duties as are required of him or her under the provisions of this article and shall be the chief administrative officer of the public employees insurance agency.

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

(c) The director shall be responsible for the administration and management of the public employees insurance agency as provided for in this article and in connec-
tion therewith shall have the power and authority to make all rules and regulations necessary to effectuate the provisions of this article. Nothing in section four or five of this article shall limit the director's ability to manage on a day-to-day basis the group insurance plans required or authorized by this article, including, but not limited to, administrative contracting, studies, analyses and audits, eligibility determinations, utilization management provisions and incentives, provider negotiations, provider contracting and payment, designation of covered and noncovered services, offering of additional coverage options or cost containment incentives, pursuit of coordination of benefits and subrogation, or any other actions which would serve to implement the plan or plans designed by the finance board.

(d) The public employees insurance agency shall terminate in the manner provided in article ten, chapter four of this code, on the first day of July, two thousand one, unless extended by legislation enacted before the termination date: Provided, That the public employees insurance agency advisory board, created in section six of this article, shall terminate in the manner provided in article ten, chapter four of this code on the first day of July, 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, chapter five of the code of West Virginia, one thousand nine hundred 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 amended, be amended and reenacted to read as follows:
ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

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

(a) There is hereby created the public employees insurance agency finance board, which shall consist of the director and four members appointed by the governor with the advice and consent of the Senate for terms of four years and until the appointment of their successors: Provided, That the members initially appointed by the governor shall be appointed not later than the tenth day of September, one thousand nine hundred ninety, and may serve and may perform the duties required by this article until such time as the Senate may convene to give its advice and consent. Of the members first appointed, one shall be appointed for a term of one year, one for two years, one for three years and one for four years. Members may be reappointed for successive terms. No more than three members (including the director) may be of the same political party.

(b) Of the four members appointed by the governor, one member shall represent the interests of education employees, one shall represent the interests of public employees and two shall be selected from the public at large. The two members appointed from the public shall each have experience in the financing, development or management of employee benefit programs. All new appointments made subsequent to the first day of July, one thousand nine hundred ninety-four, shall be selected to represent the different geographical areas within the state and all members shall be residents of West Virginia. No member may be removed from office by the governor except for official misconduct, incompetence, neglect of duty, neglect of fiduciary duty or other specific responsibility imposed by this article, or gross immorality.

(c) The director shall serve as chairperson of the finance board, which shall meet at such time and place as shall be specified by the call of the director or upon the
written request to the director of at least two members. Notice of each meeting shall be given in writing to each member by the director at least three days in advance of the meeting. Three members shall constitute a quorum. The board shall pay each member the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties.

(d) Pursuant to the provisions of article ten, chapter four of this code, the finance board shall terminate on the first day of July, two thousand one, unless extended by legislation enacted before the termination date.

(e) Upon termination of the board and notwithstanding any provisions in this article to the contrary, the director is authorized to assess monthly employee premium contributions and to change the types and levels of costs to employees only in accordance with this subsection. Any assessments or changes in costs imposed pursuant to this subsection shall be implemented by rules and regulations of the director promulgated pursuant to the provisions of chapter twenty-nine-a of this code. Any employee assessments or costs authorized by the finance board shall remain in effect until amended by rule or regulation of the director promulgated pursuant to this 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, heretofore created and established by former section seven of this article, shall be continued for the purpose of developing, with the director, standards for emergency medical service personnel and for the purpose of providing advice to the office of emergency medical services and the director thereof, as established by section four of this article with respect to reviewing and making recommendations for and providing assistance to the establishment and maintenance of adequate emergency medical services for all portions of this state.

12 The council shall have the duty to advise the director in all matters pertaining to his duties and functions in relation to carrying out the purposes of this article.

15 The council shall be composed of thirteen members appointed by the governor by and with the advice and consent of the Senate. The mountain state emergency medical services association shall submit to the governor a list of six names of representatives from their association and a list of three names shall be submitted to the governor of representatives of their respective organizations by the West Virginia association of county officials, West Virginia state firemen's association, West Virginia
hospital association, West Virginia state medical association, West Virginia chapter of the American college of emergency physicians, West Virginia emergency medical services administrators association and the state department of education. The governor shall appoint from the respective lists submitted two persons who represent the mountain state emergency medical services association, one of whom shall be a paramedic and one of whom shall be an emergency medical technician, and one person from the West Virginia association of county officials, West Virginia state firemen's association, West Virginia hospital association, West Virginia state medical association, West Virginia chapter of the American college of emergency physicians, West Virginia emergency medical services administrators association and the state department of education. The governor shall in addition appoint one person to represent emergency medical service providers operating within the state, one person to represent small emergency medical service providers operating within this state and two persons to represent the general public. Not more than five of the members shall be appointed from any one congressional district. No member shall serve more than four consecutive terms.

The council shall choose its own chairman and meet at the call of the director at least twice a year.

The members of such council may be reimbursed for any and all reasonable and necessary expenses actually incurred in the performance of their duties.

The Legislature hereby finds and declares that the emergency medical services advisory council should be continued and reestablished. Accordingly, notwithstanding the provisions of article ten, chapter four of this code, the emergency medical services advisory council shall continue to exist until the first day of July, one thousand nine hundred ninety-six, to allow for completion of a preliminary performance review through the joint 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.

The office of state road commissioner heretofore existing is hereby continued in all respects as heretofore constituted, but is hereby designated as the West Virginia division of highways. All duties and responsibilities heretofore imposed upon the state road commissioner and the powers exercised by him are hereby transferred to the West Virginia division of highways and such duties and responsibilities shall be performed by the said division and the powers may be exercised thereby through the West Virginia commissioner of highways, who shall be the chief executive officer of the division.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia division of highways shall continue to exist until the first day of July, one thousand
nine hundred ninety-six, to allow for monitoring of compliance with recommendations contained in the full performance audit and to allow for further review of the division by the joint committee on government operations.

There is hereby continued the office of West Virginia commissioner of highways, who shall be appointed by the governor, by and with the advice and consent of the Senate, subject to the provisions of section two-a, article seven, 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.

The Legislature hereby finds and declares that the school building authority shall continue to exist until the first day of July, one thousand nine hundred ninety-six, to allow for the completion of a full performance audit through the joint committee on government operations pursuant to the provisions of article ten, chapter four of this code.
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.

The division of rehabilitation services is hereby transferred to the department of education and the arts created in article one, chapter five-f of this code. The secretary shall appoint any such board, commission or council over the division to the extent required by federal law to qualify for federal funds for providing rehabilitation services for disabled persons. The secretary and such boards, commissions or councils as he or she is required by federal law to appoint are authorized and directed to cooperate with the federal government to the fullest extent in an effort to provide rehabilitation services for disabled persons.

References in this article or article ten-b of this chapter to the state board of vocational education, the state board of rehabilitation or the state board as the governing board of vocational or other rehabilitation services or facilities shall mean the secretary of education and the arts. All references in the code to the division of vocational rehabilitation shall mean the division of rehabilitation services and all references to the director of the division of voca-
tional rehabilitation shall mean the director of the division of rehabilitation services.

Notwithstanding the provisions of article ten, chapter four of this code, the division of rehabilitation services shall terminate on the first day of July, one thousand nine hundred ninety-six, to allow for the completion of a full performance audit by the joint committee on government 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, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation 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.

(a) Teaching is a profession that directly correlates to the social and economic well-being of a society and its citizens. Superior teaching is essential to a well educated and productive populace. The intent of this article is to recognize the value of professional involvement by experienced educators in building and maintaining a superior teaching force and to establish avenues for applying such
involvement.

In furtherance of this intent, the center for professional development is continued and reestablished. The general mission of the center is to study matters relating to the quality of teaching and management in the schools of West Virginia and to promote the implementation of programs and practices to assure the highest quality in such teaching and management. The center shall also perform such duties as are assigned to it by law.

The center shall consist of nine persons as members: The secretary of education and the arts, ex officio; the state superintendent of schools, ex officio; one member of the state board of education, elected by the state board; two experienced educators, of whom one shall be a working classroom teacher, appointed by the governor by and with the advice and consent of the Senate; and four citizens of the state who are knowledgeable in matters relevant to the issues addressed by the center appointed by the governor by and with the advice and consent of the Senate. No two appointees shall be residents within the same region. The state superintendent of schools shall convene the first meeting of the center to elect a chair, vice chair and secretary.

The election and appointment of members shall be made as soon as possible after the effective date of this section. Of the initial appointed members, three shall be appointed for two-year terms and four shall be appointed for four-year terms. All successive appointments shall be for four-year terms.

The center for professional development shall meet at least quarterly and the appointed members shall be paid for reasonable and necessary expenses actually incurred in the performance of their official duties from funds appropriated or otherwise made available for such purposes upon submission of an itemized statement therefor.

The center may employ and fix the compensation of an executive director and such other persons as may be
necessary to carry out the mission and duties of the center.
When practical, personnel employed by state higher edu-
cation agencies and state, regional and county public edu-
cation agencies shall be made available to the center to
assist in the operation of projects of limited duration.

The center shall contract with existing agencies or
agencies created after the effective date of this section or
others to provide training programs in the most efficient
manner. Existing programs currently based in agencies of
the state shall be continued in the agency of their origin
unless the center establishes a compelling need to transfer
or cancel the existing program. The center shall recom-
mend to the governor the transfer of funds to the provid-
ing agency, if needed, to provide programs approved by
the center.

(b) To assist the center for professional development
in the performance of its duties related to teacher educa-
tion and professional development, there is continued an
advisory council on professional development which shall
consist of eleven persons as follows: An employee of the
center who shall chair the advisory council; two shall be
professors or associate or assistant professors of teacher
education, one from a public institution and one from a
private institution of higher education in this state offering
programs leading to certification to teach in the public
schools of this state; two county school superintendents,
one of whom shall be from a district with a student enroll-
ment above the statewide average and one of whom shall
be from a district with a student enrollment below such
average; two school principals, one of whom shall be from
a school including elementary grade levels and one of
whom shall be from a school including secondary grade
levels; and four professional instructional personnel, two
of whom shall be from a school including elementary
grade levels and two of whom shall be from a school in-
cluding secondary grade levels. To the extent possible,
the principals and instructional personnel shall be appoint-
ed from the members of county staff development coun-
cils. Except for the employee of the center, the members shall be appointed jointly by the secretary of education and the arts and the state superintendent for two-year terms which overlap so that one member from each of the classes shall be appointed in each successive year, except that two members from the professional instructional personnel class shall be appointed in each successive year. No two members of the council shall be from the same college or university or school district. Members of the council shall be granted release time from their employment for attending meetings of the council.

Pursuant to the provisions of article ten, chapter four of this code, the center for professional development and advisory council shall continue to exist until the first day 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.
(a) In recognition that article ten, chapter four of this code requires a preliminary performance review of the rural resource division of the department of agriculture and that performance standards must be stated before such audit can be performed, the rural resources division is hereby formally established and renamed the marketing and development division in the department of agriculture. The duties of the division are to establish marketing, promotional and development programs to advance West Virginia agriculture in the domestic and international markets; to provide grading, inspection and market news services to the various elements of the West Virginia agricultural industry; and to regulate and license individuals involved in the marketing of agricultural products.

(b) After having conducted a preliminary performance review and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares the marketing and development division should be continued and reestablished. Accordingly, notwithstanding the provisions of section four of said article, the marketing and development division shall continue 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.

A division of natural resources, the office of director of the division of natural resources, and a natural resources commission are hereby created and established in the state government with jurisdiction, powers, functions, services and enforcement processes as provided in this chapter and elsewhere by law.

Pursuant to the provisions of article ten, chapter four of this code, the division of natural resources shall continue to exist until the first day of July, two thousand one.

Pursuant to the provisions of article ten, chapter four of this code, the parks section and parks functions of the division of natural resources, transferred to the division of natural resources pursuant to the provisions of section twelve, article one, chapter five-b of this code, shall continue to exist within the division of natural resources until the first day of July, one thousand nine hundred ninety-six, to allow for monitoring of compliance with recommendations contained in the preliminary performance review and to allow for further review by the joint committee on government 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 joint committee on government operations, pursuant to article ten, chapter four of this code, the Legislature hereby finds and declares that the division of labor should be continued and reestablished. Accordingly, notwithstanding the provisions of article ten, chapter four of this code, the division of labor shall continue to exist until the first day of July, one thousand nine hundred ninety-six, to allow for monitoring of compliance with recommendations contained in the performance audit and to allow for further review of the division by the joint committee on government operations.
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.

Pursuant to the provisions of article ten, chapter four of this code, the division of environmental protection shall continue to exist until the first day of July, one thousand nine hundred ninety-six, to allow for the completion of a performance audit by the joint committee on government operations.

CHAPTER 232

(S. B. 194—By Senators Wagner, Bailey, Bowman, Buckaiew, 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.

Consistent with the provisions of this article the director shall, at a minimum, maintain the following offices within the division:

1. The office of abandoned mine lands and reclamation, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of article two of this chapter;

2. The office of mining and reclamation, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles three and four of this chapter;

3. The office of air quality, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of article five of this chapter;

4. The office of oil and gas, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles six, seven, eight, nine and ten of this chapter;

5. The office of water resources, which is charged, at a minimum, with administering and enforcing, under the
supervision of the director, the provisions of articles

(6) The office of waste management, which is charged,
at a minimum, with administering and enforcing, under
the supervision of the director, the provisions of articles
fifteen, sixteen, seventeen, eighteen, nineteen and twenty of
this chapter.

Pursuant to the provisions of article ten, chapter four
of this code, the office of water resources within the
division of environmental protection shall continue to
exist until the first day of July, one thousand nine hundred
ninety-six, to allow for the completion of a preliminary
performance review by the joint committee on govern-
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.

Pursuant to the provisions of article ten, chapter four
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:

§29-19-10. Information filed to become public records.
§29-19-11. Records to be kept by charitable organizations, professional
fund-raising counsel and professional solicitors.


1 As used in this article:

2 (1) "Charitable organization" means a person who is or
holds itself out to be a benevolent, educational, philanthropic, humane, patriotic, religious or eleemosynary organization, or any person who solicits or obtains contributions solicited from the public for charitable purposes, or any person who in any manner employs any appeal for contributions which may be reasonably interpreted to suggest that any part of such contributions will be used for charitable purposes. A chapter, branch, area, office or similar affiliate or any person soliciting contributions within the state for a charitable organization which has its principal place of business outside the state is a charitable organization for the purposes of this article.

(2) "Contribution" means the promise or grant of any money or property of any kind or value.

(3) "Solicit" and "solicitation" means the request or appeal, directly or indirectly, for any contribution on the plea or representation that such contribution will be used for a charitable purpose, including, without limitation, the following methods of requesting such contribution:

(a) Any oral or written request;

(b) Any announcement to the press, over the radio or television, or by telephone or telegraph, concerning an appeal or campaign to which the public is requested to make a contribution for any charitable purpose connected therewith;

(c) The distribution, circulation, posting or publishing of any handbill, written advertisement or other publication which directly or by implication seeks to obtain public support; or

(d) The sale of, offer or attempt to sell, any advertisement, advertising space, subscription, ticket or any service or tangible item in connection with which any appeal is made for any charitable purpose or where the name of any charitable or civic organization is used or referred to in any such appeal as an inducement or reason for making any such sale, or when or where in connection with any
such sale, any statement is made that the whole or any part
of the proceeds from any such sale will be donated to any
charitable purpose.

"Solicitation", as defined herein, shall be deemed to
occur when the request is made, at the place the request is
received, whether or not the person making the same
actually receives any contribution.

(4) "Federated fund-raising organization" means a
federation of independent charitable organizations which
have voluntarily joined together, including, but not limited
to, a united fund or community chest, for purposes of
raising and distributing money for and among themselves
and where membership does not confer operating
authority and control of the individual agencies upon the
federated group organization.

(5) "Parent organization" is that part of a charitable
organization which coordinates, supervises or exercises
control over policy, fund raising and expenditures, or
assists, receives funds from or advises one or more
chapters, branches or affiliates in the state.

(6) "Person" means any individual, organization, trust,
foundation, group, association, partnership, corporation,
society or any combination of them.

(7) "Professional fund-raising counsel" means any
person who for a flat fixed fee under a written agreement
plans, conducts, manages, carries on, advises or acts as a
consultant, whether directly or indirectly, in connection
with soliciting contributions for, or on behalf of any
charitable organization but who actually solicits no
contributions as a part of such services. A bona fide
salaried officer or employee of a charitable organization
maintaining a permanent establishment within the state
shall not be deemed to be a professional fund-raising
counsel.

(8) "Professional solicitor" means any person who, for
a financial or other consideration, solicits contributions
for, or on behalf of a charitable organization, whether such solicitation is performed personally or through said person's agents, servants or employees specially employed by, or for a charitable organization, who are engaged in the solicitation of contributions under the direction of such person, or a person who plans, conducts, manages, carries on, advises or acts as a consultant to a charitable organization in connection with the solicitation of contributions but does not qualify as "professional fund-raising counsel" within the meaning of this article. A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the state is not a professional solicitor.

No attorney, investment counselor or banker, who advises any person to make a contribution to a charitable organization, shall be considered, as the result of such advice, a professional fund-raising counsel or a professional solicitor.

§29-19-10. Information filed to become public records.

Registration statements and applications, reports, professional fund-raising counsel contracts or professional solicitor contracts, and all other documents and information required to be filed under this article or by the secretary of state shall become public records in the office of the secretary of state, and shall be open to the general public for inspection at such time and under such conditions as the secretary of state may prescribe.

§29-19-11. Records to be kept by charitable organizations, professional fund-raising counsel and professional solicitors.

Every charitable organization, professional fund raising counsel and professional solicitor subject to the provisions of this article shall, in accordance with the rules prescribed by the secretary of state, keep true fiscal records as to its activities in this state as may be covered by this article in such form as will enable it accurately to provide the information required by this article. Upon
demand, such records shall be made available to the
secretary of state, or the attorney general for inspection.
Such records shall be retained for a period of at least three
years after the end of the period of registration to which
they relate.


(a) The secretary of state, upon his or her own motion,
or upon complaint of any person, may, if he or she finds
reasonable ground to suspect a violation, investigate any
charitable organization, professional fund-raising counsel
or professional solicitor to determine whether such
charitable organization, professional fund-raising counsel
or professional solicitor has violated the provisions of this
article or has filed any application or other information
required under this article which contains false or
misleading statements.

(b) In addition to the foregoing, any person who
willfully and knowingly violates any provision of this
article, or who shall willfully and knowingly give false or
incorrect information to the secretary of state in filing
statements or reports required by this article, whether such
report or statement is verified or not, shall be guilty of a
misdemeanor, and, upon conviction thereof, shall be fined
upon first conviction thereof in an amount not less than
one hundred dollars nor more than five hundred dollars,
or be imprisoned in the county jail for not more than six
months, or be both fined and imprisoned, and for the
second and any subsequent offense to pay a fine of not
less than five hundred dollars nor more than one thousand
dollars, or be imprisoned for not more than one year, or
be both fined and imprisoned.

(c) Whenever the secretary of state, attorney general or
any prosecuting attorney has reason to believe that any
charitable organization, professional fund-raising counsel
or professional solicitor is operating in violation of the
provisions of this article, the secretary of state, attorney
general or prosecuting attorney may bring an action in the
name of the state against such charitable organization and
its officers, such professional fund-raising counsel or
professional solicitor or any other person who has violated
this article in the circuit court of the county wherein the
cause of action arises to enjoin such charitable organiza-
tion or professional fund-raising counsel or professional
solicitor or other person from continuing such violation,
solicitation or collection, or from engaging therein or
from doing any acts in furtherance thereof and for such
other relief as the court deems appropriate.

(d) In addition to the foregoing, any charitable
organization, professional fund-raising counsel or
professional solicitor who willfully and knowingly violates
any provisions of this article by employing any device,
scheme, artifice, false representation or promise with intent
to defraud or obtain money or other property shall be
guilty of a misdemeanor, and, upon conviction thereof, for
a first offense, shall be fined not less than one hundred
dollars nor more than five hundred dollars, or be confined
in the county jail not more than six months, or be both
fined and imprisoned; and for a second and any
subsequent offense, shall be fined not less than five
hundred dollars nor more than one thousand dollars, or
confined in the county jail not more than one year, or be
both fined and imprisoned.

At any proceeding under this section, the court shall
also determine whether it is possible to return to the
contributors the contributions which were thereby
obtained.

If the court finds that the said contributions are readily
returnable to the original contributors, it may order the
money to be placed in the custody and control of a
general receiver, appointed pursuant to the provisions of
article six, chapter fifty-one of this code, who shall be
responsible for its proper disbursement to such contribu-
tors.

If the court finds that: (1) It is impossible to obtain
the names of over one half the persons who were solicited
and in violation of this article, or (2) if the majority of
individual contributions was of an amount less than five
dollars, or (3) if the cost to the state of returning these
contributions is equal to or more than the total sum to be
refunded, the court shall order the money to be placed in
the custody and control of a general receiver appointed
pursuant to the provisions of article six, chapter fifty-one
of this code. The general receiver shall maintain this
money pursuant to the provisions of article eight, chapter
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.

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

The board shall pay each member the same compensa-
tion and expense reimbursement as is paid to members of
the Legislature for their interim duties as recommended
by the citizens legislative compensation commission and
authorized by law for each day or portion thereof
engaged in the discharge of official duties.

Pursuant to the provisions of chapter twenty-nine-a of
this code, the board, in addition to the authority, powers
and duties granted to it by this article, has the authority to
promulgate rules relating to the regulation of the practice
of architecture and may include rules pertaining to the
registration of architects. Any disciplinary proceedings
held by the board shall be held in accordance with the
provisions of the administrative procedures act for
contested cases pursuant to the provisions of article five of
said chapter.

Pursuant to the provisions of article ten, chapter four
of this code, the West Virginia board of architects shall
continue to exist until the first day of July, two thousand
one.
CHAPTER 236

(H. B. 2277—By Delegates J. Martin, Love, Michael, Osborne, Nesbitt, Harrison and Wilson)

[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.

There shall be a commission known as the "West Virginia Real Estate Commission", which commission shall be a corporation and as such may sue and be sued, may contract and be contracted with and shall have a common seal. The commission shall consist of three persons to be appointed by the governor by and with the advice and consent of the Senate. Two of such appointees each shall have been a resident and a citizen of this state for at least six years prior to his or her appointment and whose vocation for at least ten years shall have been that of a real estate broker or real estate salesperson and the third shall be a representative of the public generally. Members in office on the date this section becomes effective shall continue in office until their respective terms expire. The
term of the members of said commission shall be for four years and until their successors are appointed and qualify. No more than two members of such commission shall belong to the same political party. No member shall be a candidate for or hold any other public office or be a member of any political committee while acting as such commissioner. In case any commissioner be a candidate for or hold any other public office or be a member of any political committee, his or her office as such commissioner shall ipso facto be vacated. Members to fill vacancies shall be appointed by the governor for the unexpired term. No member may be removed from office by the governor except for official misconduct, incompetency, neglect of duty, gross immorality or other good cause shown and then only in the manner prescribed by law for the removal by the governor of state elective officers. The governor shall designate one member of the commission as the chairman thereof and the members shall choose one of the members thereof as secretary. Two members of the commission shall constitute a quorum for the conduct of official business.

(a) The commission shall do all things necessary and convenient for carrying into effect the provisions of this article and may from time to time promulgate reasonable, fair and impartial rules and regulations in accordance with the provisions of article three, chapter twenty-nine-a of this code. The board shall pay each member the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. (b) The commission shall employ an executive director and such clerks, investigators and assistants as it shall deem necessary to discharge the duties imposed by the provisions of this article and to effect its purposes, and the commission shall determine the duties and fix the compensation of such executive director, clerks,
investigators and assistants, subject to the general laws of
the state.

(c) The commission shall adopt a seal by which it shall
authenticate its proceedings. Copies of all records and
papers in the office of the commission, duly certified and
authenticated by the seal of said commission, shall be
received in evidence in all courts equally and with like
effect as the original. All records kept in the office of the
commission under authority of this article shall be open to
public inspection under reasonable rules and regulations
as shall be prescribed by the commission.

(d) After having conducted a preliminary perfor-
manence review through its joint committee on government
operations, pursuant to article ten, chapter four of this
code, the Legislature hereby finds and declares that the
West Virginia real estate commission should be continued
and reestablished. Accordingly, notwithstanding the provi-
sions of said article, the West Virginia real estate commis-
sion shall continue to exist until the first day of July, two
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 supervi-
sion 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; author-
rizing 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.

The chief inspector shall formulate, prescribe and install a system of accounting and reporting in conformity with the provisions of this article, which shall be uniform for all local governmental offices and agencies and for all public accounts of the same class and which shall exhibit true accounts and detailed statements for all public funds collected, received and expended for any purpose by all local governmental officers, employees or other persons. Such accounts shall show the receipt, use and disposition of all public property under the control of such local governmental officers, employees or other persons, and any income derived therefrom and of all sources of such public income, the amounts due and received from each source, all receipts, vouchers and other documents kept or required to be kept and necessary to identify and prove the validity of every transaction, all statements and reports made or required to be made for the internal administration of the office to which they pertain and all reports published or required to be published for the information of the people regarding any and all details of the financial administration of such public affairs. The chief inspector shall prescribe receipt forms for all such local governmental offices and agencies and shall formulate, prescribe and install a uniform system with respect to the utilization, processing and disposition of receipts given as evidence of moneys or property collected or received by such local governmental offices and agencies. The chief inspector shall also formulate, prescribe and install a system of ac-
counting for the civil accounts of the offices of the magis-
trates, which shall exhibit true accounts and detailed state-
ments of the services rendered, the name and address of
the persons for whom rendered, the charges made and
collected therefor and such other information as may be
necessary to identify the transaction.

The chief inspector is vested and charged with the
duties of administering and enforcing the provisions of
this article and is authorized to promulgate and to enforce
such rules as may be necessary to implement such admin-
istration and enforcement. The power and authority herein
granted shall be in addition to all other power and authori-
ty vested by law in the state tax commissioner as chief
inspector or otherwise.

§6-9-8. Payment of cost of services of chief inspector; revolv-
ing fund.

The cost of any service or act performed by the chief
inspector under the provisions of this article as to any
county or district office, officer or institution shall be paid
by the county commission of the county; the cost thereof
as to any board of education shall be paid by such board;
the cost thereof as to any municipal corporation shall be
paid by the authorities thereof: Provided, That in munici-
palities in which the total revenue from all taxes does not
exceed the sum of two thousand dollars annually, such
cost including the per diem and all actual costs and ex-
penses of such services shall not exceed the sum of sixty
dollars. The cost of this service shall be the actual cost
and expense of the service performed, including transpor-
tation, hotel, meals, materials, per diem compensation of
deputies, assistants, clerical help and such other costs as
may be necessary to enable them to perform the services
required, but such costs shall not exceed the sum of two
thousand dollars for services rendered to a Class III or a
Class IV municipality: Provided, however, That the chief
inspector may charge up to an additional one thousand
dollars for costs incurred for each service or act per-
formed for a utility or park system owned by a Class III or
Class IV municipality. The chief inspector shall render to
the agency liable for such cost a statement thereof as soon
after the same was incurred as practicable and it shall be
the duty of such agency to allow the same and cause it to
be paid promptly in the manner that other claims and accounts are allowed and paid and such total amount shall constitute a debt against the local agency due the state. Whenever there is in the state treasury a sum of money due any such county commission, board of education or municipality from any source, upon the application of the chief inspector, the same shall be at once applied on the debt aforesaid against the county commission, board of education or municipality and the fact of such application of such fund shall be reported by the auditor to the said county commission, board of education or municipality, which report shall be a receipt for the amount therein named. All money received by the chief inspector from this source shall be paid into the state treasury, shall be deposited to the credit of an account to be known as chief inspector's fund and shall be expended only for the purpose of covering the cost of such services, unless otherwise directed by the Legislature. The cost of any such examination, service or act by the chief inspector made necessary, or such part thereof as was made necessary, by the willful fault of any officer or employee, may be recovered by the chief inspector from such person, on motion, on ten days' notice in any court having jurisdiction.

For the purpose of permitting payments to be made at definite periods to deputy inspectors and assistants for per diem compensation and expenses, there is hereby created a revolving fund for the chief inspector's office. The fund shall be accumulated and administered as follows:

(1) There shall be appropriated from the state fund general revenue the sum of twenty-five thousand dollars to be transferred to this fund to create a revolving fund which, together with other payments into this fund as provided in this article, shall constitute a fund to defray the cost of this service.

(2) Payments received for the cost of services of the chief inspector's office shall be deposited into this revolving fund, which shall be known as the chief inspector's fund.

(3) Any appropriations made to this fund shall not be deemed to have expired at the end of any fiscal period.
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.

For the purpose of giving effect to the "Tax Limitations Amendment" this chapter shall be interpreted in accordance with the following definitions, unless the context clearly requires a different meaning:

"Owner" means the person who is possessed of the freehold, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or deed of trust securing a debt or liability is deemed the owner until the mortgagee or trustee takes possession, after which such mortgagee or trustee shall be deemed the owner. A person who has an equitable estate of freehold, or is a purchaser of a freehold estate who is in possession before transfer of legal title is also deemed the owner.

"Used and occupied by the owner thereof exclusively for residential purpose" means actual habitation by the
owner of all or a portion of a parcel of real property as a place of abode to the exclusion of any commercial use. If a license is required for an activity on the premises or if an activity is conducted thereon which involves the use of equipment of a character not commonly employed solely for domestic as distinguished from commercial purposes, the use may not be construed to be exclusively residential.

"Farm" means a tract or contiguous tracts of land used for agriculture, horticulture or grazing and includes all real property designated as "wetlands" by the United States army corps of engineers or the United States fish and wildlife service.

"Occupied and cultivated" means subjected as a unit to farm purposes, whether used for habitation or not, and although parts may be lying fallow, in timber or in waste-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.

(a) Notwithstanding any other provisions of this article, a coal waste disposal power project designed, constructed or installed to reclaim, burn and dispose of coal wastes in compliance with applicable air and water quality standards and which meets the criteria for financing under section twenty-one, article two-c, chapter thirteen of this code shall, for purposes of section three of this article, be subject to the provisions of this section.

(b) All items of personal property installed at a coal waste disposal power project shall be deemed a pollution control facility for purposes of this article, subject to an allocation of value as contemplated by section four of this article, as provided by this subsection. In allocating value, the tax commissioner shall accord salvage valuation to a portion of the total personal property at the project. The portion shall be equal to the ratio of tons of West Virginia coal waste burned and disposed of at the project to the total tons of coal and coal waste burned and disposed at the project during the previous calendar year. Provided, that with respect to a project placed in service prior to the effective date of this section at which project such ratio for the year ended the thirty-first day of December, one thousand nine hundred ninety-four, was less than seventy percent, the tax commissioner shall award salvage valuation to sixty-three percent of the total personal property at the project for tax years after the effective date of this section, notwithstanding the actual ratio for any calendar year. The remaining portion of the personal property at the project, but in no event less than twenty-five percent of that total, shall be valued without regard to this article: Provided, however, That the facility shall not qualify as a pollution control facility under this subsection if it burns coal, coal waste or fuel waste from outside the state of West Virginia after the effective date of this section.

The provisions of this section are not intended to be applied retroactively.
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-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.

Notwithstanding any other provisions of law, inventory of vehicles, as that term is defined in section one, article one, chapter seventeen-b of this code, that is held for sale or lease by new or used vehicle dealers licensed under the provisions of article *[six-c,] chapter seventeen-a of this code, provided that house trailers and factory-built homes shall be included within the scope of this article, consisting 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.
unit of which, upon its sale to a retail purchaser, must, as a matter of law, be titled in the name of the retail purchaser and registered with the division of motor vehicles, shall be appraised for assessment purposes, as set forth in this article.

This article does not apply to units of inventory which are included in fleet sales, transactions between dealers or classified as heavy duty trucks of sixteen thousand pounds or more gross vehicular weight. For purposes of this article, inventory subject to the provisions of this article shall be denoted "dealer vehicle inventory".


For purposes of appraisal, the market value of dealer vehicle inventory, as of the first day of July of each year, shall be the gross sales or total annual sales of such inventory made by such dealer during the preceding calendar year, divided by twelve, for a dealer with respect to which or whom sales were made during the entire preceding year. For the purposes of this article, "gross sales" or "total annual sales" means the amount received in money, credits, property, services or other consideration from sales within this state without deduction on account of the cost of the property sold, amounts paid for interest or any other expenses whatsoever. Gross sales or total annual sales shall not be reduced by the value of an item of tangible personal property which is traded in for the purpose of reducing the purchase price of the item purchased. In the case of dealers who were not in business during the entire calendar year immediately preceding the first day of July of that calendar year, the assessor shall estimate the market value of such inventory based on such data as may be available to him or her: Provided, That the assessor may extrapolate estimates using such sales data as may be available and reliable when sales are made for a period of three months or more during the prior year: Provided, however, That there shall be excluded from the appraisal calculations the value of those units which were not physically held as inventory by the owner of the inventory at any time during the preceding year. In all
cases, the market value, so derived, shall serve as the basis for calculating the appraised value.

§11-6C-3. Owner to file return estimating market value.

The owner of dealer vehicle inventory shall report the market value of such inventory, derived as set forth in section two of this article, to the assessor, as a part of the return required by law to be filed annually pursuant to the provisions of this chapter.

§11-6C-4. Determination of tax on dealer vehicle inventory.

The annual amount of tax levied upon the dealer vehicle inventory pursuant to article eight of this chapter shall be based upon the market value as determined pursuant to this article, times the assessment percentage then provided by law.

§11-6C-5. Intent of this article; tax commissioner to promulgate regulations.

(a) This article is adopted to address the lack of uniformity, audit difficulties and business management issues arising in this state with respect to the assessment of the personal property held as new and used dealer vehicle inventory. Accordingly, the Legislature finds and declares that the adoption of this article will provide a more reliable and uniform method of determining market value of dealer vehicle inventory; minimize audit problems associated with such property; provide a predictable revenue stream for levying bodies; maximize the owner's ability to manage inventory; and provide clear guidance to local authorities by superseding the wide variety of otherwise lawful appraisal methods now in use in this state.

(b) The tax commissioner shall have the power to promulgate such rules and regulations as may be necessary to implement the provisions of this article: Provided, That the tax commissioner shall provide to the joint committee on government and finance by the first day of January for the next two fiscal years a report detailing the results of the administration of this article.
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.

(a) Periods before July 1, 1987. — For taxable years
or months thereof ending prior to the first day of July,
one thousand nine hundred eighty-seven, there is hereby
levied and shall be collected annual privilege taxes against
the persons, on account of the business and other activities,
and in the amounts to be determined by the application of
rates against values or gross income as set forth in sections
two-a to two-m, both inclusive, of this article and the appli-
cation of the surtax rate against gross income as set forth
in section two-k: Provided, That on the first day of July,
one thousand nine hundred eighty-five, the taxes imposed
by this section, at the rates set forth in sections two-b
through two-m, both inclusive, of this article, and in effect
on the first day of January, one thousand nine hundred
eighty-five, exclusive of any surtaxes, shall be reduced by
five percent for taxable months beginning on and after
said first day of July: Provided, however, That on and
after the first day of July, one thousand nine hundred
eighty-five, the rate of tax under section two-b of this
article shall not be less than eight tenths of one percent;
Provided further, That there shall be no such reduction of
the rates set forth in section two-a or two-l of this article.

(b) Periods after June 30, 1987. — For taxable years or months beginning after the thirtieth day of June, one thousand nine hundred eighty-seven, there is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amount to be determined by the application of rates against values or gross income as set forth in sections two-d and two-m of this article: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the rates applicable to the privileges exercised in sections two-d and two-m of this article shall be restored and returned to those which were in effect as to such privileges on the first day of January, one thousand nine hundred eighty-five: Provided, however, That for taxable months or taxable years beginning after the twenty-eighth day of February, one thousand nine hundred eighty-nine, there is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amount to be determined by the application of rates against the measure of the tax as set forth in sections two-d, two-e, two-m and two-n of this article: Provided further, That for taxable months or taxable years beginning after the thirty-first day of May, one thousand nine hundred ninety-five, there is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amount to be determined by the application of rates against the measure of the tax as set forth in sections two-d, two-e, two-m, two-n and two-o of this article.

(c) If any person liable for any tax under section two-m shall ship or transport his products or any part thereof out of the state without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the state shall be the basis for the assessment of the tax imposed in such section, except in those instances in which
another measure of the tax is expressly provided. The tax commissioner shall prescribe equitable and uniform rules for ascertaining such value.

(d) In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the tax commissioner shall prescribe uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar.

§11-13-2d. Public service or utility business.

(a) Upon any person engaging or continuing within this state in any public service or utility business, except railroad, railroad car, express, pipeline, telephone and telegraph companies, water carriers by steamboat or steamship and motor carriers, the tax imposed by section two of this article shall be equal to the gross income of the business derived from such activity or activities multiplied by the respective rates as follows:

1. Street and interurban and electric railways, one and four-tenths percent;
2. Water companies, four and four-tenths percent, except as to income received by municipally owned water plants;
3. Electric light and power companies, four percent on sales and demand charges for domestic purposes and commercial lighting and four percent on sales and demand charges for all other purposes, and except as to income received by municipally owned plants producing or purchasing electricity and distributing same: Provided, That electric light and power companies which engage
21 in the supplying of public service but which do not generate or produce in this state the electric power they supply shall be taxed on the gross income derived from sales of power which they do not generate in this state at the rate of three percent on sales and demand charges for domestic purposes and commercial lighting and three percent on sales and demand charges for all other purposes, except as to income received by municipally owned plants: *Provided, however, That the sale of electric power under this section shall be taxed at the rate of two percent on that portion of the gross proceeds derived from the sale of electric power to a plant location of a customer engaged in a manufacturing activity, if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year, or if the usage of such plant location exceeds two hundred thousand kilowatts per hour in a year: Provided further, That the sale of electric power under this section shall be exempt from the tax imposed by this section and section two of this article if it is separately metered and consumed in an electrolytic process for the manufacture of chlorine in this state, or is separately metered and consumed in the manufacture of ferroalloy in this state, and the rate reduction herein provided to the taxpayer shall be passed on to the manufacturer of the chlorine or ferroalloy. As used in this section, the term "ferroalloy" means any of various alloys of iron and one or more other elements used as a raw material in the production of steel: *And provided further, That the term does not include the final production of steel;*

(4) Natural gas companies, four and twenty-nine hundredths percent on the gross income: *Provided, That the sale of natural gas under this section shall be exempt from the tax imposed by this section and section two of this article to the extent that the natural gas is separately metered and is gas from which the purchaser derives hydrogen and carbon monoxide for use in the manufacture of chemicals in this state, and the full economic benefit of the exception herein provided to the taxpayer shall be passed on to such purchaser of the natural gas: *Provided, howev-
er, That there shall be no exemption for the sale of any natural gas from which the purchaser derives carbon monoxide or hydrogen for the purpose of resale;

(5) Toll bridge companies, four and twenty-nine hundredths percent; and

(6) Upon all other public service or utility business, two and eighty-six hundredths percent.

(b) The measure of this tax shall not include gross income derived from commerce between this state and other states of the United States or between this state and foreign countries. The measure of the tax under this section shall include only gross income received from the supplying of public service. The gross income of the taxpayer from any other activity shall be included in the measure of the tax imposed upon such other activity by the appropriate section or sections of this article.

(c) Beginning the first day of March, one thousand nine hundred eighty-nine, electric light and power companies shall determine their liability for payment of tax under this section and sections two-m and two-n of this article. If for taxable months beginning on or after the first day of March, one thousand nine hundred eighty-nine, liability for tax under section two-n of this article is equal to or greater than the sum of the power company's liability for payment of tax under subdivision (3), subsection (a) of this section and section two-m of this article, then the company shall pay the tax due under section two-n of this article and not the tax due under subdivision (3), subsection (a) of this section and section two-m of this article. If tax liability under section two-n is less, then tax shall be paid under subdivision (3), subsection (a) of this section and section two-m of this article and the tax due under section two-n shall not be paid. The provisions of subdivision (3), subsection (a) of this section shall expire and become null and void for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-eight.
(d) Notwithstanding the provisions of subsection (c) of this section, beginning the first day of June, one thousand nine hundred ninety-five, electric light and power companies that actually paid tax based on the provisions of subdivision (3), subsection (a) of this section or section two-m of this article for every taxable month in one thousand nine hundred ninety-four shall determine their liability for payment of tax under this article in accordance with subdivision (1) of this subsection. All other electric light and power companies shall determine their liability for payment of tax under this article exclusively under section two-o of this article.

(1) If for taxable months beginning on or after the first day of June, one thousand nine hundred ninety-five, liability for tax under section two-o of this article is equal to or greater than the sum of the power company's liability for payment of tax under subdivision (3), subsection (a) of this section and section two-m of this article, then the company shall pay the tax due under section two-o of this article and not the tax due under subdivision (3), subsection (a) of this section and section two-m of this article. If tax liability under section two-o is less, then the tax shall be paid under subdivision (3), subsection (a) of this section and section two-m of this article and the tax due under section two-o shall not be paid.

(2) The provisions of subdivision (3), subsection (a) of this section shall expire and become null and void for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-eight.

§11-13-2e. Business of gas storage; effective date.

(a) Rate of tax. — Upon every person engaging or continuing within this state in any gas storage business utilizing one or more gas storage reservoirs located within this state, the tax imposed by section two of this article shall be equal to five cents multiplied by the sum of either (1) the net number of dekatherms of gas injected into 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 utili­
19 zation 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.

(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.

(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.

(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
§11-13-2m. Business of generating or producing electric power; exception; rates.

(a) Upon every person engaging or continuing within this state in the business of generating or producing electric power for sale, profit or commercial use, either directly or through the activity of others, in whole or in part, when the sale thereof is not subject to tax under section two-d of this article, the amount of the tax to be equal to the value of the electric power, as shown by the gross proceeds derived from the sale thereof by the generator or producer of the same multiplied by a rate of four percent, except that the rate shall be two percent on that portion of the gross proceeds derived from the sale of electric power to a plant location of a customer engaged in a manufacturing activity, if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year, or if the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year.

(b) The measure of this tax shall be the value of all electric power generated or produced in this state for sale, profit or commercial use, regardless of the place of sale or the fact that transmission may be to points outside this state: Provided, That the gross income received by municipally owned plants generating or producing electricity shall not be subject to tax under this article.

(c) Beginning the first day of March, one thousand nine hundred eighty-nine, every person taxable under this section shall determine their liability for payment of tax under this section and under subdivision (3), subsection (a), section two-d of this article and section two-n of this article. If for taxable months beginning on or after the first day of March, one thousand nine hundred eighty-nine such person's liability for payment of tax under this section and subdivision (3), subsection (a), section two-d of this article is less than the amount of such person's liability for payment of tax under section two-n
of this article, then such person shall pay the tax due under section two-n and not the sum of the amount of tax due under this section and under subdivision (3), subsection (a), section two-d of this article. If the tax due under section two-n of this article is less, then the amount of tax due under this section and subdivision (3), subsection (a), section two-d of this article shall be paid. The provisions of this section shall expire and become null and void for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-eight.

(d) Beginning the first day of June, one thousand nine hundred ninety-five, electric light and power companies that actually paid tax based on the provisions of subdivision (3), subsection (a), section two-d of this article or this section for every taxable month in one-thousand nine hundred ninety-four shall determine their liability for payment of tax under this article in accordance with subdivision (1) of this subsection. All other electric light and power companies shall determine their liability for payment of tax under this article exclusively under section two-o of this article.

(1) If for taxable months beginning on or after the first day of June, one thousand nine hundred ninety-five, liability for tax under section two-o of this article is equal to or greater than the sum of the power company's liability for payment of tax under subdivision (3), subsection (a), section two-d of this article and this section, then the company shall pay the tax due under section two-o of this article and not the tax due under subdivision (3), subsection (a), section two-d of this article and this section. If tax liability under section two-o is less, then the tax shall be paid under subdivision (3), subsection (a), section two-d of this article and this section and the tax due under section two-o shall not be paid.

(2) The provisions of this section shall expire and become null and void for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-eight. Notwithstanding this subsection or any other...
provision of this chapter to the contrary, an electric light
and power company that generates and produces power in
this state shall continue to be deemed to be an "industrial
taxpayer" for purposes of subdivision (8), subsection (b),
section two, article thirteen-d of this chapter, and gross
income of an electric light and power company from the
generation and production of power in this state and sales
and demand charges for electric power sold in this state
shall continue to be deemed "gross income of the business
subject to tax under article thirteen of this chapter" for
purposes of subsection (b), section seventeen, article
twenty-three of this chapter all to the extent of and in
accordance with the law in effect immediately preceding
the effective date of this section as amended in one thou-
sand nine hundred ninety-five.

§11-13-2n. Business of generating or producing or selling
electric power; exemptions; rates.

(a) Rate of tax. — Upon every person engaging or
continuing within this state in the business of generating
or producing electricity for sale, profit or commercial use,
either directly or indirectly through the activity of others,
in whole or in part, or in the business of selling electricity
to consumers, or in both businesses, the tax imposed by
section two of this article shall be equal to:

(1) Twenty-six hundredths of one cent times the kilo-
watt hours of net generation available for sale that was
generated or produced in this state by the taxpayer during
the taxable year, except that this rate shall be five hun-
dredths of one cent times the kilowatt hours of net genera-
tion available for sale that was generated or produced in
this state by the taxpayer and sold to a plant location of a
customer engaged in manufacturing activity if the contract
demand at such plant location exceeds two hundred thou-
sand kilowatts per hour per year or if the usage at such
plant location exceeds two hundred thousand kilowatts per
hour in a year: Provided, That in order to encourage the
development of industry to improve the environment of
this state, the tax imposed by this section on any person
generating or producing electric power and an alternative
form of energy at a facility located within this state sub-
stantially from gob or other mine refuse shall be equal to
five hundredths of one cent times the kilowatt hours of net
generation or production available for sale. The measure
of tax under this paragraph shall be equal to the total
kilowatt hours of net generation available for sale that was
generated or produced in this state by the taxpayer during
the taxable year, regardless of the place of sale or use, or
the fact that transmission may be made to points outside
this state.

(2) Nineteen hundredths of one cent times the kilowatt
hours of electricity sold to consumers in this state that
were not generated or produced in this state by the tax-
payer, except that the rate shall be five hundredths of one
cent times the kilowatt hours of electricity not generated
or produced in this state by the taxpayer which is sold to a
plant location in this state of a customer engaged in manu-
facturing activity if the contract demand at such plant
location exceeds two hundred thousand kilowatts per hour
per year or if the usage at such plant location exceeds two
hundred thousand kilowatts per hour in a year. The mea-
sure of tax under this paragraph shall be equal to the total
kilowatt hours of electricity sold to consumers in this state
during the taxable year, that were not generated or pro-
duced in this state by the taxpayer, to be determined by
subtracting from the total kilowatt hours of electricity sold
to consumers in the state the net kilowatt hours of electric-
ity generated or produced in the state by the taxpayer
during the taxable year.

The West Virginia public service commission shall,
upon application of a public utility, allow an immediate
pass-through to the utility's customers in this state in the
form of a rate surcharge the increase enacted by the Leg-
islature during its third extraordinary session, one thou-
sand nine hundred ninety, in the tax imposed by this
article upon electricity generated or produced in this state
and sold to consumers in this state and upon electricity not
generated or produced in this state that is sold to consumers in this state.

(b) Exemptions. — The provisions of this section shall not apply to:

(1) Kilowatt hours of electricity generated and sold, or purchased and resold, by a municipally owned plant.

(2) Kilowatt hours of electric power that are separately metered and consumed in an electrolytic process for the manufacture of chlorine.

(3) Kilowatt hours of electric power that are separately metered and consumed in the manufacture of ferroalloy. As used in this paragraph, the term "ferroalloy" means any of the various alloys of iron and one or more other elements used as a raw material in the production of steel but shall not include electric power used in the production of steel.

(4) The full economic benefits provided to the taxpayer by subdivisions (2) and (3) of this subsection shall be passed on to the manufacturer of the chlorine or ferroalloy.

(c) Credit. — Any person taxable under subdivision (2), subsection (a) of this section shall be allowed a credit against the amount of tax due under that paragraph for any electric power generation taxes paid by the taxpayer with respect to such electric power to the state in which such power was generated or produced. The amount of credit allowed shall not exceed the tax liability arising under subdivision (2), subsection (a) of this section with respect to the sale of such power.

(d) Transition rule. — Beginning the first day of March, one thousand nine hundred eighty-nine, electric light and power companies shall determine their liability for payment of tax under this section and sections two-d and two-m of this article. If for taxable months beginning on or after the first day of March, one thousand nine hun-
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95 dreed 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
tax due under section two-n shall not be paid. The provi-
sions of this subsection (d) shall expire and become null
and void for taxable years beginning on or after the first
day of January, one thousand nine hundred ninety-eight.

109 (e) Effective date. — The amendments to this section
made in the year one thousand nine hundred ninety shall
take effect on the first day of October, one thousand nine
hundred ninety: Provided, That as to calendar months
ending before such date, the tax rates specified in this
section, as then in effect shall be fully and completely
preserved.

116 (f) Beginning the first day of June, one thousand nine
hundred ninety-five and thereafter, electric light and pow-
er companies shall not determine their tax liability under
this section.

§11-13-20. 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
dividing by four the sum of a generating unit's net genera-
tion, expressed in kilowatt hours, for calendar years one
thousand nine hundred ninety-one, one thousand nine
hundred ninety-two, one thousand nine hundred ninety-
two, one thousand nine hundred ninety-three, and one thousand nine hundred ninety-four.
For any generating unit which was newly installed and
placed into commercial operation after the first day of January, one thousand nine hundred ninety-one and prior to the effective date of this section, "average four-year generation" is computed by dividing such unit's net generation for the period beginning with the month in which the unit was placed into commercial operation and ending with the month preceding the effective date of this section by the number of months in such period and multiplying the resulting amount by twelve with the result being a representative twelve-month average of the unit's net generation while in an operational status.

(2) "Capacity factor" means a fraction, the numerator of which is average four-year generation and the denominator of which is the maximum possible annual generation.

(3) "Generating unit" means a mechanical apparatus or structure which through the operation of its component parts is capable of generating or producing electricity and is regularly used for this purpose.

(4) "Inactive reserve" means the removal of a generating unit from commercial service for a period of not less than twelve consecutive months as a result of lack of need for generation from the generating unit or as a result of the requirements of state or federal law or the removal of a generating unit from commercial service for any period as a result of any physical exigency which is beyond the reasonable control of the taxpayer.

(5) "Maximum possible annual generation" means the product, expressed in kilowatt hours, of official capability times eight thousand seven hundred sixty hours.

(6) "Official capability" means the nameplate capacity rating of a generating unit expressed in kilowatts.

(7) "Peaking unit" means a generating unit designed for the limited purpose of meeting peak demands for electricity or filling emergency electricity requirements.
(8) "Retired from service" means the removal of a generating unit from commercial service for a period of at least twelve consecutive months with the intent that the unit will not thereafter be returned to active service.

(9) "Taxable generating capacity" means the product, expressed in kilowatts, of the capacity factor times the official capability of a generating unit, subject to the modifications set forth in subdivisions (2) and (3), subsection (c) of this section.

(10) "Net generation" for a period means the kilowatt hours of net generation available for sale generated or produced by the generating unit in this state during such period less the following:

(A) Twenty-one twenty-sixths of the kilowatt hours of electricity generated at the generating unit and sold during such period to a plant location of a customer engaged in manufacturing activity if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour in a year or where the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year;

(B) Twenty-one twenty-sixths of the kilowatt hours of electricity produced or generated at the generating unit during such period by any person producing electric power and an alternative form of energy at a facility located in this state substantially from gob or other mine refuse;

(C) The total kilowatt hours of electricity generated at the generating unit exempted from tax during such period by subsection (b), section two-n of this article.

(b) Rate of tax. — Upon every person engaging or continuing within this state in the business of generating or producing electricity for sale, profit or commercial use, either directly or indirectly through the activity of others, in whole or in part, or in the business of selling electricity to consumers, or in both businesses, the tax imposed by
section two of this article shall be equal to:

(1) For taxpayers who generate or produce electricity for sale, profit or commercial use, the product of twenty-two dollars and seventy-eight cents multiplied by the taxable generating capacity of each generating unit in this state owned or leased by the taxpayer, subject to the modifications set forth in subsection (c) of this section: Provided, That with respect to each generating unit in this state which has installed a flue gas desulfurization system, the tax imposed by section two of this article shall, on and after the thirty-first day of January, one thousand nine hundred ninety-six, be equal to the product of twenty dollars and seventy cents multiplied by the taxable generating capacity of the units, subject to the modifications set forth in subsection (c) of this section: Provided, however, That with respect to kilowatt hours sold to or used by a plant location engaged in manufacturing activity in which the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year or if the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year, in no event shall the tax imposed by this article with respect to the sale or use of such electricity exceed five hundredths of one cent times the kilowatt hours sold to or used by a plant engaged in such a manufacturing activity; and,

(2) For taxpayers who sell electricity to consumers in this state that is not generated or produced in this state by the taxpayer, nineteen hundredths of one cent times the kilowatt hours of electricity sold to consumers in this state that were not generated or produced in this state by the taxpayer, except that the rate shall be five hundredths of one cent times the kilowatt hours of electricity not generated or produced in this state by the taxpayer which is sold to a plant location in this state of a customer engaged in manufacturing activity if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year or if the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year.
The measure of tax under this subdivision (2) shall be equal to the total kilowatt hours of electricity sold to consumers in the state during the taxable year, that were not generated or produced in this state by the taxpayer, to be determined by subtracting from the total kilowatt hours of electricity sold to consumers in the state the net kilowatt hours of electricity generated or produced in the state by the taxpayer during the taxable year. The provisions of this subdivision (2) shall not apply to those kilowatt hours exempt under subsection (b), section two-n of this article. Any person taxable under this subdivision (2) shall be allowed a credit against the amount of tax due under this subdivision (2) for any electric power generation taxes or a tax similar to the tax imposed by subdivision (1) of this subsection (b) paid by the taxpayer with respect to such electric power to the state in which such power was generated or produced. The amount of credit allowed shall not exceed the tax liability arising under this subdivision (2) with respect to the sale of such power.

The following provisions are applicable to taxpayers subject to tax under subdivision (1), subsection (b) of this section:

(1) **Retired units; inactive reserve.** — If a generating unit is retired from service or placed in inactive reserve, a taxpayer shall not be liable for tax computed with respect to the taxable generating capacity of the unit for the period that the unit is inactive or retired. The taxpayer shall provide written notice to the joint committee on government and finance, as well as to any other entity as may be otherwise provided by law, eighteen months prior to retiring any generating unit from service in this state.

(2) **New generating units.** — If a new generating unit, other than a peaking unit, is placed in initial service on or after the effective date of this section, the generating unit's taxable generating capacity shall equal forty percent of the official capability of the unit.

(3) **Peaking units.** — If a peaking unit is placed in
initial service on or after the effective date of this section, the generating unit's taxable generating capacity shall equal five percent of the official capability of the unit.

(4) **Transfers of interests in generating units.** — If a taxpayer acquires an interest in a generating unit, the taxpayer shall include the computation of taxable generating capacity of said unit in the determination of the taxpayer's tax liability as of the date of the acquisition. Conversely, if a taxpayer transfers an interest in a generating unit, the taxpayer shall not for periods thereafter be liable for tax computed with respect to the taxable generating capacity of such transferred unit.

(5) **Proration, allocation.** — The tax commissioner shall promulgate rules in conformity with the provisions of article three, chapter twenty-nine-a of this code to provide for the administration of this section and to equitably prorate taxes for a taxable year in which a generating unit is first placed in service, retired or placed in inactive reserve, or in which a taxpayer acquires or transfers an interest in a generating unit, to equitably allocate and reallocate adjustments to net generation, and to equitably allocate taxes among multiple taxpayers with interests in a single generating unit, it being the intent of the Legislature to prohibit multiple taxation of the same taxable generating capacity.

So as to provide for an orderly transition with respect to the rate making effect of this section, those electric light and power companies which, as of the effective date of this section, are permitted by the West Virginia public service commission to utilize deferred accounting for purposes of recovery from ratepayers of any portion of business and occupation tax expense under this article shall be permitted, until such time that action pursuant to a rate application or order of the commission provides for appropriate alternative rate making treatment for such expense, to recover the tax expense imposed by this section by means of deferred accounting to the extent that the tax expense imposed by this section exceeds the level of business and
occupation tax under this article currently allowed in rates.

(6) Electricity generated by manufacturer or affiliate for use in manufacturing activity.—When electricity used in a manufacturing activity is generated in this state by the person who owns the manufacturing facility in which the electricity is used and the electricity generating unit or units producing the electricity so used are owned by such manufacturer, or by a member of the manufacturer's controlled group, as defined in section 267 of the Internal Revenue Code of 1986, as amended, the generation of the electricity shall not be taxable under this article: Provided, That any electricity generated or produced at the generating unit or units which is sold or used for purposes other than in the manufacturing activity shall be taxed under this section and the amount of tax payable shall be adjusted to be equal to an amount which is proportional to the electricity sold for purposes other than the manufacturing activity. The department of tax and revenue shall promulgate rules in accordance with article three, chapter twenty-nine-a of the code: Provided, That the rules shall be promulgated as emergency rules.

(d) Beginning the first day of June, one thousand nine hundred ninety-five, electric light and power companies that actually paid tax based on the provisions of subdivision (3), subsection (a), section two-d of this article or section two-m of this article for every taxable month in one thousand nine hundred ninety-four shall determine their liability for payment of tax under this article in accordance with subdivisions (1) and (2) of this subsection. All other electric light and power companies shall determine their liability for payment of tax under this article exclusively under this section beginning the first day of June, one thousand nine hundred ninety-five and thereafter.

(1) If for taxable months beginning on or after the first day of June, one thousand nine hundred ninety-five, liability for tax under section two-o of this article is equal to or greater than the sum of the power company's liability
for payment of tax under subdivision (3), subsection (a), section two-d of this article and this section, then the company shall pay the tax due under section two-o of this article and not the tax due under subdivision (3), subsection (a), section two-d of this article and section two-m of this article. If tax liability under this section is less, then the tax shall be paid under subdivision (3), subsection (a), section two-d of this article and section two-m and the tax due under this section shall not be paid.

(2) Notwithstanding subdivision (1) of this subsection, for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-eight, all electric light and power companies shall determine their liability for payment of tax under this article exclusively under 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-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) General rule. — When used in this article, or in the administration of this article, the terms defined in subsection (b), (c) or (d) of this section shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by the context in which the term is used, or by specific definition.

7 (b) General terms defined. — Definitions in this subsection apply to all persons subject to the taxes imposed by this article.

10 (1) "Business" includes all activities engaged in, or caused to be engaged in, with the object of gain or economic benefit, direct or indirect, and whether engaged in for profit, or not for profit, or by a governmental entity: Provided, That "business" does not include services rendered by an employee within the scope of his or her contract of employment. Employee services, services by a partner on behalf of his or her partnership and services by a member of any other business entity on behalf of that entity are the business of the employer, or partnership, or other business entity as the case may be, and reportable as such for purposes of the taxes imposed by this article.

22 (2) "Corporation" includes associations, joint-stock
companies and insurance companies. It also includes

governmental entities when and to the extent such govern-
ment entities engage in activities taxable under this arti-
cle.

(3) "Delegate" in the phrase "or his delegate", when
used in reference to the tax commissioner, means any
officer or employee of the state tax division of the depart-
ment of tax and revenue duly authorized by the tax com-
missioner directly, or indirectly by one or more
redelegations of authority, to perform the function men-
tioned or described in this article or regulations promul-
gated thereunder.

(4) "Fiduciary" means and includes a guardian, trustee,
executor, administrator, receiver, conservator or any per-
son acting in any fiduciary capacity for any person.

(5) "Gross proceeds" means the value, whether in mon-
ey or other property, actually proceeding from the sale or
lease of tangible personal property, or from the rendering
of services, without any deduction for the cost of property
sold or leased or expenses of any kind.

(6) "Includes" and "including" when used in a defini-
tion contained in this article shall not be deemed to ex-
clude other things otherwise within the meaning of the
term being defined.

(7) "Partner" includes a member of a syndicate, group,
pool, joint venture or other organization which is a "part-
nership" as defined in this section.

(8) "Partnership" includes a syndicate, group, pool,
joint venture or other unincorporated organization
through or by means of which any privilege taxable under
this article is exercised, and which is not within the mean-
ing of this article a trust or estate or corporation. "Partners-
ship" includes a limited liability company which is treated
as a partnership for federal income tax purposes.

(9) "Person" or "company" are herein used inter-
changeably and include any individual, firm, partnership,
mining partnership, joint venture, association, corporation,
trust or other entity, or any other group or combination
acting as a unit, and the plural as well as the singular num-
ber, unless the intention to give a more limited meaning is
declared by the context.

(10) "Sale" includes any transfer of the ownership or
title to property, whether for money or in exchange for
other property or services, or any combination thereof.
"Sale" includes a lease of property, whether the transaction
be characterized as a rental, lease, hire, bailment or license
to use. "Sale" also includes rendering services for a con-
sideration, whether direct or indirect.

(11) "Service" includes all activities engaged in by a
person for a consideration, which involve the rendering of
a service as distinguished from the sale of tangible person-
al property: Provided, That "service" does not include:
(A) Services rendered by an employee to his or her em-
ployer under a contract of employment; (B) contracting;
or (C) severing or processing natural resources.

(12) "Tax" means any tax imposed by this article and,
for purposes of administration and collection of such tax,
it includes any interest, additions to tax or penalties im-
posed with respect thereto under article ten of this chapter.

(13) "Tax commissioner" or "commissioner" means
the tax commissioner of the state of West Virginia or his
or her delegate.

(14) "Taxable year" means the calendar year, or the
fiscal year ending during such calendar year, upon the
basis of which a tax liability is computed under this article.
In the case of a return made under this article, or regula-
tions of the tax commissioner, for a fractional part of a
year, the term "taxable year" means the period for which
such return is made.

(15) "Taxpayer" means any person subject to any tax
imposed by this article.

(16) "This code" means the code of West Virginia, one
thousand nine hundred thirty-one, as amended.
(17) "This state" means the state of West Virginia.

(18) "Withholding agent" means any person required by law to deduct and withhold any tax imposed by this article or under regulations promulgated by the tax commissioner.

(c) Specific definitions for producers of natural resources. —

(1) "Barrel of oil" means forty-two U.S. gallons of two hundred thirty-one cubic inches of liquid at a standard temperature of sixty degrees Fahrenheit.

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

(3) "Cubic foot of gas" means the volume of gas contained in one cubic foot at a standard pressure base of fourteen point seventy-three pounds per square inch (absolute) and a standard temperature of sixty degrees Fahrenheit.

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

(5) "Extraction of ores or minerals from the ground" includes extraction by mine owners or operators of ores or minerals from the waste or residue of prior mining only when such extraction is sold.

(6) "Gross value" in the case of natural resources means the market value of the natural resource product, in the immediate vicinity, where severed, determined after application of post production processing generally applied by the industry to obtain commercially marketable or usable natural resource products. For all natural resources, "gross value" is to be reported as follows:
(A) For natural resources severed or processed (or both severed and processed) and sold during a reporting period, gross value is the gross proceeds received or receivable by the taxpayer.

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

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

(D) If severed natural resources are purchased for the purpose of processing and resale, the gross value is the amount received or receivable during the reporting period reduced by the amount paid or payable to the taxpayer actually severing the natural resource. If natural resources are severed outside the state of West Virginia and brought into the state of West Virginia by the taxpayer for the purpose of processing and sale, the gross value is the amount received or receivable during the reporting period reduced by the fair market value of natural resources of similar grade and quality and in the same condition immediately preceding the processing of the natural resources in this state.

(E) If severed natural resources are purchased for the purpose of processing and consumption, the gross value is the fair market value of processed natural resources of similar grade and quality reduced by the amount paid or payable to the taxpayer actually severing the natural resource. If severed natural resources are severed outside the state of West Virginia and brought into the state of West Virginia by the taxpayer for the purpose of processing and consumption, the gross value is the fair market value of processed natural resources of similar grade and quality reduced by the fair market value of natural resources of similar grade and quality and in the same condition immediately preceding the processing of the natural resources.

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

(G) For natural gas, gross value is the value of the
natural gas at the wellhead immediately preceding trans-}
portation and transmission.

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

(7) "Mining" includes not merely the extraction of
ores or minerals from the ground but also those treatment
processes necessary or incidental thereto.

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

(9) "Processed" or "processing" as applied to:

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

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

(10) "Related parties" means two or more persons,
organizations or businesses owned or controlled directly
or indirectly by the same interests. Control exists if a
contract or lease, either written or oral, is entered into
whereby one party mines or processes natural resources
owned or held by another party and the owner or lessor
participates in the severing, processing or marketing of the
natural resources or receives any value other than an arm's
length passive royalty interest. In the case of related par-
ties, the tax commissioner may apportion or allocate the
receipts between or among such persons, organizations or
businesses if he determines that such apportionment or
allocation is necessary to more clearly reflect gross value.

(11) "Severing" or "severed" means the physical removal of the natural resources from the earth or waters of this state by any means: Provided, That "severing" or "severed" shall not include the removal of natural gas from underground storage facilities into which the natural gas has been mechanically injected following its initial removal from earth: Provided, however, That "severing" or "severed" oil and natural gas shall not include any separation process of oil or natural gas commonly employed to obtain marketable natural resource products.

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

(13) "Taxpayer" means and includes any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind engaged in the business of severing or processing (or both severing and processing) natural resources in this state for sale or use. In instances where contracts (either oral or written) are entered into whereby persons, organizations or businesses are engaged in the business of severing or processing (or both severing and processing) a natural resource but do not obtain title to or do not have an economic interest therein, the party who owns the natural resource immediately after its severance or has an economic interest therein is the taxpayer.

(d) Specific definitions for persons providing health care items or services. —

(1) "Behavioral health services" means health care related services provided by a behavioral health center as defined in section one, article two-a, chapter twenty-seven of this code or section one, article nine of said chapter.

(2) "Community care services" means home and community care services furnished by a provider pursuant to an individual plan of care, which also includes senior citizens groups that provide such services, but does not include 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.

(a) Effective the first day of July, one thousand nine hundred ninety-six, five percent of the tax attributable to the severance of oil and gas imposed by section three-a of this article is hereby dedicated for the use and benefit of counties and municipalities within this state and shall be distributed to such counties and municipalities as hereinafter provided. Effective the first day of July, one thousand nine hundred ninety-seven, and thereafter, ten percent of the tax attributable to the severance of oil and gas imposed by section three-a of this article is hereby dedicated for the use and benefit of counties and municipalities within this state and shall be distributed to such counties and municipalities as hereinafter provided.

(b) Seventy-five percent of this dedicated tax shall, after appropriation thereof by the Legislature, be distributed by the state treasurer in the manner hereinafter specified, to the various counties of this state in which the oil and gas upon which this additional tax is imposed was located at the time it was removed from the ground. Those counties are hereinafter in this section referred to as the "oil and gas producing counties". The remaining twenty-five percent of the net proceeds of this additional tax on coal shall be distributed, after appropriation, among all the counties and municipalities of this state in the manner hereinafter specified.

(c) The tax commissioner is hereby granted plenary
power and authority to promulgate reasonable rules requiring the furnishing by oil and gas producers of such additional information as may be necessary to compute the allocation required under the provisions of subsection (f) of this section. The tax commissioner is also hereby granted plenary power and authority to promulgate such other reasonable rules as may be necessary to implement the provisions of this section.

(d) In order to provide a procedure for the distribution of seventy-five percent of such dedicated tax on oil and gas to such oil and gas producing counties, there is hereby created in the state treasurer's office the special fund known as the "oil and gas county revenue fund"; and in order to provide a procedure for the distribution of the remaining twenty-five percent of such dedicated tax on oil and gas to all counties and municipalities of the state, without regard to oil and gas having been produced therein, there is also hereby created in the state treasurer's office the special fund known as the "all counties and municipalities revenue fund".

Seventy-five percent of such dedicated tax on oil and gas shall be deposited in the "oil and gas county revenue fund" and twenty-five percent of such dedicated tax on oil and gas shall be deposited in the "all counties and municipalities revenue fund", from time to time, as such proceeds are received by the tax commissioner. The moneys in such funds shall, after appropriation thereof by the Legislature, be distributed to the respective counties and municipalities entitled thereto in the manner set forth in subsection (e) of this section.

(e) The moneys in the "oil and gas county revenue fund" and the moneys in the "all counties and municipalities revenue fund" shall be allocated among and distributed annually to the counties and municipalities entitled thereto by the state treasurer in the manner hereinafter specified. On or before each distribution date, the state treasurer shall determine the total amount of moneys in each fund which will be available for distribution to the
respective counties and municipalities entitled thereto on that distribution date. The amount to which an oil and gas producing county is entitled from the "oil and gas county revenue fund" shall be determined in accordance with subsection (f) of this section, and the amount to which every county and municipality shall be entitled from the "all counties and municipalities revenue fund" shall be determined in accordance with subsection (g) of this section. After determining as set forth in subsections (f) and (g) of this section the amount each county and municipality is entitled to receive from the respective fund or funds, a warrant of the state auditor for the sum due to such county or municipality shall issue and a check drawn thereon making payment of such sum shall thereafter be distributed to such county or municipality.

(f) The amount to which an oil and gas producing county is entitled from the "oil and gas county revenue fund" shall be determined by:

(1) In the case of moneys derived from tax on the severance of gas:

(A) Dividing the total amount of moneys in such fund derived from tax on the severance of gas then available for distribution by the total volume of cubic feet of gas extracted in this state during the preceding year; and

(B) Multiplying the quotient thus obtained by the number of cubic feet of gas taken from the ground in such county during the preceding year; and

(2) In the case of moneys derived from tax on the severance of oil:

(A) Dividing the total amount of moneys in such fund derived from tax on the severance of oil then available for distribution by the total number of barrels of oil extracted in this state during the preceding year; and

(B) Multiplying the quotient thus obtained by the number of barrels of oil taken from the ground in such county during the preceding year.
(g) The amount to which each county and municipality is entitled from the "all counties and municipalities revenue fund" shall be determined in accordance with the provisions of this subsection. For purposes of this subsection "population" means the population as determined by the most recent decennial census taken under the authority of the United States:

(1) The treasurer shall first apportion the total amount of moneys available in the "all counties and municipalities revenue fund" by multiplying the total amount in such fund by the percentage which the population of each county bears to the total population of the state. The amount thus apportioned for each county is the county's "base share".

(2) Each county's "base share" shall then be subdivided into two portions. One portion is determined by multiplying the "base share" by that percentage which the total population of all unincorporated areas within the county bears to the total population of the county, and the other portion is determined by multiplying the "base share" by that percentage which the total population of all municipalities within the county bears to the total population of the county. The former portion shall be paid to the county and the latter portion shall be the "municipalities' portion" of the county's "base share". The percentage of such latter portion to which each municipality in the county is entitled shall be determined by multiplying the total of such latter portion by the percentage which the population of each municipality within the county bears to the total population of all municipalities within the county.

(h) Moneys distributed to any county or municipality under the provisions of this section, from either or both special funds, shall be deposited in the county or municipal general fund and may be expended by the county commission or governing body of the municipality for such purposes as the county commission or governing body shall determine to be in the best interest of its respective county or municipality: Provided, That in coun-
ties with population in excess of two hundred thousand at least seventy-five percent of such funds received from the oil and gas county revenue fund shall be apportioned to, and expended within the oil and gas producing area or areas of the county, said coal-producing areas of each county to be determined generally by the state tax commissioner: Provided, however, That the moneys distributed to any county or municipality under the provisions of this section shall not be budgeted for personal services in an amount to exceed one fourth of the total amount of such moneys.

(i) On or before the twenty-eighth day of March, one thousand nine hundred ninety-seven, and each twenty-eighth day of March thereafter, each county commission or governing body of a municipality receiving any such moneys shall submit to the tax commissioner on forms provided by the tax commissioner a special budget, detailing how such moneys are to be spent during the subsequent fiscal year. Such budget shall be followed in expending such moneys unless a subsequent budget is approved by the state tax commissioner. All unexpended balances remaining in the county or municipality general fund at the close of a fiscal year shall remain in the general fund and may be expended by the county or municipality without restriction.

(j) On or before the fifteenth day of December, one thousand nine hundred ninety-six, and each fifteenth day of December thereafter, the tax commissioner shall deliver to the clerk of the Senate and the clerk of the House of Delegates a consolidated report of such budgets, created by subsection (i) of this section, for all county commissions and municipalities as of the fifteenth day of July of the current year.

(k) The state tax commissioner shall retain for the benefit of the state from the dedicated tax attributable to the severance of oil and gas the amount of thirty-five thousand dollars annually as a fee for the administration of such additional tax by the tax commissioner.
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 131, to read as follows:

**ARTICLE 131. TAX CREDIT FOR EMPLOYING FORMER EMPLOYEES OF COLIN ANDERSON CENTER WHO LOST THEIR JOBS DUE TO THE CLOSURE OF COLIN ANDERSON CENTER.**

§11-131-1. Legislative purpose.
§11-131-2. Credit allowed; amount and duration of credit; recapture of credit and effective date.
§11-131-3. Application of credit; limitation of credit; tax commissioner to promulgate forms and legislative rule; notice of credit.

§11-131-1. Legislative purpose.

1 The Legislature finds and declares that the Colin
2 Anderson Center employees were good employees and
performed a valuable service for the residents of the center, and the public comments regarding the closure of Colin Anderson indicated that the main objection to the closure was the care which the residents of Colin Anderson would receive elsewhere. In recognition of the expertise of these employees and their dedication to their duties and the people whom they cared for, the Legislature finds that it is in the best interests of the state to encourage the employment of those persons who are unemployed as a result of the closing of the Colin Anderson Center.

§11-131-2. Credit allowed; amount and duration of credit; recapture of credit and effective date.

(a) There shall be allowed to eligible taxpayers a credit against the taxes imposed in articles twenty-one, twenty-three and twenty-four of this chapter. For the purpose of this article, "eligible taxpayer" means a person, firm, partnership, corporation or other entity who employs a person or persons who lost his or her job as a result of the closure of the Colin Anderson Center. Such credit shall be in an amount equal to one-half of the cost to the state of unemployment compensation which shall be determined based on the unemployment compensation cost to the state of an employee who earns twenty-one thousand dollars per year and shall be further determined as if such person was unemployed for and drew a full sixteen weeks of unemployment benefits. In the event an eligible taxpayer employs more than one such person, the credit allowed shall be multiplied by the number of persons so employed.

(b) The credit set forth in this article shall apply to personal income tax liabilities, corporation net income tax liabilities and business franchise tax liabilities arising after the thirty-first day of December, one thousand nine hundred ninety-five. The credit established in this article shall expire and may not be claimed for those tax years ending after the thirty-first day of December, one thousand nine hundred ninety-eight and in order to claim this credit an eligible taxpayer shall have employed a person who lost his or her job after December 31, one thousand nine hundred ninety-five as a result of the
closing of Colin Anderson Center and must be employed after said date and prior to December thirty-one, one thousand nine hundred ninety-seven.

(c) As a condition of receiving the credit established in this article, the eligible taxpayer shall employ the person or persons for a period of time at least equal to one year. In the event such person is employed for less than one year the credit herein shall be recaptured at the rate of twenty percent of the dollar value of the credit for each month under twelve months the person works.

§11-131-3. Application of credit; limitation of credit; tax commissioner to promulgate forms and legislative rule; notice of credit.

(a) The credit allowed in this article shall be first applied to a taxpayer's business franchise tax liability, and then to either the taxpayer's personal income tax liability or corporation net income tax liability, as the case may be.

(b) The credit allowed in this article shall not exceed ten thousand dollars per year and shall not be refundable, nor carried forward nor backward to other tax years.

(c) The state tax commissioner shall promulgate legislative rules pursuant to chapter twenty-nine-a of this code regarding the applicability, method of claiming of the credit, recapture of the credit and documentation necessary to claim the credit herein allowed.

(d) The state tax commissioner shall develop a written notice setting forth the availability of this credit and shall transmit this notice to the department of health and human resources to be distributed to potential employers of the Colin Anderson Center to make such employers aware of the tax credit allowed herein. The department of health and human resources shall distribute notice of the credit allowed herein as widely as possible to potential employers.
CHAPTER 244

(S. B. 277—By Senators Craigo, 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 gasoline or special fuel imposed by this article the following:

2 (1) All gallons of gasoline or special fuel exported from this state to any other state or nation.

3 (2) All gallons of gasoline or special fuel sold to and purchased by the United States or any agency thereof when delivered in bulk quantities of five hundred gallons or more.
(3) All gallons of gasoline or special fuel sold to and purchased by a county board of education when delivered in bulk quantities of five hundred gallons or more.

(4) All gallons of gasoline or special fuel sold pursuant to a government contract, in bulk quantities of five hundred gallons or more, for use in conjunction with any municipal, county, state or federal civil defense or emergency service program, or to any person on whom is imposed a requirement to maintain an inventory of gasoline or special fuel for the purpose of any such program: Provided, That fueling facilities used for these purposes are not capable of fueling motor vehicles and the person in charge of the program has in his or her possession a letter of authority from the tax commissioner certifying his or her right to such exemption.

(5) All gallons of gasoline or special fuel imported into this state in the fuel supply tank or tanks of a motor vehicle, other than in the fuel supply tank of a vehicle being hauled. This exemption does not relieve a person owning or operating as a motor carrier of any taxes imposed by article fourteen-a of this chapter.

(6) All gallons of gasoline and special fuel used and consumed in stationary off-highway turbine engines.

(7) All gallons of special fuel for heating any public or private dwelling, building or other premises.

(8) All gallons of special fuel for boilers.

(9) All gallons of gasoline or special fuel used as a dry cleaning solvent or commercial or industrial solvent.

(10) All gallons of gasoline or special fuel used as lubricants, ingredients or components of any manufactured product or compound.

(11) All gallons of gasoline or special fuel sold to any municipality or agency thereof for use in vehicles or equipment owned and operated by such municipality or agency thereof and when purchased for delivery in bulk.
quantities of five hundred gallons or more.

(12) All gallons of gasoline or special fuel sold to any urban mass transportation authority, created pursuant to the provisions of article twenty-seven, chapter eight of this code, for use in an urban mass transportation system.

(13) All gallons of gasoline or special fuel sold for use as aircraft fuel.

(14) All gallons of gasoline or special fuel sold for use or used as a fuel for commercial watercraft.

(15) All gallons of special fuel sold for use or consumed in railroad diesel locomotives.

(16) All gallons of gasoline or special fuel sold to and purchased by a unit of county government when delivered 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, nonprofit ambulance service and emergency rescue service.

(a) Upon application by a municipality, county or county board of education, or upon application and certification by the county commission to the state tax commissioner that an organization in the county is a bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service, the tax imposed by this article and paid by any municipality, unit of county government or any such organization shall be refunded.

(b) The tax shall be refunded upon presentation to the commissioner of an affidavit accompanied by the original or top copy sales slips or invoices, or certified copies thereof, from the distributor or producer or retail dealer, showing the purchases, together with evidence of payment thereof, which affidavit shall set forth the total amount of the gasoline or special fuel purchased and consumed by the user and the commissioner upon the receipt of the
affidavit and the paid sales slips or invoices shall cause to be refunded the tax paid on gasoline or special fuel purchased and consumed as provided in this section.

(c) The right to receive any refund under the provisions of this section is not assignable and any assignment thereof is void and of no effect, nor shall any payment be made to any person other than the original person entitled thereto using gasoline or special fuel as set forth in this section. The commissioner shall cause a refund to be made under the authority of this section only when the application for the refund is filed with the commissioner, upon forms prescribed by the commissioner, no later than the thirty-first day of August for purchases of fuel made during the preceding fiscal year ending the thirtieth day of June. Any claim for a refund not timely filed shall not be construed to be or constitute a moral obligation of the state of West Virginia for payment. The claim for refund is also subject to the provisions of section fourteen, article ten of this chapter: Provided, That the refund established in this section for counties and municipalities shall only apply to those purchases of gasoline and special fuels made after the thirtieth day of June, one thousand nine 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.

The tax credit allowed by this section shall be terminated on the thirty-first day of December, one thousand nine hundred ninety-seven: Provided, That for those rehabilitation projects for which a completed Part 2 (Description of Rehabilitation) of the historic preservation certification application was filed with the West Virginia division of culture and history prior to that date and subsequently approved in accordance with section eight-c of this article, the credit shall continue to be allowed pursuant to this article.

The West Virginia division of culture and history shall provide a full disclosure of applications for credit made and of credits granted pursuant to this section to the joint committee on government and finance and to the governor annually. The first report shall be presented on or before the first day of January, one thousand nine hundred 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.


(a) Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1986, as amended, and such other provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred ninety-five, shall be given effect in determining the taxes imposed by this article for any taxable year beginning the first day of January, one thousand nine hundred ninety-four, or thereafter, but no amendment to the laws of the United States made on or after the first day of January, one thousand nine hundred ninety-five, shall be given any effect.

(b) Effective date. — The amendments to this section enacted in the year one thousand nine hundred ninety-five shall be retroactive and shall apply to taxable years beginning on or after the first day of January, one thousand nine hundred ninety-four, to the extent allowable under federal income tax law. With respect to taxable years that begin prior to the first day of January, one thousand nine hundred ninety-four, the law in effect for each of those 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 commissioner; disposition and use of proceeds.

When any instrument on which the tax as herein provided is imposed is offered for recordation, the clerk of the county commission shall ascertain and compute the amount of the tax due thereon and shall ascertain if stamps in the proper amount are attached thereto as a prerequisite to acceptance of the instrument for recordation.

When offered for recording, each instrument subject to the tax as herein provided shall have appended on the face or at the end thereof, a statement or declaration signed by the grantor, grantee or other responsible party familiar with the transaction therein involved declaring the consideration paid for or the value of the property thereby conveyed. Such declaration may be in the following language:

"DECLARATION OF CONSIDERATION OR VALUE

I hereby declare:

(a) The total consideration paid for the property conveyed by the document to which this declaration is appended is $________; or

(b) The true and actual value of the property transferred by the document to which this declaration is appended is, to the best of my knowledge and belief $________; or

(c) The proportion of all the property included in the document to which this declaration is appended which is real property located in West Virginia is _______%; the
value of all the property $______; the value of real
estate in West Virginia is $______; or

(d) This deed conveys real estate located in more than
one county in West Virginia; the total consideration paid
for, or actual cash value of, all the real estate located in
West Virginia conveyed by this document is $______;
and documentary stamps showing payment of all of the
excise tax on all of said real estate are attached to an ex-
ecuted counterpart of this deed recorded in
___________ County.

Given under my hand this _________ day of
________, 19__.  

Signed ____________________________  (Indi-
cate whether grantor, grantee, or other interest in convey-
ance). ____________________________ Address"

Such declaration shall be considered by the clerk in
ascertaining the correct number of stamps required, and if
declaration (d) is used, no stamps shall be required on the
duplicate deed to which it is attached and such duplicate
deed shall be admitted to record and when recorded shall
have the same effect for all purposes as if stamps were
attached thereto.

On or after the first day of July, one thousand nine
hundred eighty-three, the clerk shall not record any docu-
ment with stamps affixed unless there is tendered with the
document a completed and verified sales listing form for
the benefit and use of the state tax commissioner.
Preprinted forms for this purpose shall be provided each
clerk by the tax commissioner:

The forms shall require the following information: (1)
If the last deed in the chain of title represents the last
transfer of the property, the names of the grantor and
grantee and the deedbook and page number; or (2) if the
last transfer was not made by deed, the source of the
grantor's title, if known; or (3) if the source of the grant-
or's title is unknown, a description of the property and the
name of the person to whom real property taxes are as-
signed as set forth in the landbook prepared by the asses-
sor. In all cases the forms shall require the tax map and parcel number of the property, the district or municipality in which the real property or the greater portion thereof lies, the address of the property, the consideration or value in money, including any other valuable goods or services, upon which the buyer and seller agree to consummate the sale and any other financing arrangements affecting value. The sales listing form required by this paragraph is to be completed in addition to, and not in lieu of, the declaration required by this section: Provided, That the tax commissioner may design and provide a form which combines into one form the contents of the declaration and the sales listing form required herein and recordation and filing of that form may be used as an alternative to filing the sales listing form required herein: Provided, however, That the filing with the clerk of a duplicate deed containing the sales listing form information required by this section shall also satisfy the requirements of this section regarding the sales listing form. The clerk shall, at the end of the month, pay all of the proceeds collected from the sale of stamps for the county excise tax into the county general fund for use of the county.

On or before the tenth day of each month the clerk shall deliver to the tax commissioner, or a person designated by the tax commissioner, the sales listing forms or such other alternative forms as may be authorized by this section for documents recorded during the preceding month. The sales listing form required by this section shall also include a portion thereof for the information required of a person claiming a lien against the real property described in the document who desires to file a statement pursuant to the provisions of subsection (a), section three, article three, chapter eleven-a of this code. Upon receipt of the form, the clerk shall, no later than the end of the business day upon which it was received, provide a copy of the statement to the assessor and a copy thereof to the sheriff. The assessor shall note the lien and any new owner of the real property indicated on the sales listing form upon his land books. The sheriff shall promptly compare the information contained in the sales listing form with his records and shall:
(1) Provide the lienholder such notice as the lienholder would thereafter otherwise be entitled to receive pursuant to the provisions of chapter eleven-a of this code had the lienholder provided the information in the form of a statement as permitted by the provisions of section three, article three of said chapter;

(2) Provide any other person listed on the sales listing form such notice as the person would thereafter otherwise be entitled to receive as a result of the person's interest in the real property pursuant to the provisions of chapter eleven-a of this code;

(3) Deliver to any person listed on the sales listing form as the new owner of the real property described in the document a copy of any subsequently issued tax ticket required to be sent by the provisions of section eight, article one, chapter eleven-a of this code; and

(4) Promptly notify any person listed on the sales listing form as the lienholder or the new owner of the real property of any due and unpaid taxes assessed against the 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.


(a) The sheriff may give notice by posting at not less than six public places in each magisterial district, for at least ten days before the time appointed, that between the fifteenth day of July and the thirty-first day of August he will attend at one or more of the most public and convenient places in each district, such places to be specified in the notice, for the purpose of receiving taxes due by the people residing or paying taxes in such district. The notice shall also state that those who pay the first installment of their taxes on or before the first day of September will
be entitled to a discount of two and one-half percent. Like notice may be given that between the fifteenth day of January and the twenty-eighth day of February he will again appear in each district for the collection of taxes, and that those who pay their second installment on or before the first day of March will be entitled to the same discount. Failure of the sheriff to post such lists shall not impair the right to collect such taxes, the right to collect any interest or penalty imposed as a result of the failure to pay such taxes or the methods of enforcing the payment of such taxes, interest or penalty.

The county commission of any county may order that the above notice shall also be given by advertisement. Such an order, once entered, shall continue in effect until rescinded by the county commission. Upon entry of such order, the sheriff shall, besides posting as required above, publish the proper notice as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. Such notice shall be so published within fourteen consecutive days next preceding the fifteenth day of July or the fifteenth day of January as the case may be. For every failure so to advertise, the sheriff shall forfeit one hundred dollars.

Notwithstanding the foregoing provisions, the sheriff shall send to every person owing real or personal property taxes a copy of such taxpayers annual tax ticket or tickets showing what tax is due and how such tax may be paid. Such copy shall be sent to the last known address of such taxpayer by first class United States mail.

Failure of the sheriff to send or failure of the taxpayer to receive such copy shall not impair the right to collect such taxes, the right to collect any interest or penalty imposed as a result of the failure to pay such taxes or the method of enforcing the payment of such taxes, interest or penalty.

At such time as the sheriff prepares the delinquent list for real property, he shall compare such list with a copy of the landbooks most recently delivered by the assessor to the board of review and equalization pursuant to section
nineteen, article three, chapter eleven of this code. The assessor shall make a copy of said landbooks available to the sheriff. If property on the delinquent list should appear as a transfer on said landbooks with the delinquent owner as the transferor, the sheriff shall send to the transferee at his last known address by first class United States mail a copy of the annual tax ticket or tickets showing what taxes are due upon the real property of such transferee and how they may be paid as prescribed in this section.

Failure of the sheriff to send or failure of the taxpayer to receive such copy shall not impair the right to collect such taxes, the right to collect any interest or penalty imposed as a result of the failure to pay such taxes or the method of enforcing the payment of such taxes, interest or penalty.

(b) In addition to the notice of real or property taxes owed, provided in this section, the county commission of any county may order that the sheriff include in the mailing notice of any taxes or other fees owed to the county or a municipality in the county.

(c) (1) The sheriff may accept credit cards in payment of any of the taxes, interest or penalty described in this section. The type of credit card accepted shall be at the discretion of the sheriff.

(2) The sheriff may set a fee to be added to each credit card transaction equal to the charge paid by the state, county, sheriff or taxpayer for the use of the credit card by the taxpayer. Except for fees imposed pursuant to this subdivision, no other fees for the use of a credit card may be imposed upon the taxpayer.

(3) Except as provided in subsection (a) of this section, in no event shall the sheriff discount or otherwise reduce the tax liability of a taxpayer who has elected to use a credit card for the payment of the tax liability.

(d) The tax commissioner may promulgate legislative rules to provide for the payment of tax liability by installment payments other than those prescribed in subsection (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-3-22. 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-3-69. 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.

(a) On or before the tenth day of September of each year, the sheriff shall prepare a second list of delinquent lands, which shall include all real estate in his county remaining delinquent as of the first day of September, together with a notice of sale, in form or effect as follows:

Notice is hereby given that tax liens for the following described tracts or lots of land or undivided interests therein in the County of ____________ which are delinquent for the nonpayment of taxes for the year (or years) 19____, will be offered for sale by the undersigned sheriff (or collector) at public auction at the front door of the courthouse of the county, between the hours of ten in the morning and four in the afternoon, on the ____ day of ____________, 19____.

Tax liens on each unredeemed tract or lot, or each unredeemed part thereof or undivided interest therein, will be sold at public auction to the highest bidder in an amount which shall not be less than the taxes, interest and charges which shall be due thereon to the date of sale, as set forth in the following table:

<table>
<thead>
<tr>
<th>Name of person charged with taxes</th>
<th>Quantity of land</th>
<th>Local description</th>
<th>Total amount of taxes, interest and charges due to date of sale</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Any of the aforesaid tracts or lots, or part thereof or an undivided interest therein, may be redeemed by the
payment to the undersigned sheriff (or collector) before
sale, of the total amount of taxes, interest and charges due
thereon up to the date of redemption.

Given under my hand this __________ day of
________________________, 19__.

______________________________
Sheriff (or collector).

The sheriff shall publish the list and notice prior to the
sale date fixed in the notice as a Class III-0 legal advertise-
ment in compliance with the provisions of article three,
chapter fifty-nine of this code, and the publication area
for such publication shall be the county.

(b) In addition to such publication, no less than thirty
days prior to the sale the sheriff shall send a notice of such
delinquency and the date of sale by certified mail: (1) To
the last known address of each person listed in the land
books whose taxes are delinquent; (2) to each person
having a lien on real property upon which the taxes are
due as disclosed by a statement filed with the sheriff pur-
suant to the provisions of section three of this article; (3)
to each other person with an interest in the property or
with a fiduciary relationship to a person with an interest in
the property who has in writing delivered to the sheriff on
a form prescribed by the tax commissioner a request for
such notice of delinquency; and (4) in the case of proper-
ty which includes a mineral interest but does not include
an interest in the surface other than an interest for the
purpose of developing the minerals, to each person who
has in writing delivered to the sheriff, on a form pre-
scribed by the tax commissioner, a request for such notice
which identifies the person as an owner of an interest in
the surface of real property that is included in the bound-
aries of such property: Provided, That in a case where one
owner owns more than one parcel of real property upon
which taxes are delinquent, the sheriff may, at his option,
mail separate notices to the owner and each lienholder for
each parcel or may prepare and mail to the owner and
each lienholder a single notice which pertains to all such
delinquent parcels. If he elects to mail only one notice, that notice shall set forth a legally sufficient description of all parcels of property on which taxes are delinquent. In no event shall failure to receive the mailed notice by the landowner or lienholder affect the validity of the title of the property conveyed if it is conveyed pursuant to section twenty-seven or fifty-nine of this article.

(c) (1) To cover the cost of preparing and publishing the second delinquent list, a charge of seven dollars and fifty cents shall be added to the taxes, interest and charges already due on each item and all such charges shall be stated in the list as a part of the total amount due.

(2) To cover the cost of preparing and mailing notice to the landowner, lienholder or any other person entitled thereto pursuant to this section, a charge of five dollars per addressee shall be added to the taxes, interest and charges already due on each item and all such charges shall be stated in the list as a part of the total amount due.

(d) Any person whose taxes were delinquent on the first day of September may have his name removed from the delinquent list prior to the time the same is delivered to the newspapers for publication by paying to the sheriff the full amount of taxes and costs owed by such person at the date of such redemption. In such case, the sheriff shall include but three dollars of the costs provided in this section in making such redemption. Costs collected by the sheriff hereunder which are not expended for publication and mailing shall be paid into the general county fund.

§11A-3-3. Waiver of notice by person claiming lien.

(a) Any person claiming a lien against real property shall be deemed to have waived the right to notice provided by section two of this article unless he shall have filed a statement declaring such interest with the sheriff. Such statement shall be filed upon creation of the lien and upon release of said lien and upon any change of the lienholder's postal address since the original filing of such statement.

Such statement shall be sufficient if it is filed at the
time the document creating the lien is filed and when said lien is released on a form and in a manner to be pre­
scribed from time to time by the tax commissioner, which form shall include the name of the person charged with taxes for the real property; the tax map and parcel number of the property; the assessor's account number of the
property; a description of the interest claimed; and the address to which notice is to be sent: Provided, That it shall be sufficient for purposes of this section if the inform­
ation required by this section is provided on a sales listing form prescribed in section six, article twenty-two, chapter eleven of this code and filed with the clerk of the county commission at the time of the filing of the docu­
ment. The statement may be amended at any time by the person claiming the lien, upon such amended form and in such manner as may be prescribed by the tax commissi­
oner: Provided, however, That in counties with a population greater than two hundred thousand any person claiming liens against more than fifty parcels of real estate may file such statement electronically in a similar format as before described designed by the tax commissioner.

(b) At least once a year prior to the first day of July, the sheriff shall publish a notice that any person claiming a lien against taxable real property must file the statement required by this section or such person will be deemed to have waived any right to notice provided by the preceding section. The notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which such land is located.

§11A-3-5. Sale by sheriff; immunity; penalty; mandamus.

(a) The tax lien on each unredeemed tract or lot, or each unredeemed part thereof or undivided interest there­
in shall be sold by the sheriff, in the same order as set forth in the list and notice prescribed in section two of this article, at public auction to the highest bidder, between the hours of ten in the morning and four in the afternoon on any business working day after the fourteenth day of October and before the twenty-third day of November:
9 Provided, That no tax lien for such unredeemed tract or lot or undivided interest therein shall be sold upon any bid or for any sum less than the total amount of taxes, interest and charges then due: Provided, however, That at any such sale, the tax lien for each unredeemed tract or lot, or undivided interest therein, shall be offered for sale and sold for the entirety of such tract or lot or undivided interest therein as the same is described and constituted as a unit or entity in the list and notice prescribed in section two of this article. If the sale shall not be completed on the day designated in the notice for the holding of such sale, it shall be continued from day to day between the same hours until disposition shall have been made of all the land. The payment for any tax lien purchased at a sale shall be made by check or money order payable to the sheriff of the county and delivered before the close of business on the day of the sale.

(b) Each sheriff is immune from liability if a loss or claim results from the sale of a tax lien conducted pursuant to the provisions of this article or from any subsequent conveyance of the property to which the lien attaches: Provided, That where a sheriff fails or refuses to sell said tax lien pursuant to the provisions of this article for reasons other than those provided by section seven of this article, the sheriff may be compelled by mandamus to sell the same upon the petition of the auditor or any taxpayer of the county in a court of competent jurisdiction.

§11A-3-10. Sheriff to account for proceeds; disposition of surplus.

(a) The sheriff shall account for the proceeds of all sales and redemptions included in such list in the same way he accounts for other taxes collected by him, except that if the purchase money paid for any property sold is in excess of the amount of taxes, interest and charges due thereon, the surplus shall be deposited in a special county fund to be known and designated as the "sale of tax lien surplus fund". Where there is a redemption after the sale, the sheriff shall also deposit into said fund the amount of taxes, interest and charges due on the date of the sale, plus
the interest at the rate of one percent per month from the
date of sale to the date of redemption, described in subdi-
vision (2), subsection (b), section twenty-four of this arti-
cle. Such surpluses shall be disposed of as follows:

(1) In any case where the property was redeemed, such
surplus shall be distributed to the person or persons who
purchased the tax lien thereon, or the heirs, devisees, lega-
etees, executors, administrators, successors or assigns there-
of.

(2) If the purchaser, his heirs, devisees, legatees, execu-
tors, administrators, successors or assigns cannot be found
within two years from and after the date of redemption, all
claims to such surplus shall be barred and such surplus
shall be distributed by the sheriff in the manner provided
by law for the distribution of property taxes collected by
him.

(b) All real estate included in the first delinquent list
sent to the auditor, and not accounted for in the list of
sales, suspensions, redemptions and certifications, shall be
deemed to have been redeemed before sale and the taxes,
interest and charges due thereon shall be accounted for by
the sheriff as if they had been received by him before the
sale.

§11A-3-13. Publication by sheriff of sales list.

Within one month after completion of the sale, the
sheriff shall prepare and publish a list of all the sales and
certifications made by him, in form or effect as follows,
which list shall be published as a Class II-0 legal advertise-
ment in compliance with the provisions of article three,
chapter fifty-nine of this code, and the publication area
for such publication shall be the county.

List of tax liens on real estate sold in the county of
_________________________, in the
month (or months) of _________________, 19____, for nonpayment of taxes thereon for the year (or
years) 19____, and purchased by individuals or certified
to the auditor of the state of West Virginia:
The owner of any real estate listed above, or any other person entitled to pay the taxes thereon, may, however, redeem such real estate as provided by law.

Given under my hand this ___________ day of ______________, 19__. 

______________________________
Sheriff

To cover the costs of preparing and publishing such list, a charge of seven dollars and fifty cents shall be added to the taxes, interest and charges already due on each item listed.

§11A-3-16. Subsequent tax payments by purchaser.

Any person who has paid any subsequent taxes on lands for which he holds the certificate of sale described in section fourteen or fifteen of this article shall produce such certificate and copies of paid tax receipts to the clerk of the county commission, who shall endorse the amount of such subsequent taxes and the date of payment thereof in his records upon the payment to the clerk of a fee therefor in the amount of two dollars.

§11A-3-18. Limitations on tax certificates.

(a) No lien upon real property evidenced by a tax certificate of sale issued by a sheriff on account of any delinquent property taxes shall remain a lien thereon for a period longer than eighteen months after the original issuance thereof.
(b) No tax deed shall issue on any tax sale evidenced by a tax certificate of sale where such certificate has ceased to be a lien pursuant to the provisions of this section and application for such tax deed is not pending at the time of the expiration of the limitation period provided for in this section.

(c) Whenever a lien evidenced by a tax certificate of sale has expired by reason of the provisions of this section, the county clerk shall immediately issue and record a certificate of cancellation describing the real estate included in the certificate of purchase or tax certificate and giving the date of cancellation and he shall also make proper entries in his records. He shall also present a copy of every such certificate of cancellation to the sheriff who shall enter the same in his records and such certificate and the record thereof shall be prima facie evidence of the cancellation of the certificate of sale and of the release of the lien of such certificate on the lands therein described. Failure to record such certificate of cancellation shall not extend the lien evidenced by the certificate of sale. The sheriff and county clerk shall not be entitled to any fees for the issuing of such certificate of cancellation nor for the entries in their books made under the provisions of this subsection.


Whenever the provisions of section nineteen of this article have been complied with, the clerk of the county commission shall thereupon prepare a notice in form or effect as follows:

To___________________________.

You will take notice that ____________, the purchaser (or ____________, the assignee, heir or devisee of ____________, the purchaser) of the tax lien(s) on the following real estate, _____________, (here describe the real estate for which the tax lien(s) thereon were sold) located in _____________, (here name the city, town or village in which the real estate is situated or, if not within a city, town or village, give the district and a general description) which was returned delinquent in the name of
and for which the tax lien(s) thereon was sold by the sheriff of __________ County at the sale for delinquent taxes made on the __________ day of __________, 19__, has requested that you be notified that a deed for such real estate will be made to him on or after the first day of April, 19__, as provided by law, unless before that day you redeem such real estate.

The amount you will have to pay to redeem on the last day, March thirty-first, will be as follows:

Amount equal to the taxes, interest, and charges due on the date of sale, with interest to March 31, 19__ $__________

Amount of taxes paid on the property, since the sale, with interest to March 31, 19__ $__________

Amount paid for title examination and preparation of list of those to be served, and for preparation and service of the notice with interest to March 31, 19__ $__________

Amount paid for other statutory costs (describe) $__________

Total $__________

You may redeem at any time before March thirty-first, nineteen hundred ___________, by paying the above total less any unearned interest.

Given under my hand this ________ day of ___________, 19__.

Clerk of the County Commission of __________ County, State of West Virginia

The clerk for his service in preparing the notice shall receive a fee of five dollars for the original and one dollar
for each copy required. Any costs which must be expended in addition thereto for publication, or service of such notice in the manner provided for serving process commencing a civil action, or for service of process by certified mail, shall be charged by the clerk. All costs provided by this section shall be included as redemption costs and included in the notice described herein.

§11A-3-22. Service of notice.

As soon as the clerk has prepared the notice provided for in section twenty-one of this article, he shall cause it to be served upon all persons named on the list generated by the purchaser pursuant to the provisions of section nineteen of this article.

The notice shall be served upon all such persons residing or found in the state in the manner provided for serving process commencing a civil action or by certified mail, return receipt requested. The notice shall be served on or before the thirtieth day following the request for such notice.

If any person entitled to notice is a nonresident of this state, whose address is known to the purchaser, he shall be served at such address by certified mail, return receipt requested.

If the address of any person entitled to notice, whether a resident or nonresident of this state, is unknown to the purchaser and cannot be discovered by due diligence on the part of the purchaser, the notice shall be served by publication as a Class III-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which such real estate is located. If service by publication is necessary, publication shall be commenced when personal service is required as set forth above, and a copy of the notice shall at the same time be sent by certified mail, return receipt requested, to the last known address of the person to be served. The return of service of such notice and the affidavit of publication, if any, shall be in the manner provided for process generally and shall be filed and preserved by the clerk in his office,
§11A-3-23. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.

(a) After the sale of any tax lien on any real estate pursuant to section five of this article, the owner of, or any other person who was entitled to pay the taxes on, any real estate for which a tax lien thereon was purchased by an individual may redeem at any time before a tax deed is issued therefor. In order to redeem, he must pay to the clerk of the county commission the following amounts:

1. An amount equal to the taxes, interest and charges due on the date of the sale, with interest thereon at the rate of one percent per month from the date of sale;
2. All other taxes thereon, which have since been paid by the purchaser, his heirs or assigns, with interest at the rate of one percent per month from the date of payment;
3. Such additional expenses as may have been incurred in preparing the list of those to be served with notice to redeem and any title examination incident thereto, with interest at the rate of one percent per month from the date of payment, but the amount he shall be required to pay, excluding said interest, for such expenses incurred for the preparation of the list of those to be served with notice to redeem required by section nineteen of this article and any title examination incident thereto, shall not exceed two hundred dollars; and
4. All additional statutory costs paid by the purchaser. Where the clerk has not received from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem, and any examination of title incident thereto, in the form of receipts or other evidence thereof, the person redeeming shall pay the clerk the sum of two hundred dollars plus interest thereon at the rate of one percent per month from the date of the sale for disposition by the sheriff pursuant to the provisions of sections ten, twenty-four, twenty-five and thirty-two of this article.

The person redeeming shall be given a receipt for the payment.
(b) Any person who, by reason of the fact that no provision is made for partial redemption of the tax lien on real estate purchased by an individual, is compelled in order to protect himself to redeem the tax lien on all of such real estate when it belongs, in whole or in part, to some other person, shall have a lien on the interest of such other person for the amount paid to redeem such interest. He shall lose his right to the lien, however, unless within thirty days after payment he shall file with the clerk of the county commission his claim in writing against the owner of such interest, together with the receipt provided for in this section. The clerk shall docket the claim on the judgment lien docket in his office and properly index the same. Such lien may be enforced as other judgment liens are enforced.

§11A-3-24. Notice of redemption to purchaser; moneys received by sheriff.

(a) Upon payment of the sum necessary to redeem, the clerk shall deliver to the sheriff the redemption money paid and the name and address of the purchaser, his heirs and assigns. The clerk shall also note the fact of redemption on his record of delinquent lands.

(b) Of the redemption money received by the sheriff pursuant to this section, the sheriff shall deposit into the sale of tax lien surplus fund provided by section ten of this article the amount thereof equal to the amount of taxes, interest and charges due on the date of the sale, plus the interest at the rate of one percent per month thereon from the date of sale to the date of redemption.

§11A-3-25. Distribution of surplus to purchaser.

(a) Where the land has been redeemed in the manner set forth in section twenty-three of this article, and the clerk has delivered the redemption money to the sheriff pursuant to section twenty-four of this article, the sheriff shall, upon delivery of the sum necessary to redeem, promptly notify the purchaser, his heirs or assigns, by mail, of the fact of the redemption and pay to the purchaser, his heirs or assigns the following amounts: (1) From the sale of tax lien surplus fund provided by section ten of
this article: (A) The surplus of money paid in excess of
the amount of the taxes, interest and charges due and paid
to the sheriff at the sale; and (B) the amount of taxes,
interest and charges due on the date of the sale, plus the
interest at the rate of one percent per month from the date
of sale to the date of redemption; (2) all other taxes there­
on, which have since been paid by the purchaser, his heirs
or assigns, with interest at the rate of one percent per
month from the date of payment; (3) such additional
expenses as may have been incurred in preparing the list
of those to be served with notice to redeem and any title
examination incident thereto, with interest at the rate of
one percent per month from the date of payment, but the
amount which shall be paid, excluding said interest, for
such expenses incurred for the preparation of the list of
those to be served with notice to redeem required by sec­
tion nineteen of this article, and any title examination
incident thereto, shall not exceed two hundred dollars; and
(4) all additional statutory costs paid by the purchaser.

(b) (1) The notice shall include:

(A) A copy of the redemption certificate issued by the
county clerk;

(B) An itemized statement of the redemption money
to which the purchaser is entitled pursuant to the provi­
sions of this section; and

(C) Where, at the time of the redemption, the clerk has
not received from the purchaser satisfactory proof of the
expenses incurred in preparing the list of those to be
served with notice to redeem and any title examination
incident thereto, the clerk shall also include instructions to
the purchaser as to how these expenses may be claimed.

(2) Subject to the limitations of this section, the pur­
chaser is entitled to recover any expenses incurred in pre­
paring the list of those to be served with notice to redeem
and any title examination incident thereto from the date of
the sale to the date of the redemption.

(c) Where, pursuant to section twenty-three of this
article, the clerk has not received from the purchaser satis­
factory proof of the expenses incurred in preparing the list of those to be served with notice to redeem, and any title examination incident thereto, in the form of receipts or other evidence thereof, and therefore received from the purchaser as required by said section and delivered to the sheriff the sum of two hundred dollars plus interest thereon at the rate of one percent per month from the date of the sale to the date of redemption, and the sheriff has not received from the purchaser such satisfactory proof of such expenses within thirty days from the date of notification, the sheriff shall refund such amount to the person redeeming and the purchaser is barred from any claim thereto. Where, pursuant to said section, the clerk has received from the purchaser and therefore delivered to the sheriff said sum of two hundred dollars plus interest thereon at the rate of one percent per month from the date of the sale to the date of redemption, and the purchaser provides the sheriff within thirty days from the date of notification such satisfactory proof of such expenses, and the amount of such expenses is less than the amount paid by the person redeeming, the sheriff shall refund the difference to the person redeeming.

§11A-3-27. Deed to purchaser; record.

If the real estate described in the notice is not redeemed within the time specified therein, but in no event prior to the first day of April of the second year following the sheriff's sale, the person entitled thereto shall make and deliver to the clerk of the county commission at any time thereafter, subject to the provisions of section eighteen of this article, a quitclaim deed for such real estate in form or effect as follows:

This deed made this _____ day of ________, 19___, by and between ____________________, clerk of the county commission of _______________ County, West Virginia, (or by and between _______________, a commissioner appointed by the Circuit Court of _______________ County, West Virginia) grantor, and _______________, purchaser, (or _______________, heir, devisee or assignee of _______________, purchaser), grantee, witnesseth, that:
Whereas, In pursuance of the statutes in such case made and provided, Sheriff of County, (or deputy for County), (or collector of County), did, in the month of , in the year 19 , sell the tax lien(s) on real estate, hereinafter mentioned and described, for the taxes delinquent thereon for the year (or years) 19 , and (here insert name of purchaser) for the sum of $ , that being the amount of purchase money paid to the sheriff, did become the purchaser of the tax lien(s) on such real estate (or on ______ acres, part of the tract or land, or on an undivided ______ interest in such real estate) which was returned delinquent in the name of ____________; and

Whereas, The clerk of the county commission has caused the notice to redeem to be served on all persons required by law to be served therewith; and

Whereas, The tax lien(s) on the real estate so purchased has not been redeemed in the manner provided by law and the time for redemption set in such notice has expired;

Now, therefore, the grantor, for and in consideration of the premises and in pursuance of the statutes, doth grant unto ________________, grantee, his heirs and assigns forever, the real estate on which the tax lien(s) so purchased existed, situate in the county of ________________, bounded and described as follows: ________________

Witness the following signature: ________________

Clerk of the County Commission of ________________ County.

Except when ordered to do so, as provided in section twenty-eight of this article, no clerk of the county commission shall execute and deliver such a deed more than thirty days after the person entitled to the deed delivers the same and requests the execution thereof. Upon the clerk's
determination that the deed presented substantially com-
plies with the requirements of this section, the clerk shall
execute the deed and acknowledge the same, record the
deed in the clerk's office and deliver the original thereof
to the purchaser.

For the execution of the deed and for all the recording
required by this section, a fee of seven dollars and fifty
cents and the recording expenses shall be charged, to be
paid by the grantee upon delivery of the deed. The deed,
when duly acknowledged or proven, shall be recorded by
the clerk of the county commission in the deed book in
his office, together with assignment from the purchaser, if
one was made, the notice to redeem, the return of service
of such notice, the affidavit of publication, if the notice
was served by publication, and any return receipts for
notices sent by certified mail.

§11A-3-28. Compelling service of notice or execution of deed.

If the clerk of the county commission fails or refuses
to prepare and serve the notice to redeem as required in
sections twenty-one and twenty-two of this article, the
person requesting the notice may, at any time within two
weeks after discovery of such failure or refusal, but in no
event later than sixty days following the date the person
requested that notice be prepared and served, apply by
petition to the circuit court of the county for an order
compelling the clerk to prepare and serve the notice or
appointing a commissioner to do so. If the person re-
questing the notice fails to make such application within
the time allowed, he shall lose his right to the notice, but
his rights against the clerk under the provisions of section
sixty-seven of this article shall not be affected. Notice
given pursuant to an order of the court or judge shall be
as valid for all purposes as if given within the time re-
quired by section twenty-two of this article.

If the clerk fails or refuses to execute the deed as re-
quired in section twenty-seven of this article, the person
requesting the deed may, at any time after such failure or
refusal, but not more than six months after his right to the
deed accrued, apply by petition to the circuit court of the
county for an order compelling the clerk to execute the
deed or appointing a commissioner to do so. If the person requesting the deed fails to make such application within the time allowed, he shall lose his right to the deed, but his rights against the clerk under the provisions of section sixty-seven of this article shall not be affected. Any deed executed pursuant to an order of the court or judge shall have the same force and effect as if executed and delivered by the clerk within the time specified in the preceding section.

Ten days' written notice of every such application must be given to the clerk. If, upon the hearing of such application, the court or judge is of the opinion that the applicant is not entitled to the notice or deed requested, the petition shall be dismissed at his costs; but if the court or judge is of the opinion that he is entitled to such notice or deed, then, upon his deposit with the clerk of the circuit court of a sum sufficient to cover the costs of preparing and serving the notice, unless such a deposit has already been made with the clerk of the county commission, an order shall be made by the court or judge directing the clerk to prepare and serve the notice or execute the deed, or appointing a commissioner for the purpose, as the court or judge shall determine. If it appears to the court or judge that the failure or refusal of the clerk was without reasonable cause, judgment shall be given against him for the costs of the proceedings; otherwise the costs shall be paid by the applicant.

Any commissioner appointed under the provisions of this section shall be subject to the same liabilities as are provided for the clerk. For the preparation of the notice to redeem, he shall be entitled to the same fee as is provided for the clerk. For the execution of the deed, he shall also be entitled to a fee of seven dollars and fifty cents and the recording expenses, to be paid by the grantee upon delivery of the deed.

§11A-3-29. One deed for adjoining pieces of real estate within the same tax district.

Whenever one purchaser at the tax sale has purchased tax liens on two or more adjoining pieces of real estate within the same tax district, or undivided interests therein,
charged with taxes for the same year, or years, he, his heirs or assigns may request the clerk of the county commission to execute a separate deed for each adjoining piece of real estate within the same tax district, or undivided interest therein, or separate deeds for some and one deed for the remainder, or one deed for all, as he or they may prefer. Every deed for two or more pieces of adjoining real estate within the same tax district, or undivided interests therein, shall describe each piece of real estate and each undivided interest separately.

§11A-3-45. Deputy commissioner to hold annual auction.

(a) Each tract or lot certified to the deputy commissioner pursuant to the preceding section shall be sold by the deputy commissioner at public auction at the courthouse of the county to the highest bidder between the hours of ten in the morning and four in the afternoon on any business working day within one hundred twenty days after the auditor has certified the lands to the deputy commissioner as required by the preceding section. The payment for any tract or lot purchased at a sale shall be made by check or money order payable to the sheriff of the county and delivered before the close of business on the day of sale. No part or interest in any tract or lot subject to such sale, or any part thereof of interest therein, that is less than the entirety of such unredeemed tract, lot or interest, as the same is described and constituted as a unit or entity in said list, shall be offered for sale or sold at such sale. If the sale shall not be completed on the first day of the sale, it shall be continued from day to day between the same hours until all the land shall have been offered for sale.

(b) A private, nonprofit, charitable corporation, incorporated in this state, which has been certified as a nonprofit corporation pursuant to the provisions of Section 501(c)(3) of the federal Internal Revenue Code, as amended, which has as its principal purpose the construction of housing or other public facilities and which notifies the deputy commissioner of an intention to bid and subsequently submits a bid that is not more than five percent lower than the highest bid submitted by any person or
organization which is not a private, nonprofit, charitable
corporation as defined in this subsection, shall be sold the
property offered for sale by the deputy commissioner
pursuant to the provisions of this section at the public
auction as opposed to the highest bidder.

The nonprofit corporation referred to in this subsec-
tion does not include a business organized for profit, a
labor union, a partisan political organization or an organi-
zation engaged in religious activities and it does not in-
clude any other group which does not have as its principal
purpose the construction of housing or public facilities.

§11A-3-46. Publication of notice of auction.

Once a week for three consecutive weeks prior to the
auction required in the preceding section, the deputy com-
missioner shall publish notice of the auction as a Class
III-0 legal advertisement in compliance with the provisions
of article three, chapter fifty-nine of this code, and the
publication area for such publication shall be the county.

The notice shall be in form or effect as follows:

Notice is hereby given that the following described
tracts or lots of land in the County of __________, have
been certified by the Auditor of the State of West Virginia
to ______________, Deputy Commissioner of Delin-
quent and Nonentered Lands of said County, for sale at
public auction. The lands will be offered for sale by the
undersigned deputy commissioner at public auction in
(specific location) the courthouse of _____ County be-
tween the hours of ten in the morning and four in the
afternoon, on the _____ day of ______________.

Each tract or lot as described below will be sold to the
highest bidder. The payment for any tract or lot pur-
chased at a sale shall be made by check or money order
payable to the sheriff of the county and delivered before
the close of business on the day of the sale. If any of said
tracts or lots remain unsold following the auction, they will
be subject to sale by the deputy commissioner without
additional advertising or public auction. All sales are
subject to the approval of the auditor of the state of West Virginia.

(here insert description of lands to be sold)

Any of the aforesaid tracts or lots may be redeemed by any person entitled to pay the taxes thereon at any time prior to the sale by payment to the deputy commissioner of the total amount of taxes, interest and charges due thereon up to the date of redemption. Lands listed above as escheated or waste and unappropriated lands may not be redeemed.

Given under my hand this ______ day of ________, 19_____.

__________________________ Deputy Commissioner of Delinquent and Nonentered Lands of _____________

The description of lands required in the notice shall be in the same form as the list certifying said lands to the deputy commissioner for sale. If the deputy commissioner is required to auction lands certified to him in any previous years, pursuant to section forty-eight of this article, he shall include such lands in the notice, with reference to the year of certification and the item number of the tract or interest.

To cover the cost of preparing and publishing the notice, a charge of twenty-five dollars shall be added to the taxes, interest and charges due on the delinquent and nonentered property.

§11A-3-47. Redemption prior to sale.

Any of the delinquent and nonentered lands certified to the deputy commissioner may be redeemed, prior to the auction, by the owner of such land or any other person entitled to pay the taxes thereon, by payment of the taxes, interest and charges due. The deputy commissioner shall prepare an original and five copies of the receipt, give to the person redeeming the original receipt, retain one copy for his files and forward one copy each to the sheriff, auditor, assessor and the clerk of the county commission, each of whom shall note the fact of such redemption on their respective records of delinquent lands. Any person
redeeming the interest of another shall be subrogated to
the lien of the state on such interest as provided in section
nine, article one of this chapter.

§ 11A-3-50. Receipt to purchaser for purchase price.

The deputy commissioner shall prepare an original
and two copies of the receipt for the purchase money. He
shall give the original receipt to the purchaser and shall
file one copy thereof with the clerk of the county commis-
sion and one copy thereof with the sheriff, each of whom
shall note the fact of such sale on their respective records
of delinquent lands. The heading of the receipt shall be:

Memorandum of real estate sold in the county of
__________ on this _____ day of __________,
19____, by ____________, the deputy commissioner
of delinquent and nonentered lands of said county.

Except for the heading, the auditor shall prescribe the
form of the receipt.

§ 11A-3-51. Deputy commissioner to report sales to auditor;
auditor to approve sales.

Within fourteen days following the auction required
by section forty-five of this article, and within fourteen
days of any sale pursuant to section forty-eight of this
article, the deputy commissioner must report such sales to
the auditor. The report must include the year that the land
was certified by the auditor for sale, the item number of
the land on the list certifying the land for sale, the amount
of taxes, interest and charges due on such land at the time
of the sale, the quantity of the land, the name and address
of the purchaser and the purchase price. The report shall
be filed with the auditor. The auditor may prescribe the
form of the report.

As soon as possible after receiving the report, the audi-
tor shall determine whether the sale is in the best interest
of the state and shall either approve or disapprove the sale.
The auditor shall then note such approval or disapproval
and, if disapproved, the reasons therefor, on the report,
and return a copy to the deputy commissioner. The origi-
nal shall be retained by the auditor. The deputy commis-
If the auditor shall disapprove any such sale, the deputy commissioner shall forthwith refund the purchase price to the purchaser. The land shall then be again subject to sale pursuant to sections forty-five and forty-eight of this article. If the auditor approves the sale, the purchaser shall immediately commence the steps to obtain a deed, as provided in section fifty-two of this article.

§11A-3-52. What purchaser must do before he can secure a deed.

(a) Within forty-five days following the approval of the sale by the auditor pursuant to section fifty-one of this article, the purchaser, his heirs or assigns, in order to secure a deed for the real estate purchased, shall: (1) Prepare a list of those to be served with notice to redeem and request the deputy commissioner to prepare and serve the notice as provided in sections fifty-four and fifty-five of this article; and (2) deposit, or offer to deposit, with the deputy commissioner a sum sufficient to cover the costs of preparing and serving the notice. For failure to meet these requirements, the purchaser shall lose all the benefits of his purchase. The deputy commissioner may then sell the property in the same manner as he sells lands which have been offered for sale at public auction but which remain unsold after such auction, as provided in section forty-eight of this article.

(b) If the person requesting preparation and service of the notice is an assignee of the purchaser, he shall, at the time of the request, file with the deputy commissioner a written assignment to him of the purchaser's rights, executed, acknowledged and certified in the manner required to make a valid deed.

§11A-3-54. Notice to redeem.

Whenever the provisions of section fifty-two of this article have been complied with, the deputy commissioner shall thereupon prepare a notice in form or effect as fol-
You will take notice that ________________, the purchaser (or ________________, the assignee, heir or devisee of ________________, the purchaser) of the following real estate, ________________, (here describe the real estate sold) located in ________________, (here name the city, town or village in which the real estate is situated or, if not within a city, town or village, give the district and a general description) which was ________________ (here put whether the property was returned delinquent or nonentered) in the name of ________________, and was sold by the deputy commissioner of delinquent and nonentered lands of ________________ County at the sale for delinquent taxes (or nonentry) on the _____ day of ________________, 19___, has requested that you be notified that a deed for such real estate will be made to him on or after the ___ day of ________________, 19___, as provided by law, unless before that day you redeem such real estate. The amount you will have to pay to redeem on the _____ day of ________________, 19___ will be as follows:

Amount equal to the taxes, interest and charges due on the date of sale, with interest to ________________, $________

Amount of taxes paid on the property, since the sale, with interest to ________________, $________

Amount paid for title examination and preparation of list of those to be served, and for preparation and service of the notice with interest to ________________, $________

Amount paid for other statutory costs (describe)

$________

Total $________

You may redeem at any time before ________________ by paying the above total less any unearned interest.

Given under my hand this _____ day of
The deputy commissioner for his service in preparing the notice shall receive a fee of ten dollars for the original and two dollars for each copy required. Any costs which must be expended in addition thereto for publication, or service of such notice in the manner provided for serving process commencing a civil action, or for service of process by certified mail, shall be charged by the deputy commissioner. All costs provided by this section shall be included as redemption costs and included in the notice described herein.

§11A-3-55. Service of notice.

As soon as the deputy commissioner has prepared the notice provided for in section fifty-four of this article, he shall cause it to be served upon all persons named on the list generated by the purchaser pursuant to the provisions of section fifty-two of this article. Such notice shall be mailed and, if necessary, published at least thirty days prior to the first day a deed may be issued following the deputy commissioner's sale.

The notice shall be served upon all such persons residing or found in the state in the manner provided for serving process commencing a civil action or by certified mail, return receipt requested. The notice shall be served on or before the thirtieth day following the request for such notice.

If any person entitled to notice is a nonresident of this state, whose address is known to the purchaser, he shall be served at such address by certified mail, return receipt requested.
If the address of any person entitled to notice, whether a resident or nonresident of this state, is unknown to the purchaser and cannot be discovered by due diligence on the part of the purchaser, the notice shall be served by publication as a Class III-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which such real estate is located. If service by publication is necessary, publication shall be commenced when personal service is required as set forth above, and a copy of the notice shall at the same time be sent by certified mail, return receipt requested, to the last known address of the person to be served. The return of service of such notice, and the affidavit of publication, if any, shall be in the manner provided for process generally and shall be filed and preserved by the auditor in his office, together with any return receipts for notices sent by certified mail.

§11A-3-56. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.

(a) After the sale of any tax lien on any real estate pursuant to section forty-five or forty-eight of this article, the owner of, or any other person who was entitled to pay the taxes on, any real estate for which a tax lien thereon was purchased by an individual, may redeem at any time before a tax deed is issued therefor. In order to redeem, he must pay to the deputy commissioner the following amounts: (1) An amount equal to the taxes, interest and charges due on the date of the sale, with interest thereon at the rate of one percent per month from the date of sale; (2) all other taxes thereon, which have since been paid by the purchaser, his heirs or assigns, with interest at the rate of one percent per month from the date of payment; (3) such additional expenses as may have been incurred in preparing the list of those to be served with notice to redeem, and any title examination incident thereto, with interest at the rate of one percent per month from the date of payment, but the amount he shall be required to pay, excluding said interest, for such expenses incurred for the preparation of the list of those to be served with notice to
redeem required by section fifty-two of this article, and any title examination incident thereto, shall not exceed two hundred dollars; (4) all additional statutory costs paid by the purchaser; and (5) the deputy commissioner's fee and commission as provided by section sixty-six of this article. Where the deputy commissioner has not received from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem, and any examination of title incident thereto, in the form of receipts or other evidence thereof, the person redeeming shall pay the deputy commissioner the sum of two hundred dollars plus interest thereon at the rate of one percent per month from the date of the sale for disposition pursuant to the provisions of sections fifty-seven, fifty-eight and sixty-four of this article. Upon payment to the deputy commissioner of those and any other unpaid statutory charges required by this article, and of any unpaid expenses incurred by the sheriff, the auditor and the deputy commissioner in the exercise of their duties pursuant to this article, the deputy commissioner shall prepare an original and five copies of the receipt for the payment and shall note on said receipts that the property has been redeemed. The original of such receipt shall be given to the person redeeming. The deputy commissioner shall retain a copy of the receipt and forward one copy each to the sheriff, assessor, the auditor and the clerk of the county commission. The clerk shall endorse on the receipt the fact and time of such filing and note the fact of redemption on his record of delinquent lands.

(b) Any person who, by reason of the fact that no provision is made for partial redemption of the tax lien on real estate purchased by an individual, is compelled in order to protect himself to redeem the tax lien on all of such real estate when it belongs, in whole or in part, to some other person, shall have a lien on the interest of such other person for the amount paid to redeem such interest. He shall lose his right to the lien, however, unless within thirty days after payment he shall file with the clerk of the county commission his claim in writing against the owner of such interest, together with the receipt provided for in this section. The clerk shall docket the claim on the judg-
ment lien docket in his office and properly index the same. Such lien may be enforced as other judgment liens are enforced.

§11A-3-57. Notice of redemption to purchaser; moneys received by sheriff.

(a) Upon payment of the sum necessary to redeem, the deputy commissioner shall promptly deliver to the sheriff the redemption money paid and the name and address of the purchaser, his heirs or assigns.

(b) Of the redemption money received by the sheriff pursuant to this section, the sheriff shall hold as surplus to be disposed of pursuant to section sixty-four of this article an amount thereof equal to the amount of taxes, interest and charges due on the date of the sale, plus the interest at the rate of one percent per month thereon from the date of sale to the date of redemption.

§11A-3-58. Distribution to purchaser.

(a) Where the land has been redeemed in the manner set forth in section fifty-six of this article, and the deputy commissioner has delivered the redemption money to the sheriff pursuant to section fifty-seven of this article, the sheriff shall, upon delivery of the sum necessary to redeem, promptly notify the purchaser, his heirs or assigns, by mail, of the redemption and pay to the purchaser, his heirs or assigns, the following amounts: (1) The amount paid to the deputy commissioner at the sale; (2) all other taxes thereon, which have since been paid by the purchaser, his heirs or assigns, with interest at the rate of one percent per month from the date of payment; (3) such additional expenses as may have been incurred in preparing the list of those to be served with notice to redeem, and any title examination incident thereto, with interest at the rate of one percent per month from the date of payment, but the amount which shall be paid, excluding said interest, for such expenses incurred for the preparation of the list of those to be served with notice to redeem required by section fifty-two of this article, and any title examination incident thereto, shall not exceed two hundred dollars; and (4) all additional statutory costs paid by the purchaser.
(b) (1) The notice shall include:

(A) A copy of the redemption certificate issued by the deputy commissioner;

(B) An itemized statement of the redemption money to which the purchaser is entitled pursuant to the provisions of this section; and

(C) Where, at the time of the redemption, the deputy commissioner has not received from the purchaser satisfactory proof of the expenses incurred in preparing the list of those to be served with notice to redeem and any title examination incident thereto, the deputy commissioner shall also include instructions to the purchaser as to how these expenses may be claimed.

(2) Subject to the limitations of this section, the purchaser is entitled to recover any expenses incurred in preparing the list of those to be served with notice to redeem and any title examination incident thereto from the date of the sale to the date of the redemption.

(c) Where, pursuant to section fifty-six of this article, the deputy commissioner has not received from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem, and any title examination incident thereto, in the form of receipts or other evidence thereof, and therefore received from the purchaser as required by said section and delivered to the sheriff the sum of two hundred dollars plus interest thereon at the rate of one percent per month from the date of the sale to the date of redemption, and the sheriff has not received from the purchaser such satisfactory proof of such expenses within thirty days from the date of notification, the sheriff shall refund such amount to the person redeeming and the purchaser is barred from any claim thereto. Where, pursuant to section fifty-six of this article, the deputy commissioner has received from the purchaser and therefore delivered to the sheriff said sum of two hundred dollars plus interest thereon at the rate of one percent per month from the date of the sale to the date of redemption, and the purchaser provides the sheriff within thirty days from the date of notification such satisfactory proof of
such expenses, and the amount of such expenses is less than the amount paid by the person redeeming, the sheriff shall refund the difference to the person redeeming.

§11A-3-59. Deed to purchaser; record.

If the real estate described in the notice is not redeemed within the time specified therein, but in no event prior to thirty days after notices to redeem have been personally served, or an attempt of personal service has been made, or such notices have been mailed or, if necessary, published in accordance with the provisions of section fifty-five of this article, following the deputy commissioner’s sale, the deputy commissioner shall, upon the request of the purchaser, make and deliver to the person entitled thereto a quitclaim deed for such real estate in form or effect as follows:

This deed, made this ____ day of __________, 19__, by and between __________, deputy commissioner of delinquent and nonentered lands of __________ County, West Virginia, grantor, and ____________, purchaser (or __________ heir, devisee, assignee of __________ purchaser) grantee, witnesseth, that

Whereas, in pursuance of the statutes in such case made and provided, ______________, deputy commissioner of delinquent and nonentered lands of __________ County, did, on the ____ day of ____________, 19__, sell the real estate hereinafter mentioned and described for the taxes delinquent thereon for the year(s) 19____, (or as nonentered land for failure of the owner thereof to have the land entered on the land books for the years ____________, or as property escheated to the State of West Virginia, or as waste or unappropriated property) for the sum of $______________ , that being the amount of purchase money paid to the deputy commissioner, and __________ (here insert name of purchaser) did become the purchaser of such real estate, which was returned delinquent in the name of ________________ (or nonentered in the name of, or escheated from the estate of, or which was discovered as waste or unappropri-
37 ated property); and
38  
39  Whereas, the deputy commissioner has caused the
40  notice to redeem to be served on all persons required by
41  law to be served therewith; and
42  
43  Whereas, the real estate so purchased has not been
44  redeemed in the manner provided by law and the time for
45  redemption set forth in such notice has expired.
46  
47  Now, therefore, the grantor for and in consideration of
48  the premises recited herein, and pursuant to the provisions
49  of Article 3, Chapter 11A of the West Virginia Code, doth
50  grant unto ______________________, grantee, his
51  heirs and assigns forever, the real estate so purchased,
52  situate in the County of ____________, bounded and
53  described as follows: ______________________
54  (here insert description of property)
55  
56  Witness the following signature:
57  
58  ________________________________________
59  
60  Deputy Commissioner of Delinquent and Nonentered
61  Lands of ____________ County
62  
63  Except when ordered to do so as provided in section
64  sixty of this article, the deputy commissioner shall not
65  execute and deliver a deed more than thirty days after the
66  purchaser's right to the deed accrued.
67  
68  For the preparation and execution of the deed and for
69  all the recording required by this section, a fee of fifty
70  dollars and the recording expenses shall be charged, to be
71  paid by the grantee upon delivery of the deed. The deed,
72  when duly acknowledged or proven, shall be recorded by
73  the clerk of the county commission in the deed book in
74  his office, together with the assignment from the purchaser,
75  if one was made, the notice to redeem, the return of
76  service of such notice, the affidavit of publication, if the
77  notice was served by publication, and any return receipts
78  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
and serve the notice to redeem as required in sections fifty-four and fifty-five of this article, the person requesting the notice may, at any time within two weeks after discovery of such failure or refusal, but in no event later than sixty days following the date the person requested that notice be prepared and served, apply by petition to the circuit court of the county for an order compelling the deputy commissioner to prepare and serve the notice or appointing a commissioner to do so. If the person requesting the notice fails to make such application within the time allowed, he shall lose his right to the notice, but his rights against the deputy commissioner under the provisions of section sixty-seven of this article shall not be affected. Notice given pursuant to an order of the court or judge shall be valid for all purposes as if given within the time required by section fifty-five of this article.

If the person requesting the notice fails to make such application within the time allowed, he shall lose his right to the notice, but his rights against the deputy commissioner under the provisions of section sixty-seven of this article shall not be affected. Notice given pursuant to an order of the court or judge shall be valid for all purposes as if given within the time required by section fifty-five of this article.

If the deputy commissioner fails or refuses to prepare and execute the deed as required in the preceding section, the person requesting the deed may, at any time after such failure or refusal, but not more than six months after his right to the deed accrued, apply by petition to the circuit court of the county for an order compelling the deputy commissioner to prepare and execute the deed or appointing a commissioner to do so. If the person requesting the deed fails to make such application within the time allowed, he shall lose his right to the deed, but his rights against the deputy commissioner under the provisions of section sixty-seven of this article shall remain unaffected. Any deed executed pursuant to an order of the court shall have the same force and effect as if executed and delivered by the deputy commissioner within the time specified in the preceding section.

Ten days' written notice of every such application must be given to the deputy commissioner. If, upon the hearing of such application, the court is of the opinion that the applicant is not entitled to the notice or deed requested, the petition shall be dismissed at his costs; but, if the court is of the opinion that he is entitled to such notice or deed, then, upon his deposit with the clerk of the circuit court of a sum sufficient to cover the costs of preparing and serving the notice, unless such a deposit has already
been made with the deputy commissioner, an order shall
be made by the court directing the deputy commissioner
to prepare and serve the notice or execute the deed, or
appointing a commissioner for the purpose, as the court or
judge shall determine. The order shall be filed with the
clerk of the circuit court and entered in the civil order
book. If it appears to the court that the failure or refusal
of the deputy commissioner was without reasonable cause,
judgment shall be given against him for the costs of the
proceedings, otherwise the costs shall be paid by the appli-
cant.

Any commissioner appointed under the provisions of
this section shall be subject to the same liabilities as the
deputy commissioner. For the preparation of the notice to
redeem, he shall be entitled to the same fee as is provided
for the deputy commissioner. For the preparation and
execution of the deed, he shall also be entitled to a fee of
fifty dollars and recording expenses to be paid by the
grantee upon delivery of the deed.

§11A-3-61. One deed for adjoining pieces of real estate within
the same tax district.

Whenever one purchaser at the tax sale has purchased
tax liens on two or more adjoining pieces of real estate
within the same tax district, or undivided interests therein,
charged with taxes for the same year, or years, he, his heirs
or assigns, may request the deputy commissioner to exe-
cute a separate deed for each adjoining piece of real estate
within the same tax district, or undivided interest therein,
or separate deeds for some and one deed for the remain-
der, or one deed for all, as he or they may prefer. Every
deed for two or more adjoining pieces of real estate within
the same tax district, or undivided interests therein, shall
describe each piece of real estate and each undivided in-
terest separately.

§11A-3-64. Sheriff to receive proceeds of deputy commis-
ers' sales and redemptions from the deputy
commissioner; disposition.

(a) The sheriff shall receive all proceeds of sales held
by the deputy commissioner pursuant to sections
forty-five and forty-eight of this article, and all redemption money paid to the deputy commissioner pursuant to this article. All funds to be paid to the deputy commissioner pursuant to sections forty-five, forty-eight and fifty-six of this article shall be paid by check or money order payable to the sheriff of the county. The deputy commissioner shall, immediately upon receipt of any such payment, turn such moneys over to the sheriff.

(b) The sheriff shall keep in a separate fund, to be known and designated the "Delinquent Nonentered Land Fund", the proceeds of all redemptions and sales paid to him under the provisions of sections forty-five, forty-eight and fifty-six of this article. Out of the total proceeds of each sale or redemption he shall, in the order of priority stated below, credit the following amount for payment as hereinafter provided: (1) To the deputy commissioner, such part as represents compensation due him under the provisions of section sixty-six of this article and the charge for the cost of preparing and publishing the notice required in section forty-six of this article; (2) to the auditor, such part as represents any charges which were paid by or which are payable to him; (3) to the general county fund, such part as represents costs paid out of such fund for publishing the sheriff's delinquent and sales list and all other costs incurred by the sheriff pursuant to the provisions of this article; and (4) to the auditor for credit to the general school fund, such part as represents all taxes and interest chargeable in respect to any nonentered lands and all surplus proceeds of sale of any waste and unappropriated lands. In addition thereto, surplus proceeds from the deputy commissioner's sale of delinquent and nonentered lands, as well as the proceeds from the sale of escheated lands, shall be held by the sheriff for the periods provided in section sixty-five of this article and section seven, article four of this chapter, and if no claim is made therefore to the sheriff within the time therein specified, such amounts shall be paid to the auditor for credit to the general school fund.

The balance, if any, of the proceeds of the lands sold by the deputy commissioner shall be prorated among the 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.


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
§11A-3-70. Release of title to, and taxes on, lands on which all taxes paid for ten years.

In view of the desirability of stable land titles and to encourage landowners to cause their lands to be assessed and pay the taxes thereon, it is the purpose and intent of the Legislature to release all of the state's title and claim and the authority and control of the auditor to any real estate on which all taxes have been paid for ten consecutive years and release all taxes prior to such ten-year period. If, heretofore or hereafter, all taxes due on any parcel of land for ten consecutive years have been fully paid, all title to any such land acquired by the state prior to said ten-year period or all real property tax liens which subject the lands to the authority and control of the auditor prior to said ten-year period shall be and is hereby released to the person who would be the owner thereof but for the title of the state or the real property tax liens which subject the lands to the authority and control of the auditor so released and all unpaid taxes prior to said ten-year period are declared to be fully paid.

Nothing contained in this section shall affect or be held or construed to affect in any way the right or title of a person claiming to any land by transfer as provided in section three, article XIII of the constitution of the state of West Virginia prior to the repeal of said constitutional provision in the year one thousand nine hundred ninety-two.

It is the intention of the Legislature that this section shall be both retroactive and prospective.

§11A-3-71. Deeds of deputy commissioner conveying coal, oil, gas, timber and other natural resources.

In any deed by the deputy commissioner in which said commissioner conveys or has heretofore conveyed coal, oil, gas, timber or any natural resources, as certified to him by the auditor of the state to be sold for the benefit of the school fund or as otherwise provided in this article, it shall not be necessary to recite the mining, drilling, cutting or
other rights and privileges appurtenant to the same, which
were a part of the deed of severance of said natural re-
sources from the surface or other estate; and in cases
where any such deeds may have heretofore been made
and the rights and privileges were not recited in such
deeds, the rights and privileges are hereby declared to
have attached and passed by such deeds and all such con-
vveyances are hereby ratified and confirmed.

§11A-3-72. Release of taxes and interest.

In view of the great uncertainty and confusion existing
in the auditor's records of delinquent lands for the years
prior to one thousand nine hundred thirty-six, due to the
insufficient and inadequate reports by former school land
commissioners and the doubtful status of delinquent or
forfeited undivided interests, the Legislature finds that it
will be impossible to provide a speedy method for dispos-
ing of delinquent and forfeited lands and for conveying to
the purchasers of such lands a secure title, unless some
action is taken to prevent the certifications and sale of
lands which were formerly redeemed from or were sold by
such commissioners, but which appear on the auditor's
records, as unsold and unredeemed. Wherefore, it is the
purpose and intent of the Legislature to release all taxes,
interest and charges that may be due on any real estate in
this state for the assessment year one thousand nine hun-
dred thirty-five and for all years prior thereto, and all such
taxes, interest and charges are hereby declared to be fully
paid. If all the taxes due on any land for the assessment
year one thousand nine hundred thirty-six and for all
years subsequent thereto have been paid, all title to any
such land theretofore acquired by the state and any land
subject to the authority and control of the auditor shall be
and is hereby released.

The auditor, in computing the amount necessary for
redemption as provided in section thirty-eight of this arti-
cle, and in preparing the list of lands for certification to
the deputy commissioner as provided in section forty-four
of this article, shall use the assessment year one thousand
nine hundred thirty-six as the initial year for which taxes
are to be charged. He shall specify the year in which the
state acquired title, but if such year was prior to the year
one thousand nine hundred thirty-six, shall charge no
taxes for any year prior thereto, nor shall he charge any
interest, fees, penalties or costs for any years prior to the
year one thousand nine hundred thirty-six.

Nothing contained in this section shall be held or
construed to affect in any way the right of a person claim-
ing title to any land by transfer, as provided in section
three, article XIII of the constitution of West Virginia prior
to the repeal of said constitutional provision in the year
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.

In view of the large number of lots, parcels and tracts
of land in this state which are entered on the land books
by descriptions, or statement of interest or estate, or name
of owner, or in a taxing district, which are erroneous or
deficient in various particulars and the large number of
lots, parcels and tracts of land in this state, and interests
and estates therein, which appear on the land books by
entries which have been or may be considered to be irreg-
ular, erroneous, invalid or void in various particulars be-
cause of the way in which the name of the owner, the area,
the lot or tract number or reference, the local description,
the statement of the interest or estate and other particulars
are stated, or because the entries are in the wrong taxing
district; and the uncertainty which exists as to whether the
payment of taxes thereon prevents the land intended to be
assessed from having been forfeited for nonentry or be
subject to the authority and control of the auditor pursu-
ant to section thirty-seven of this article; and in view of the
necessity for permitting the owners of such land to pay
taxes thereon in safety and to relieve from and avoid dou-
ble payment of taxes on the same land in such cases, it is
the purpose and intent of the Legislature to, and it hereby
does, release all taxes and charges that may be or become
due or unpaid, or considered to be or become due or
unpaid, on any such lot, parcel or tract of land in this state
for each year that the taxes charged thereon under such
entry have been or shall be paid, even though the entry be
entirely different in description or otherwise from the land
intended or be completely deficient, provided the identity
of the land intended by such entry can be ascertained. All
title which has been acquired by the state of West Virginia
by forfeiture of land or lands which are subject to the
authority and control of the auditor because of any such
entry for any such year is hereby released and granted to
the owner of such land in all cases where the identity of
the land intended by such entry can be ascertained. No
such entry heretofore or hereafter made for any such year
shall constitute, or be considered to constitute, a failure of
the owner of such land to have the same entered on the
land books and to have himself charged with taxes there-
on, or an omission of the same from the land books, or
shall result in, or be considered to have resulted in a for-
feiture for nonentry of the land or be considered to sub-
ject the land to the authority and control of the auditor
intended by such entry if the identity of the land intended
by such entry can be ascertained. Such identity may be
ascertained by any available evidence, parole or written, of
record or not of record, including, but not limited to, trac-
ing back prior years land book entries and valuations to a
transfer to the present or a former owner, notations on the
land books and other records in the office of the assessor
for the current and prior years, conveyances to and from
the present and former owners, and all pertinent evidence
not within the foregoing classes. The provisions of this
section are remedial and shall be liberally construed for
the relief of landowners.

§11A-3-74. Severability.

If any section, subsection, subdivision, subparagraph,
sentence or clause of this article is adjudged to be uncon-
stitutional or otherwise invalid, such invalidation shall not
affect the validity of the remaining portions of this article
and, to this end, the provisions of this article are hereby
declared to be severable.
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.

(a) Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1986, as amended, and such other provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred ninety-five, shall be given effect in determining the taxes imposed by this article for any taxable year beginning the first day of January, one thousand nine hundred ninety-four, or thereafter, but no amendment to the laws of the United States made on or after the first day of January, one thousand nine hundred ninety-five, shall be given any effect.
(b) The term "Internal Revenue Code of 1986" means the Internal Revenue Code of the United States enacted by the "Federal Tax Reform Act of 1986" and includes the provisions of law formerly known as the Internal Revenue Code of 1954, as amended, and in effect when the "Federal Tax Reform Act of 1986" was enacted, that were not amended or repealed by the "Federal Tax Reform Act of 1986". Except when inappropriate, any references in any law, executive order or other document:

(1) To the Internal Revenue Code of 1954 shall include reference to the Internal Revenue Code of 1986; and

(2) To the Internal Revenue Code of 1986 shall include a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

(c) Effective date. — The amendments to this section enacted in the year one thousand nine hundred ninety-five shall be retroactive and shall apply to taxable years beginning on or after the first day of January, one thousand nine hundred ninety-four, to the extent allowable under federal income tax law. With respect to taxable years that begin prior to the first day of January, one thousand nine hundred ninety-four, the law in effect for each of those years shall be fully preserved as to such year.
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
4. Bank Deposits and Collections.
5. Letters of Credit.
8. Investment Securities.

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 transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this chapter applies to transactions bearing an appropriate relation to this state.

8 (2) Where one of the following provisions of this chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules)
§46-1-206. Statute of frauds for kinds of personal property not otherwise covered.

(1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (section 2-201) nor of securities (section 8-113) nor to security agreements (section 9-203).

ARTICLE 4. BANK DEPOSITS AND COLLECTIONS.

§46-4-104. Definitions and index of definitions.

(a) In this article unless the context otherwise requires:

(1) "Account" means any deposit or credit account with a bank, including demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(2) "Afternoon" means the period of a day between noon and midnight;
(3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions;

(4) "Clearing house" means an association of banks or other payors regularly clearing items;

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (section 8-102) or instructions for uncertificated securities (section 8-102), or other certificates, statements or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(7) "Draft" means a draft as defined in section 3-104 or an item, other than an instrument, that is an order;

(8) "Drawee" means a person ordered in a draft to make payment;

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by article four-a or a credit or debit card slip;

(10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final;

(12) "Suspends payments" with respect to a bank
means that it has been closed by order of the supervisory
authorities, that a public officer has been appointed to take
it over or that it ceases or refuses to make payments in the
ordinary course of business.

(b) Other definitions applying to this article and the
sections in which they appear are:

"Agreement for electronic
presentation" Section 4-110.

"Bank" Section 4-105.

"Collecting bank" Section 4-105.

"Depositary bank" Section 4-105.

"Intermediary bank" Section 4-105.

"Payor bank" Section 4-105.

"Presenting bank" Section 4-105.

"Presentment notice" Section 4-110.

(c) The following definitions in other articles of this
chapter apply to this article:

"Acceptance" Section 3-409.

"Alteration" Section 3-407.

"Cashier's check" Section 3-104.

"Certificate of deposit" Section 3-104.

"Certified check" Section 3-409.

"Check" Section 3-104.

"Draft" Section 3-104.

"Good faith" Section 3-103.

"Holder in due course" Section 3-302.

"Instrument" Section 3-104.
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 payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

2 (2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (section 7-507) or of a certificated security (section 8-108) or is forged or fraudulent or there is fraud in the transaction:
(a) The issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (section 3-302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (section 7-502) or a bona fide purchaser of a certificated security (section 8-302); and

(b) In all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

(3) Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

(4) When a credit provides for payment by the issuer on receipt of notice that the required documents are in the possession of a correspondent or other agent of the issuer:

   (a) Any payment made on receipt of such notice is conditional; and

   (b) The issuer may reject documents which do not comply with the credit if it does so within three banking days following its receipt of the documents; and

   (c) In the event of such rejection, the issuer is entitled by charge-back or otherwise to return of the payment made.

(5) In the case covered by subsection (4) of this section failure to reject documents within the time specified in subdivision (b) of said subsection constitutes acceptance of the documents and makes the payment final in favor of the beneficiary.
ARTICLE 8. INVESTMENT SECURITIES.

PART I. 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 code—investment securities.

§46-8-102. Definitions.

1 (a) In this article:

2 (1) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

3 (2) "Bearer form", as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.
(3) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(4) "Certificated security" means a security that is represented by a certificate.

(5) "Clearing corporation" means:

(i) A person that is registered as a "clearing agency" under the federal securities laws;

(ii) A federal reserve bank; or

(iii) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

(6) "Communicate" means to:

(i) Send a signed writing; or

(ii) Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(7) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of section 8-501(b)(2) or (3), that person is the entitlement holder.

(8) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(9) "Financial asset", except as otherwise provided in section 8-103, means:
(i) A security;
(ii) An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets or which is recognized in any area in which it is issued or dealt in as a medium for investment;
or
(iii) Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this article. As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate or a security entitlement.

(10) "Good faith", for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this article, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(11) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring or redeeming the security or granting a power to assign, transfer or redeem it.

(12) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(13) "Registered form", as applied to a certificated security, means a form in which:
(i) The security certificate specifies a person entitled to the security; and
(ii) A transfer of the security may be registered upon
books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(14) "Securities intermediary" means:

(i) A clearing corporation; or

(ii) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(15) "Security", except as otherwise provided in section 8-103, means an obligation of an issuer or a share, participation or other interest in an issuer or in property or an enterprise of an issuer:

(i) Which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) Which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests or obligations; and

(iii) Which:

(A) Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) Is a medium for investment and by its terms expressly provides that it is a security governed by this article.

(16) "Security certificate" means a certificate representing a security.

(17) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5.

(18) "Uncertificated security" means a security that is not represented by a certificate.
(b) Other definitions applying to this article and the sections in which they appear are:

- "Appropriate person"  Section 8-107
- "Control"         Section 8-106
- "Delivery"        Section 8-301
- "Investment company security"  Section 8-103
- "Issuer"          Section 8-201
- "Overissue"       Section 8-210
- "Protected purchaser"  Section 8-303
- "Securities account"  Section 8-501

(c) In addition, article one contains general definitions and principles of construction and interpretation applicable throughout this article.

(d) The characterization of a person, business or transaction for purposes of this article does not determine the characterization of the person, business or transaction 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.

(a) A share or similar equity interest issued by a corporation, business trust, joint stock company or similar entity is a security.

(b) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.
14 (c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this article or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

21 (d) A writing that is a security certificate is governed by this article and not by article three, even though it also meets the requirements of that article. However, a negotiable instrument governed by article three is a financial asset if it is held in a securities account.

26 (e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in section 9-115, is not a security or a financial asset.

§46-8-104. Acquisition of security or financial asset or interest therein.

(a) A person acquires a security or an interest therein, under this article, if:

1 (1) The person is a purchaser to whom a security is delivered pursuant to section 8-301; or

2 (2) The person acquires a security entitlement to the security pursuant to section 8-501.

(b) A person acquires a financial asset, other than a security, or an interest therein, under this article, if the person acquires a security entitlement to the financial asset.

(c) A person who acquires a security entitlement to a security or other financial asset has the rights specified in Part 5, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in section 8-503.
(d) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule or agreement to transfer, deliver, present, surrender, exchange or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection (a) or (b) of this section.

§46-8-105. Notice of adverse claim.

(a) A person has notice of an adverse claim if:

1. The person knows of the adverse claim;
2. The person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or
3. The person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.

(b) Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

(c) An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:

1. One year after a date set for presentment or surrender for redemption or exchange; or
(2) Six months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.

(d) A purchaser of a certificated security has notice of an adverse claim if the security certificate:

(1) Whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(2) Is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

(e) Filing of a financing statement under article nine is not notice of an adverse claim to a financial asset.

§46-8-106. Control.

(a) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(b) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser and:

(1) The certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(2) The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(c) A purchaser has "control" of an uncertificated security if:

(1) The uncertificated security is delivered to the purchaser; or

(2) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.
(d) A purchaser has "control" of a security entitlement if:

(1) The purchaser becomes the entitlement holder; or

(2) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder.

(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of subdivision (2), subsection (c) of this section or subdivision (2), subsection (d) of this section has control even if the registered owner in the case of subdivision (2), subsection (c) of this section, subsection (c) of this section or the entitlement holder in the case of subdivision (2), subsection (d) of this section retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in subdivision (2), subsection (c) of this section or subdivision (2), subsection (d) of this section without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

§46-8-107. Whether indorsement, instruction or entitlement order is effective.

(a) "Appropriate person" means:
(1) With respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;

(2) With respect to an instruction, the registered owner of an uncertificated security;

(3) With respect to an entitlement order, the entitlement holder;

(4) If the person designated in subdivision (1), (2) or (3) of this subsection is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or

(5) If the person designated in subdivision (1), (2) or (3) of this subsection lacks capacity, the designated person's guardian, conservator or other similar representative who has power under other law to transfer the security or financial asset.

(b) An indorsement, instruction or entitlement order is effective if:

(1) It is made by the appropriate person;

(2) It is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under section 8-106(c)(2) or (d)(2); or

(3) The appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

(c) An indorsement, instruction or entitlement order made by a representative is effective even if:

(1) The representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or
(2) The representative's action in making the indorsement, instruction or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

(d) If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

(e) Effectiveness of an indorsement, instruction or entitlement order is determined as of the date the indorsement, instruction or entitlement order is made, and an indorsement, instruction or entitlement order does not become ineffective by reason of any later change of circumstances.

§46-8-108. Warranties in direct holding.

(a) A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser, that:

(1) The certificate is genuine and has not been materially altered;

(2) The transferor or indorser does not know of any fact that might impair the validity of the security;

(3) There is no adverse claim to the security;

(4) The transfer does not violate any restriction on transfer;

(5) If the transfer is by indorsement, the indorsement is made by an appropriate person or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(6) The transfer is otherwise effective and rightful.
(b) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

(1) The instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;

(2) The security is valid;

(3) There is no adverse claim to the security; and

(4) At the time the instruction is presented to the issuer:

(i) The purchaser will be entitled to the registration of transfer;

(ii) The transfer will be registered by the issuer free from all liens, security interests, restrictions and claims other than those specified in the instruction;

(iii) The transfer will not violate any restriction on transfer; and

(iv) The requested transfer will otherwise be effective and rightful.

(c) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:

(1) The uncertificated security is valid;

(2) There is no adverse claim to the security;

(3) The transfer does not violate any restriction on transfer; and

(4) The transfer is otherwise effective and rightful.

(d) A person who indorses a security certificate warrants to the issuer that:

(1) There is no adverse claim to the security; and
(2) The indorsement is effective.

(e) A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:

(1) The instruction is effective; and

(2) At the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.

(f) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.

(g) If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

(h) A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection (g) of this section.

(i) Except as otherwise provided in subsection (g) of this section, a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections (a) through (f) of this section. A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security,
makes to the customer the warranties provided in subsection (a) or (b) of this section, and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer.

§46-8-109. Warranties in indirect holding.

(a) A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

(1) The entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(2) There is no adverse claim to the security entitlement.

(b) A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in section 8-108(a) or (b).

(c) If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in section 8-108(a) or (b).

§46-8-110. Applicability; choice of law.

(a) The local law of the issuer's jurisdiction, as specified in subsection (d) of this section governs:

(1) The validity of a security;

(2) The rights and duties of the issuer with respect to registration of transfer;
(3) The effectiveness of registration of transfer by the issuer;

(4) Whether the issuer owes any duties to an adverse claimant to a security; and

(5) Whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(b) The local law of the securities intermediary's jurisdiction, as specified in subsection (e) of this section, governs:

(1) Acquisition of a security entitlement from the securities intermediary;

(2) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(3) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(4) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(c) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(d) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in subdivisions (2) through (5), subsection (a) of this section.

(e) The following rules determine a "securities inter-
mediary's jurisdiction" for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(2) If an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in subdivision (1) of this subsection, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(3) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subdivision (1) or (2) of this subsection, the securities intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder's account.

(4) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subdivision (1) or (2) of this subsection and an account statement does not identify an office serving the entitlement holder's account as provided in subdivision (3) of this subsection, the securities intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.

(f) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement or by the location of facilities for data processing or other record keeping concerning the account.

§46-8-111. Clearing corporation rules.

A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and
its participants in the clearing corporation is effective even if the rule conflicts with this and affects another party who does not consent to the rule.

§46-8-112. Creditor's legal process.

(a) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection (d) of this section. However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

(b) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection (d) of this section.

(c) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection (d) of this section.

(d) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

(e) A creditor whose debtor is the owner of a certificated security, uncertificated security or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

§46-8-113. Statute of frauds inapplicable.
A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one year of its making.

§46-8-114. Evidentiary rules concerning certificated securities.

The following rules apply in an action on a certificated security against the issuer:

(1) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary indorsement is admitted.

(2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.

(3) If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.

(4) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted.

§46-8-115. Securities intermediary and others not liable to adverse claimant.

A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary or broker or other agent or bailee:

(1) Took the action after it had been served with an
injunction, restraining order or other legal process enjoin-
ing it from doing so, issued by a court of competent juris-
diction, and had a reasonable opportunity to act on the
injunction, restraining order or other legal process; or

(2) Acted in collusion with the wrongdoer in violating
the rights of the adverse claimant; or

(3) In the case of a security certificate that has been
stolen, acted with notice of the adverse claim.

§46-8-116. Securities intermediary as purchaser for value.

A securities intermediary that receives a financial asset
and establishes a security entitlement to the financial asset
in favor of an entitlement holder is a purchaser for value
of the financial asset. A securities intermediary that ac-
quires a security entitlement to a financial asset from an-
other securities intermediary acquires the security entitle-
ment for value if the securities intermediary acquiring the
security entitlement establishes a security entitlement to
the financial asset in favor of an entitlement holder.

PART 2. ISSUE AND ISSUER.

§46-8-201. Issuer.

(a) With respect to an obligation on or a defense to a
security, an "issuer" includes a person that:

(1) Places or authorizes the placing of its name on a
security certificate, other than as authenticating trustee,
registrar, transfer agent or the like, to evidence a share,
participation or other interest in its property or in an en-
terprise or to evidence its duty to perform an obligation
represented by the certificate;

(2) Creates a share, participation, or other interest in
its property or in an enterprise, or undertakes an obliga-
tion, that is an uncertificated security;

(3) Directly or indirectly creates a fractional interest
in its rights or property, if the fractional interest is repre-
sented by a security certificate; or
(4) Becomes responsible for, or in place of, another person described as an issuer in this section.

(b) With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.

(c) With respect to a registration of a transfer, issuer means a person on whose behalf transfer books are maintained.

§46-8-202. Issuer's responsibility and defenses; notice of defect or defense.

(a) Even against a purchaser for value and without notice, the terms of a certificated security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order or the like, to the extent the terms referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice.

The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order or the like, pursuant to which the security is issued.

(b) The following rules apply if an issuer asserts that a security is not valid:

(1) A security other than one issued by a government or governmental subdivision, agency or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by
original issue.

(2) Subdivision (1) of this subsection applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(c) Except as otherwise provided in section 8-205, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

(d) All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

(e) This section does not affect the right of a party to cancel a contract for a security "when, as and if issued" or "when distributed" in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

(f) If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

§46-8-203. Staleness as notice of defect or defense.

After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue.
or defense of the issuer, if the act or event:

(1) Requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or

(2) Is not covered by subdivision (1) of this section and the purchaser takes the security more than two years after the date set for surrender or presentation or the date on which performance became due.

§46-8-204. Effect of issuer's restriction on transfer.

A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless:

(1) The security is certificated and the restriction is noted conspicuously on the security certificate; or

(2) The security is uncertificated and the registered owner has been notified of the restriction.

§46-8-205. Effect of unauthorized signature on security certificate.

An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

(1) An authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security certificate or of similar security certificates, or the immediate preparation for signing of any of them; or

(2) An employee of the issuer, or of any of the persons listed in subdivision (1) of this section, entrusted with responsible handling of the security certificate.
§46-8-206. Completion or alteration of security certificate.

(a) If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(1) Any person may complete it by filling in the blanks as authorized; and

(2) Even if the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(b) A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

§46-8-207. Rights and duties of issuer with respect to registered owners.

(a) Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.

(b) This article does not affect the liability of the registered owner of a security for a call, assessment or the like.

§46-8-208. Effect of signature of authenticating trustee, registrar, or transfer agent.

(a) A person signing a security certificate as authenticating trustee, registrar, transfer agent or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:

(1) The certificate is genuine;

(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 occurs when:

1. (1) The purchaser acquires possession of the security certificate;

2. (2) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

3. (3) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and has been specially indorsed to the purchaser by an effective indorsement.

(b) Delivery of an uncertificated security to a purchaser occurs when:

1. (1) The issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

2. (2) Another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

§46-8-302. Rights of purchaser.

1. (a) Except as otherwise provided in subsections (b) and (c) of this section, upon delivery of a certificated or uncertificated security to a purchaser, the purchaser acquires all rights in the security that the transferor had or had power to transfer.

2. (b) A purchaser of a limited interest acquires rights
only to the extent of the interest purchased.

c) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

§46-8-303. Protected purchaser.

(a) "Protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

(1) Gives value;

(2) Does not have notice of any adverse claim to the security; and

(3) Obtains control of the certificated or uncertificated security.

(b) In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim.

§46-8-304. Indorsement.

(a) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.

(b) An indorsement purporting to be only of part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(c) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

(d) If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement,
the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

(e) An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

(f) Unless otherwise agreed, a person making an indorsement assumes only the obligations provided in section 8-108 and not an obligation that the security will be honored by the issuer.

§46-8-305. Instruction.

(a) If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.

(b) Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by section 8-108 and not an obligation that the security will be honored by the issuer.

§46-8-306. Effect of guaranteeing signature, indorsement, or instruction.

(a) A person who guarantees a signature of an indorser of a security certificate warrants that at the time of signing:

(1) The signature was genuine;

(2) The signer was an appropriate person to indorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and

(3) The signer had legal capacity to sign.
(b) A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

(1) The signature was genuine;

(2) The signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and

(3) The signer had legal capacity to sign.

(c) A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under subsection (b) of this section and also warrants that at the time the instruction is presented to the issuer:

(1) The person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and

(2) The transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(d) A guarantor under subsections (a) and (b) of this section or a special guarantor under subsection (c) of this section does not otherwise warrant the rightfulness of the transfer.

(e) A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under subsection (a) of this section and also warrants the rightfulness of the transfer in all respects.

(f) A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection
(c) of this section and also warrants the rightfulness of the
transfer in all respects.

(g) An issuer may not require a special guaranty of
signature, a guaranty of indorsement, or a guaranty of
instruction as a condition to registration of transfer.

(h) The warranties under this section are made to a
person taking or dealing with the security in reliance on
the guaranty, and the guarantor is liable to the person for
loss resulting from their breach. An indorser or originator
of an instruction whose signature, indorsement, or instruc-
tion has been guaranteed is liable to a guarantor for any
loss suffered by the guarantor as a result of breach of the
warranties of the guarantor.

§46-8-307. Purchaser's right to requisites for registration of
transfer.

Unless otherwise agreed, the transferor of a security
on due demand shall supply the purchaser with proof of
authority to transfer or with any other requisite necessary
to obtain registration of the transfer of the security, but if
the transfer is not for value, a transferor need not comply
unless the purchaser pays the necessary expenses. If the
transferor fails within a reasonable time to comply with the
demand, the purchaser may reject or rescind the transfer.

PART 4. REGISTRATION.

§46-8-401. Duty of issuer to register transfer.

(a) If a certificated security in registered form is pre-

sented to an issuer with a request to register transfer or an

instruction is presented to an issuer with a request to regis-
ter transfer of an uncertificated security, the issuer shall

register the transfer as requested if:

(1) Under the terms of the security the person seeking
registration of transfer is eligible to have the security reg-
istered in its name;

(2) The indorsement or instruction is made by the
appropria...y to act on behalf of the appropriate person;

(3) Reasonable assurance is given that the indorsement or instruction is genuine and authorized (section 8-402);

(4) Any applicable law relating to the collection of taxes has been complied with;

(5) The transfer does not violate any restriction on transfer imposed by the issuer in accordance with section 8-204;

(6) A demand that the issuer not register transfer has not become effective under section 8-403, or the issuer has complied with section 8-403(b) but no legal process or indemnity bond is obtained as provided in section 8-403(d); and

(7) The transfer is in fact rightful or is to a protected purchaser.

(b) If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer.

§46-8-402. Assurance that indorsement or instruction is effective.

(a) An issuer may require the following assurance that each necessary indorsement or each instruction is genuine and authorized:

(1) In all cases, a guaranty of the signature of the person making an indorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;

(2) If the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual
authority to sign;

(3) If the indorsement is made or the instruction is
originated by a fiduciary pursuant to section 8-107(a)(4)
or (a)(5), appropriate evidence of appointment or incum-

(4) If there is more than one fiduciary, reasonable
assurance that all who are required to sign have done so;
and

(5) If the indorsement is made or the instruction is
originated by a person not covered by another provision
of this subsection, assurance appropriate to the case corre-

(b) An issuer may elect to require reasonable assur-
ance beyond that specified in this section.

(c) In this section:

(1) "Guaranty of the signature" means a guaranty
signed by or on behalf of a person reasonably believed by
the issuer to be responsible. An issuer may adopt stan-

dards with respect to responsibility if they are not mani-

(2) "Appropriate evidence of appointment or incum-

(i) In the case of a fiduciary appointed or qualified
by a court, a certificate issued by or under the direction or
supervision of the court or an officer thereof and dated
within sixty days before the date of presentation for trans-

(ii) In any other case, a copy of a document showing
the appointment or a certificate issued by or on behalf of
a person reasonably believed by an issuer to be responsi-

§46-8-403. Demand that issuer not register transfer.
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(a) A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

(b) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to: (i) The person who initiated the demand at the address provided in the demand; and (ii) the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

(1) The certificated security has been presented for registration of transfer or instruction for registration of transfer of uncertificated security has been received;

(2) A demand that the issuer not register transfer had previously been received; and

(3) The issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

(c) The period described in subdivision (3), subsection (b) of this section may not exceed thirty days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

(d) An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the
person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer’s communication, either:

(1) Obtain an appropriate restraining order, injunction or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or

(2) File with the issuer an indemnity bond, sufficient in the issuer’s judgment to protect the issuer and any transfer agent, registrar or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.

(e) This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective.

§46-8-404. Wrongful registration.

(a) Except as otherwise provided in section 8-406, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:

(1) Pursuant to an ineffective indorsement or instruction;

(2) After a demand that the issuer not register transfer became effective under section 8-403(a) and the issuer did not comply with section 8-403(b);

(3) After the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(4) By an issuer acting in collusion with the wrongdoer.

(b) An issuer that is liable for wrongful registration of
transfer under subsection (a) of this section on demand
shall provide the person entitled to the security with a like
certificated or uncertificated security, and any payments
or distributions that the person did not receive as a result
of the wrongful registration. If an overissue would result,
the issuer's liability to provide the person with a like secu-

(c) Except as otherwise provided in subsection (a) of
this section or in a law relating to the collection of taxes,
an issuer is not liable to an owner or other person suffer-
ing loss as a result of the registration of a transfer of a
security if registration was made pursuant to an effective
indorsement or instruction.

§46-8-405. Replacement of lost, destroyed, or wrongfully
taken security certificate.

(a) If an owner of a certificated security, whether in
registered or bearer form, claims that the certificate has
been lost, destroyed, or wrongfully taken, the issuer shall
issue a new certificate if the owner:

(1) So requests before the issuer has notice that the
certificate has been acquired by a protected purchaser;

(2) Files with the issuer a sufficient indemnity bond;
and

(3) Satisfies other reasonable requirements imposed
by the issuer.

(b) If, after the issue of a new security certificate, a
protected purchaser of the original certificate presents it
for registration of transfer, the issuer shall register the
transfer unless an overissue would result. In that case, the
issuer's liability is governed by section 8-210. In addition
to any rights on the indemnity bond, an issuer may recov-
er the new certificate from a person to whom it was issued
or any person taking under that person, except a protected
purchaser.
§46-8-406. Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate.

If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under section 8-404 or a claim to a new security certificate under section 8-405.

§46-8-407. Authenticating trustee, transfer agent and registrar.

A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities or in the cancellation of surrendered security certificates has the same obligation to the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions.

PART 5. SECURITY ENTITLEMENTS.

§46-8-501. Securities account; acquisition of security entitlement from securities intermediary.

(a) "Securities account" means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

(b) Except as otherwise provided in subsections (d) and (e) of this section, a person acquires a security entitlement if a securities intermediary:

(1) Indicates by book entry that a financial asset has been credited to the person's securities account;
(2) Receives a financial asset from the person or ac-
quires a financial asset for the person and, in either case,
accepts it for credit to the person's securities account; or

(3) Becomes obligated under other law, regulation, or
rule to credit a financial asset to the person's securities
account.

(c) If a condition of subsection (b) of this section has
been met, a person has a security entitlement even though
the securities intermediary does not itself hold the finan-
cial asset.

(d) If a securities intermediary holds a financial asset
for another person, and the financial asset is registered in
the name of, payable to the order of, or specially indorsed
to the other person, and has not been indorsed to the secu-
rities intermediary or in blank, the other person is treated
as holding the financial asset directly rather than as having
a security entitlement with respect to the financial asset.

(e) Issuance of a security is not establishment of a
security entitlement.

§46-8-502. Assertion of adverse claim against entitlement
holder.

An action based on an adverse claim to a financial
asset, whether framed in conversion, replevin, constructive
trust, equitable lien or other theory, may not be asserted
against a person who acquires a security entitlement under
section 8-501 for value and without notice of the adverse
claim.

§46-8-503. Property interest of entitlement holder in financial
asset held by securities intermediary.

(a) To the extent necessary for a securities intermedi-
ary to satisfy all security entitlements with respect to a
particular financial asset, all interests in that financial asset
held by the securities intermediary are held by the securi-
ties intermediary for the entitlement holders, are not prop-
erty of the securities intermediary, and are not subject to
(b) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

(c) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under sections 8-505 through 8-508.

(d) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section may be enforced against a purchaser of the financial asset or interest therein only if:

(1) Insolvency proceedings have been initiated by or against the securities intermediary;

(2) The securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;

(3) The securities intermediary violated its obligations under section 8-504 by transferring the financial asset or interest therein to the purchaser; and

(4) The purchaser is not protected under subsection (e) of this section. The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.
(e) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section, whether framed in conversion, replevin, constructive trust, equitable lien or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under section 8-504.

§46-8-504. Duty of securities intermediary to maintain financial asset.

(a) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

(b) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (a) of this section.

(c) A securities intermediary satisfies the duty in subsection (a) of this section if:

(1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(d) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.
§46-8-505. Duty of securities intermediary with respect to payments and distributions.

(a) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

(b) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

§46-8-506. Duty of securities intermediary to exercise rights as directed by entitlement holder.

A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

§46-8-507. Duty of securities intermediary to comply with entitlement order.

(a) A securities intermediary shall comply with an
entitlement order if the entitlement order is originated by
the appropriate person, the securities intermediary has had
reasonable opportunity to assure itself that the entitlement
order is genuine and authorized, and the securities inter-
mediary has had reasonable opportunity to comply with
the entitlement order. A securities intermediary satisfies
the duty if:

(1) The securities intermediary acts with respect to the
duty as agreed upon by the entitlement holder and the
securities intermediary; or

(2) In the absence of agreement, the securities inter-
mediary exercises due care in accordance with reasonable
commercial standards to comply with the entitlement or-
der.

(b) If a securities intermediary transfers a financial
asset pursuant to an ineffective entitlement order, the secu-
rities intermediary shall reestablish a security entitlement
in favor of the person entitled to it, and pay or credit any
payments or distributions that the person did not receive
as a result of the wrongful transfer. If the securities inter-
mediary does not reestablish a security entitlement, the
securities intermediary is liable to the entitlement holder
for damages.

§46-8-508. Duty of securities intermediary to change entitle-
ment holder's position to other form of security
holding.

A securities intermediary shall act at the direction of
an entitlement holder to change a security entitlement into
another available form of holding for which the entitle-
ment holder is eligible, or to cause the financial asset to be
transferred to a securities account of the entitlement hold-
er with another securities intermediary. A securities inter-
mediary satisfies the duty if:

(1) The securities intermediary acts as agreed upon
by the entitlement holder and the securities intermediary;
or
§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.

(a) If the substance of a duty imposed upon a securities intermediary by sections 8-504 through 8-508 is the subject of other statute, regulation or rule, compliance with that statute, regulation or rule satisfies the duty.

(b) To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

(c) The obligation of a securities intermediary to perform the duties imposed by sections 8-504 through 8-508 is subject to:

(1) Rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and

(2) Rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(d) Sections 8-504 through 8-508 do not require a securities intermediary to take any action that is prohibited by other statute, regulation or rule.

§46-8-510. Rights of purchaser of security entitlement from entitlement holder.
(a) An action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(b) If an adverse claim could not have been asserted against an entitlement holder under section 8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(c) In a case not covered by the priority rules in article nine, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Purchasers who have control rank equally, except that a securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

§46-8-511. Priority among security interests and entitlement holders.

(a) Except as otherwise provided in subsections (b) and (c) of this section, if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

(b) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if
the creditor has control over the financial asset.

(c) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims 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.

(a) This article does not affect an action or proceeding commenced before this article takes effect.

(b) If a security interest in a security is perfected at the date this article takes effect and the action by which the security interest was perfected would suffice to perfect a security interest under this article, no further action is required to continue perfection. If a security interest in a security is perfected at the date this article takes effect but the action by which the security interest was perfected would not suffice to perfect a security interest under this article, the security interest remains perfected for a period of four months after the effective date and continues perfected thereafter if appropriate action to perfect under this article is taken within that period. If a security interest is perfected at the date this article takes effect and the security interest can be perfected by filing under this article, a financing statement signed by the secured party instead of the debtor may be filed within that period to continue perfection or thereafter to perfect.

ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER.

PART 1. SHORT TITLE, APPLICABILITY AND DEFINITIONS.

§46-9-105. Definitions and index of definitions.

§46-9-106. Definitions: "Account"; "general intangibles".

§46-9-115. Investment property.


§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.


§46-9-309. Protection of purchasers of instruments, documents and securities.

§46-9-312. Priorities among conflicting security interests in the same collateral.


1 (1) *Documents, instruments and ordinary goods.* —

2 (a) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (2) of this section, mobile goods described in subsection (3), and minerals described in subsection (5) of this section.

3 (b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

4 (c) If the parties to a transaction creating a purchase
money security interest in goods in one jurisdiction un­
derstand at the time that the security interest attaches that
the goods will be kept in another jurisdiction, then the law
of the other jurisdiction governs the perfection and the
effect of perfection or nonperfection of the security inter­
est from the time it attaches until thirty days after the debt­
or receives possession of the goods and thereafter if the
goods are taken to the other jurisdiction before the end of
the thirty-day period.

(d) When collateral is brought into and kept in this
state while subject to a security interest perfected under the
law of the jurisdiction from which the collateral was re­
moved, the security interest remains perfected, but if ac­
tion is required by Part 3 of this article to perfect the secu­

(i) If the action is not taken before the expiration of
the period of perfection in the other jurisdiction or the
end of four months after the collateral is brought into this
state, whichever period first expires, the security interest
becomes unperfected at the end of that period and is
thereafter deemed to have been unperfected as against a
person who became a purchaser after removal;

(ii) If the action is taken before the expiration of the
period specified in paragraph (i) of this subdivision, the
security interest continues perfected thereafter;

(iii) For the purpose of priority over a buyer of con­
sumer goods (subsection (2) of section 9-307), the period
of the effectiveness of a filing in the jurisdiction from
which the collateral is removed is governed by the rules
with respect to perfection in paragraphs (i) and (ii) of this
subdivision.

(2) Certificate of title. —

(a) This subsection applies to goods covered by a
certificate of title issued under a statute of this state or of
another jurisdiction under the law of which indication of a
security interest on the certificate is required as a condi­
tion of perfection.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in subdivision (d) subdivision (1) of this section.

(d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) Accounts, general intangibles and mobile goods.

(a) This subsection applies to accounts (other than an account described in subsection (5) of this section on minerals) and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more than one
jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (2) of this section.

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the federal Aviation Act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor-
or's location to another jurisdiction, or until perfection
would have ceased by the law of the first jurisdiction,
whichever period first expires. Unless perfected in the
new jurisdiction before the end of that period, it becomes
unperfected thereafter and is deemed to have been unper-
fected as against a person who became a purchaser after
the change.

(4) *Chattel paper.* —

The rules stated for goods in subsection (1) of this
section apply to a possessory security interest in chattel
paper. The rules stated for accounts in subsection (3) of
this section apply to a nonpossessory security interest in
chattel paper, but the security interest may not be perfect-
ed by notification to the account debtor.

(5) *Minerals.* —

Perfection and the effect of perfection or
nonperfection of a security interest which is created by a
debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches
thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are
governed by the law (including the conflict of laws rules)
of the jurisdiction wherein the wellhead or minehead is
located.

(6) *Investment property.* —

(a) This subsection applies to investment property.

(b) Except as otherwise provided in subdivision (f) of
this section, during the time that a security certificate is
located in a jurisdiction, perfection of a security interest,
the effect of perfection or nonperfection, and the priority
of a security interest in the certificated security represent-
ed thereby are governed by the local law of that jurisdi-
tion.

(c) Except as otherwise provided in subdivision (f) of
this section, perfection of a security interest, the effect of
perfection or nonperfection, and the priority of a security interest in an uncertificated security are governed by the local law of the issuer's jurisdiction as specified in section 8-110(d).

(d) Except as otherwise provided in subdivision (f) of this section, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account are governed by the local law of the securities intermediary's jurisdiction as specified in section 8-110(e).

(e) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account are governed by the local law of the commodity intermediary's jurisdiction. The following rules determine a "commodity intermediary's jurisdiction" for purposes of this paragraph:

(i) If an agreement between the commodity intermediary and commodity customer specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(ii) If an agreement between the commodity intermediary and commodity customer does not specify the governing law as provided in paragraph (i) of this subdivision, but expressly specifies that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(iii) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in paragraphs (i) or (ii) of this subdivision, the commodity intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the commodity customer's account.

(iv) If an agreement between the commodity intermediary 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 
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
obligor in any provision dealing with the obligation, and
may include both where the context so requires;

(e) "Deposit account" means a demand, time, savings,
passbook or like account maintained with a bank, savings
and loan association, credit union or like organization,
other than an account evidenced by a certificate of deposit;

(f) "Document" means document of title as defined in
the general definitions of article I (section 1-201), and a
receipt of the kind described in subsection (2) of section
7-201;

(g) "Encumbrance" includes real estate mortgages and
other liens on real estate and all other rights in real estate
that are not ownership interests;

(h) "Goods" includes all things which are moveable at
the time the security interest attaches or which are fixtures
(section 9-313), but does not include money, documents,
instruments, investment property, commodity contracts,
accounts, chattel paper, general intangibles, or minerals or
the like (including oil and gas) before extraction.
"Goods" also includes standing timber which is to be cut
and removed under a conveyance or contract for sale, the
unborn young of animals, and growing crops;

(i) "Instrument" means a negotiable instrument (de-
defined in section 3-104), or any other writing which evi-
dences a right to the payment of money and is not itself a
security agreement or lease and is of a type which is in
ordinary course of business transferred by delivery with
any necessary endorsement or assignment. The term does
not include investment property;

(j) "Mortgage" means a consensual interest created by
a real estate mortgage, a trust deed on real estate, or the
like;

(k) An advance is made "pursuant to commitment" if
the secured party has bound himself to make it, whether or
not a subsequent event of default or other event not within
his control has relieved or may relieve him from his obligation;

(I) "Security agreement" means an agreement which creates or provides for a security interest;

(m) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party;

(n) "Transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

(2) Other definitions applying to this article and the sections in which they appear are:

"Account". Section 9-106.
"Attach". Section 9-203.
"Commodity contract". Section 9-115.
"Commodity customer". Section 9-115.
"Commodity intermediary". Section 9-115.
"Construction mortgage". Section 9-313(1).
"Consumer goods". Section 9-109(1).
"Control". Section 9-115.
"Equipment". Section 9-109(2).
"Farm products". Section 9-109(3).
"Fixture". Section 9-313(1).
The following definitions in other articles apply to this article:

- "Broker".  
- "Certificated security".  
- "Check".  
- "Clearing corporation".  
- "Contract for sale".  
- "Control".  
- "Delivery".  
- "Entitlement holder".  
- "Financial asset".  
- "Holder in due course".  
- "Note".  
- "Sale".  
- "Securities intermediary".  
- "Security".

Section references include:

- Section 9-313(1)
- Section 9-106
- Section 9-109(4)
- Section 9-115
- Section 9-301(3)
- Section 9-306(1)
- Section 9-107
- Section 9-103
"Security certificate". Section 8-102.

"Security entitlement". Section 8-102.

"Uncertificated security". Section 8-102.

(4) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

§46-9-106. Definitions: "Account"; "general intangibles".

"Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, investment property and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.

§46-9-115. Investment property.

(1) In this article:

(a) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(b) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or other contract that, in each case, is:

(i) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to the federal commodities laws; or

(ii) Traded on a foreign commodity board of trade, exchange or market, and is carried on the books of a commodity intermediary for a commodity customer.
(c) "Commodity customer" means a person for whom a commodity intermediary carries a commodity contract on its books.

(d) "Commodity intermediary" means:

(i) A person who is registered as a futures commission merchant under the federal commodities laws; or

(ii) A person who in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to the federal commodities laws.

(e) "Control" with respect to a certificated security, uncertificated security, or security entitlement has the meaning specified in section 8-106. A secured party has control over a commodity contract if by agreement among the commodity customer, the commodity intermediary, and the secured party, the commodity intermediary has agreed that it will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer. If a commodity customer grants a security interest in a commodity contract to its own commodity intermediary, the commodity intermediary as secured party has control. A secured party has control over a securities account or commodity account if the secured party has control over all security entitlements or commodity contracts carried in the securities account or commodity account.

(f) "Investment property" means:

(i) A security, whether certificated or uncertificated;

(ii) A security entitlement;

(iii) A securities account;

(iv) A commodity contract; or

(v) A commodity account.
(2) Attachment or perfection of a security interest in a securities account is also attachment or perfection of a security interest in all security entitlements carried in the securities account. Attachment or perfection of a security interest in a commodity account is also attachment or perfection of a security interest in all commodity contracts carried in the commodity account.

(3) A description of collateral in a security agreement or financing statement is sufficient to create or perfect a security interest in a certificated security, uncertificated security, security entitlement, securities account, commodity contract or commodity account whether it describes the collateral by those terms, or as investment property, or by description of the underlying security, financial asset or commodity contract. A description of investment property collateral in a security agreement or financing statement is sufficient if it identifies the collateral by specific listing, by category, by quantity, by a computational or allocational formula or procedure or by any other method, if the identity of the collateral is objectively determinable.

(4) Perfection of a security interest in investment property is governed by the following rules:

(a) A security interest in investment property may be perfected by control.

(b) Except as otherwise provided in subdivisions (c) and (d) of this subsection, a security interest in investment property may be perfected by filing.

(c) If the debtor is a broker or securities intermediary a security interest in investment property is perfected when it attaches. The filing of a financing statement with respect to a security interest in investment property granted by a broker or securities intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(d) If a debtor is a commodity intermediary, a securi-
ty interest in a commodity contract or a commodity account is perfected when it attaches. The filing of a financing statement with respect to a security interest in a commodity contract or a commodity account granted by a commodity intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(5) Priority between conflicting security interests in the same investment property is governed by the following rules:

(a) A security interest of a secured party who has control over investment property has priority over a security interest of a secured party who does not have control over the investment property.

(b) Except as otherwise provided in subdivisions (c) and (d) of this subsection, conflicting security interests of secured parties each of whom has control rank equally.

(c) Except as otherwise agreed by the securities intermediary, a security interest in a security entitlement or a securities account granted to the debtor's own securities intermediary has priority over any security interest granted by the debtor to another secured party.

(d) Except as otherwise agreed by the commodity intermediary, a security interest in a commodity contract or a commodity account granted to the debtor's own commodity intermediary has priority over any security interest granted by the debtor to another secured party.

(e) Conflicting security interests granted by a broker, a securities intermediary, or a commodity intermediary which are perfected without control rank equally.

(f) In all other cases, priority between conflicting security interests in investment property is governed by section 9-312(5), (6) and (7). Section 9-312(4) does not apply to investment property.

(6) If a security certificate in registered form is delivered to a secured party pursuant to agreement, a written

1. If a person buys a financial asset through a securities intermediary in a transaction in which the buyer is obligated to pay the purchase price to the securities intermediary at the time of the purchase and the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary, the securities intermediary has a security interest in the buyer's security entitlement securing the buyer's obligation to pay. A security agreement is not required for attachment or enforceability of the security interest and the security interest is automatically perfected.

2. If a certificated security, or other financial asset represented by a writing which in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment is delivered pursuant to an agreement between persons in the business of dealing with such securities or financial assets and the agreement calls for delivery versus payment, the person delivering the certificate or other financial asset has a security interest in the certificated security or other financial asset securing the seller's right to receive payment. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

PART 2. VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THEREETO.

§46-9-203. Attachment and enforceability of security interest; proceeds; formal requisites.
(1) Subject to the provisions of section 4-208 on the security interest of a collecting bank, sections 9-115 and 9-116 on security interests in investment property, and section 9-113 on a security interest arising under the article on sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) The collateral is in the possession of the secured party pursuant to agreement, the collateral is investment property and the secured party has control pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;

(b) Value has been given; and

(c) The debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) of this section have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by section 9-306.

(4) A transaction may be subject to this article and also to article seven-a, chapter forty-seven of this code, relating to small loans and in case of conflict between the provisions of this article and article seven-a, chapter forty-seven of this code or any other such statute, the provisions of said article seven-a or such other statute control. Failure to comply with any applicable statute has 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) Except as otherwise provided in subsection (2 of this section), an unperfected security interest is subordinate to the rights of:

   (a) Persons entitled to priority under section 9-312;
   (b) A person who becomes a lien creditor before the security interest is perfected;
   (c) In the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business; or is a buyer of farm products in ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected; and
   (d) In the case of accounts, general intangibles and investment property, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

   (2) If the secured party files with respect to a purchase money security interest before or within twenty days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

   (3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

   (4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within forty-five days
thereafter or made without knowledge of the lien or pur-
suant to a commitment entered into without knowledge of
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
security interests except the following:

3 (a) A security interest in collateral in possession of the
secured party under section 9-305;

5 (b) A security interest temporarily perfected in instru-
ments, certificated securities or documents without deliv-
ery under section 9-304 or in proceeds for a ten-day peri-
od under section 9-306;

9 (c) A security interest created by an assignment of a
beneficial interest in a trust or a decedent's estate;

11 (d) A purchase money security interest in consumer
goods; but filing is required for a motor vehicle required
to be registered; and fixture filing is required for priority
over conflicting interests in fixtures to the extent provided
in section 9-313;

16 (e) An assignment of accounts which does not alone
or in conjunction with other assignments to the same as-
signee transfer a significant part of the outstanding ac-
counts of the assignor;

20 (f) A security interest of a collecting bank (section
4-208) or arising under the article on sales (see section
9-113) or covered in subsection (3) of this section;

23 (g) An assignment for the benefit of all the creditors
of the transferor, and subsequent transfers by the assignee
thereunder;

26 (h) A security interest in investment property which is
perfected without filing under section 9-115 or section
9-116.
(2) If a secured party assigns a perfected security interest, no filing under this article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor or.

(3) The filing of a financing statement otherwise required by this article is not necessary or effective to perfect a security interest in property subject to:

(a) A statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this article for filing of the security interest; or

(b) The following statute of this state: Chapter seventeen-a of this code; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this article (Part 4) apply to a security interest in that collateral created by him as debtor; or

(c) A certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subsection (2) of section 9-103).

(4) Compliance with a statute or treaty described in subsection (3) of this section is equivalent to the filing of a financing statement under this article, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in section 9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this article.

§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.
1. A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of section 9-306 on proceeds.

2. During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

3. A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

4. A security interest in instruments, certificated securities or negotiable documents is perfected without filing or the taking of possession for a period of twenty-one days from the time it attaches to the extent that it arises for new value given under a written security agreement.

5. A security interest remains perfected for a period of twenty-one days without filing where a secured party having a perfected security interest in an instrument, a certificated security, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor:

(a) Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner prelimi-
nary to their sale or exchange, but priority between con-
flicting security interests in the goods is subject to subsec-
tion (3) of section 9-312; or

(b) Delivers the instrument or certificated security to
the debtor for the purpose of ultimate sale or exchange or
of presentation, collection, renewal or registration of trans-
fer.

(6) After the twenty-one-day period in subsections
(4) and (5) of this section perfection depends upon com-
pliance with applicable provisions of this article.

§46-9-305. When possession by secured party perfects security
interest without filing.

A security interest in letters of credit and advices of
credit (subsection (2) (a) of section 5-116), goods, instru-
ments, money, negotiable documents or chattel paper may
be perfected by the secured party's taking possession of
the collateral. If such collateral other than goods covered
by a negotiable document is held by a bailee, the secured
party is deemed to have possession from the time the bail-
ee receives notification of the secured party's interest. A
security interest is perfected by possession from the time
possession is taken without relation back and continues
only so long as possession is retained, unless otherwise
specified in this article. The security interest may be oth-
erwise perfected as provided in this article before or after
the period of possession by the secured party.

§46-9-306. "Proceeds"; secured party's rights on disposition of
collateral.

(1) "Proceeds" includes whatever is received upon the
sale, exchange, collection or other disposition of collateral
or proceeds. Insurance payable by reason of loss or dam-
age to the collateral is proceeds, except to the extent that it
is payable to a person other than a party to the security
agreement. Any payments or distributions made with
respect to investment property collateral are proceeds.
Money, checks, deposit accounts and the like are "cash proceeds". All other proceeds are "noncash proceeds".

(2) Except where this article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless:

(a) A filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; or

(b) A filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or

(c) The original collateral was investment property and the proceeds are identifiable cash proceeds; or

(d) The security interest in the proceeds is perfected before the expiration of the ten-day period. Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this article for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security inter-
est only in the following proceeds:

(a) In identifiable noncash proceeds and in separate deposit accounts containing only proceeds;

(b) In identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(c) In identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(d) In all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this subdivision is:

(i) Subject to any right of setoff; and

(ii) Limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings less the sum of: (I) The payments to the secured party on account of cash proceeds received by the debtor during such period; and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under subdivisions (a) through (c) of this subsection.

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as the perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effec-
77 tive, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

78 (b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under section 9-308.

79 (c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under subdivision (a) of this subsection.

80 (d) A security interest of an unpaid transferee asserted under subdivision (b) or (c) of this subsection must be perfected for protection against creditors of the transferor 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 due course of a negotiable instrument (section 3-302) or a holder to whom a negotiable document of title has been duly negotiated (section 7-501) or a protected purchaser of a security (section 8-303) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this article does not constitute notice of the security interest to such holders or purchasers.

§46-9-312. Priorities among conflicting security interests in the same collateral.

1 (1) The rules of priority stated in other sections of this part and in the following sections shall govern when applicable: Section 4-210 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; section 9-103 on security interests related to other jurisdictions; section
9-114 on consignments; section 9-115 on security interests in investment property.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

(a) The purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) The purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory: (i) Before the date of the filing made by the purchase money secured party; or (ii) before the beginning of the twenty-one-day period where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of section 9-304); and

(c) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(d) The notification states that the person giving the notice has or expects to acquire a purchase money security 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.
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
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.
9. Conversions and Mergers.

ARTICLE 1. GENERAL PROVISIONS.

§47B-1-1. Definitions.
§47B-1-1. Definitions.

1 In this chapter:

2 (1) "Business" includes every trade, occupation and profession.

3 (2) "Debtor in bankruptcy" means a person who is the subject of:

4 (i) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

5 (ii) A comparable order under federal, state or foreign law governing insolvency.

6 (3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

7 (4) "Partnership" means an association of two or more persons to carry on as coowners a business for profit formed under section two, article two of this chapter, predecessor law, or comparable law of another jurisdiction.

8 (5) "Partnership agreement" means the agreement, whether written, oral or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

9 (6) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

10 (7) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the part-
nership, including the partner's transferable interest and all
management and other rights.

(8) "Person" means an individual, corporation, business
trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency or
instrumentality, or any other legal or commercial entity.

(9) "Property" means all property, real, personal or
mixed, tangible or intangible, or any interest therein.

(10) "State" means a state of the United States, the
District of Columbia, the Commonwealth of Puerto Rico,
or any territory or insular possession subject to the jurisdic-
tion of the United States.

(11) "Statement" means a statement of partnership
authority under section three, article three of this chapter,
a statement of denial under section four, article three of
this chapter, a statement of dissociation under section four,
article seven of this chapter, a statement of dissolution
under section five, article eight of this chapter, a statement
of merger under section seven, article nine of this chapter,
or an amendment or cancellation of any of the foregoing.

(12) "Transfer" includes an assignment, conveyance,
lease, mortgage, deed and encumbrance.

§47B-1-2. Knowledge and notice.

(a) A person knows a fact if the person has actual
knowledge of it.

(b) A person has notice of a fact if the person:
(1) Knows of it;
(2) Has received a notification of it; or
(3) Has reason to know it exists from all of the facts
known to the person at the time in question.

(c) A person notifies or gives a notification to another
by taking steps reasonably required to inform the other
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 pro-
visions.
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
does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(b) The partnership agreement may not:

(1) Vary the rights and duties under section five, article one of this chapter except to eliminate the duty to provide copies of statements to all of the partners;

(2) Unreasonably restrict the right of access to books and records under subsection (b), section three, article four of this chapter;

(3) Eliminate the duty of loyalty under subsection (b), section four, article four, or subdivision (3), subsection (b), section three, article six of this chapter, but:

(i) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or

(ii) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(4) Unreasonably reduce the duty of care under subsection (c), section four, article four or subdivision (3), subsection (b), section three, article six of this chapter;

(5) Eliminate the obligation of good faith and fair dealing under subsection (d), section four, article four of this chapter, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(6) Vary the power to dissociate as a partner under subsection (a), section two, article six of this chapter, except to require the notice under subdivision (1), section one, article six of this chapter to be in writing;
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(7) Vary the right of a court to expel a partner in the
events specified in subdivision (5), section one, article six
of this chapter;

(8) Vary the requirement to wind up the partnership
business in cases specified in subdivisions (4), (5) or (6),
section one, article eight of this chapter; or

(9) Restrict rights of third parties under this chapter.

§47B-1-4. Supplemental principles of law.

(a) Unless displaced by particular provisions of this
chapter, the principles of law and equity supplement this
chapter.

(b) If an obligation to pay interest arises under this
chapter and the rate is not specified, the rate is that speci-
ified in section thirty-one, article six, chapter fifty-six of
this code.

§47B-1-5. Execution, filing and recording of statements.

(a) A statement may be filed in the office of the secre-
tary of state. A certified copy of a statement that is filed
in an office in another state may be filed in the office of
the secretary of state. Either filing has the effect provided
in this chapter with respect to partnership property located
in or transactions that occur in this state.

(b) A certified copy of a statement that has been filed
in the office of the secretary of state and recorded in the
office for recording transfers of real property has the
effect provided for recorded statements in this chapter. A
recorded statement that is not a certified copy of a state-
ment filed in the office of the secretary of state does not
have the effect provided for recorded statements in this
chapter.

(c) A statement filed by a partnership must be execut-
ed by at least two partners. Other statements must be exe-
cuted by a partner or other person authorized by this
chapter. An individual who executes a statement as, or on
behalf of, a partner or other person named as a partner in
a statement shall personally declare under penalty of per-
jury that the contents of the statement are accurate.

(d) A person authorized by this chapter to file a state-
ment may amend or cancel the statement by filing an
amendment or cancellation that names the partnership,
identifies the statement, and states the substance of the
amendment or cancellation.

(e) A person who files a statement pursuant to this
section shall promptly send a copy of the statement to
every nonfiling partner and to any other person named as
a partner in the statement. Failure to send a copy of a
statement to a partner or other person does not limit the
effectiveness of the statement as to a person not a partner.

(f) The secretary of state may collect a fee for filing or
providing a certified copy of a statement. The clerk of the
county commission of any county may collect a fee for
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.

A partnership governed by this chapter is subject to
any amendment to or repeal of this chapter.

ARTICLE 2. NATURE OF PARTNERSHIP.

§47B-2-1. Partnership as entity.
§47B-2-4. When property is partnership property.

§47B-2-1. Partnership as entity.

1 A partnership is an entity distinct from its partners.

(a) Except as otherwise provided in subsection (b) of this section, the association of two or more persons to carry on as coowners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

(b) An association formed under a statute other than this chapter, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this chapter.

(c) In determining whether a partnership is formed, the following rules apply:

(1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the coowners share profits made by the use of the property.

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

(3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

(i) Of a debt by installments or otherwise;

(ii) For services as an independent contractor or of wages or other compensation to an employee;

(iii) Of rent;

(iv) Of an annuity or other retirement or health benefit to a beneficiary, representative or designee of a deceased or retired partner;

(v) Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, 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.


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.

Subject to the effect of a statement of partnership authority under section three, article three of this chapter:

(1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.

(2) An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

§47B-3-2. Transfer of partnership property.

(a) Partnership property may be transferred as follows:

(1) Subject to the effect of a statement of partnership authority under section three, article three of this chapter, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.
(2) Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(3) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(b) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under section one, article three of this chapter, and:

(1) As to a subsequent transferee who gave value for property transferred under subdivisions (1) and (2), subsection (a) of this section, proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

(2) As to a transferee who gave value for property transferred under subdivision (3), subsection (a) of this section, proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(c) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection (b) of this section, from any earlier transferee of the property.

(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.
(d) Except as otherwise provided in subsection (g) of this section, a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(1) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

(2) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(e) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(f) Except as otherwise provided in subsections (d) and (e) of this section and section four, article seven and section five, article eight of this chapter, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(g) Unless earlier canceled, a filed statement of part-
partnership authority is canceled by operation of law five years after the date on which the statement, or the most recent amendment, was filed with the secretary of state.

§47B-3-4. Statement of denial.

A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to subsection (b), section three, article three of this chapter may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in subsections (d) and (e), section three, article three of this chapter.

§47B-3-5. Partnership liable for partner's actionable conduct.

(a) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(b) If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

§47B-3-6. Partner's liability.

(a) Except as otherwise provided in subsection (b) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(b) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.
§47B-3-7. Actions by and against partnership and partners.

(a) A partnership may sue and be sued in the name of the partnership.

(b) An action may be brought against the partnership and any or all of the partners in the same action or in separate actions.

(c) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

(d) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless:

(1) A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied, in whole or in part;

(2) The partnership is a debtor in bankruptcy;

(3) The partner has agreed that the creditor need not exhaust partnership assets;

(4) A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(5) Liability is imposed on the partner by law or contract independent of the existence of the partnership.

(e) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under section eight, article three of this chapter.
§47B-3-8. Liability of purported partner.

(a) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner’s consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

(b) If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(c) A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.

(d) A person does not continue to be liable as a partner merely because of a failure to file a statement of disso-
citation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

(e) Except as otherwise provided in subsections (a) and (b) of this section, persons who are not partners as to 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.

(a) Each partner is deemed to have an account that is:

1. (1) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

2. (2) Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(b) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(c) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(d) A partnership shall reimburse a partner for an
advance to the partnership beyond the amount of capital the partner agreed to contribute.

(e) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (c) or (d) of this section constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(f) Each partner has equal rights in the management and conduct of the partnership business.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(i) A person may become a partner only with the consent of all of the partners.

(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(k) This section does not affect the obligations of a partnership to other persons under section one, article three of this chapter.

§47B-4-2. Distributions in kind.

A partner has no right to receive, and may not be required to accept, a distribution in kind.

§47B-4-3. Partner's rights and duties with respect to information.

(a) A partnership shall keep its books and records, if any, at its chief executive office.
(b) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

(c) Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:

(1) Without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this chapter; and

(2) On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

§47B-4-4. General standards of partner's conduct.

(a) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections (b) and (c) of this section.

(b) A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(1) To account to the partnership and hold as trustee for it any property, profit or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;

(2) To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or
(3) To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

(c) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) A partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(f) A partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.

(g) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

§47B-4-5. Actions by partnership and partners.

(a) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief,
with or without an accounting as to partnership business, to:

(1) Enforce the partner's rights under the partnership agreement;

(2) Enforce the partner's rights under this chapter, including:

(i) The partner's rights under sections one, three or four, article four of this chapter;

(ii) The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to section one, article seven of this chapter or enforce any other right under article six or seven;

(iii) The partner's right to compel a dissolution and winding up of the partnership business under section one, article eight of this chapter or enforce any other right under article eight; or

(3) Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

§47B-4-6. Continuation of partnership beyond definite term or particular undertaking.

(a) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(b) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of
the partnership, they are presumed to have agreed that the partnership will continue.

ARTICLE 5. TRANSFEREES AND CREDITORS OF PARTNER.

§47B-5-1. Partner not coowner of partnership property.

A partner is not a coowner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

§47B-5-2. Partner's transferable interest in partnership.

The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

§47B-5-3. Transfer of partner's transferable interest.

(a) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

(1) Is permissible;

(2) Does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and

(3) Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

(b) A transferee of a partner's transferable interest in the partnership has a right:

(1) To receive, in accordance with the transfer, distr-
butions to which the transferor would otherwise be enti-
tled;

(2) To receive upon the dissolution and winding up of
the partnership business, in accordance with the transfer,
the net amount otherwise distributable to the transferor;
and

(3) To seek under subdivision (6), section one, article
eight of this chapter a judicial determination that it is equi-
table to wind up the partnership business.

(c) In a dissolution and winding up, a transferee is
entitled to an account of partnership transactions only
from the date of the latest account agreed to by all of the
partners.

(d) Upon transfer, the transferor retains the rights and
duties of a partner other than the interest in distributions
transferred.

(e) A partnership need not give effect to a transferee's
rights under this section until it has notice of the transfer.

(f) A transfer of a partner's transferable interest in the
partnership in violation of a restriction on transfer con-
tained in the partnership agreement is ineffective as to a
person having notice of the restriction at the time of trans-
fer.

§47B-5-4. Partner's transferable interest subject to charging
order.

(a) On application by a judgment creditor of a part-
er or of a partner's transferee, a court having jurisdiction
may charge the transferable interest of the judgment debt-
or to satisfy the judgment. The court may appoint a re-
ceiver of the share of the distributions due or to become
due to the judgment debtor in respect of the partnership
and make all other orders, directions, accounts, and inqui-
ries the judgment debtor might have made or which the
circumstances of the case may require.
(b) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, an interest charged may be redeemed:

(1) By the judgment debtor;

(2) With property other than partnership property, by one or more of the other partners; or

(3) With partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.

(d) This chapter does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

(e) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

ARTICLE 6. PARTNER'S DISSOCIATION.

§47B-6-1. Events causing partner's dissociation.

A partner is dissociated from a partnership upon the occurrence of any of the following events:

(1) The partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner;

(2) An event agreed to in the partnership agreement as causing the partner's dissociation;
(3) The partner's expulsion pursuant to the partnership agreement;

(4) The partner's expulsion by the unanimous vote of the other partners if:

(i) It is unlawful to carry on the partnership business with that partner;

(ii) There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;

(iii) Within ninety days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(iv) A partnership that is a partner has been dissolved and its business is being wound up;

(5) On application by the partnership or another partner, the partner's expulsion by judicial determination because:

(i) The partner engaged in wrongful conduct that adversely and materially affected the partnership business;

(ii) The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section four, article four of this chapter; or

(iii) The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;
(6) The partner's:

(i) Becoming a debtor in bankruptcy;

(ii) Executing an assignment for the benefit of creditors;

(iii) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

(iv) Failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;

(7) In the case of a partner who is an individual:

(i) The partner's death;

(ii) The appointment of a guardian or general conservator for the partner; or

(iii) A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;

(9) In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or

(10) Termination of a partner who is not an individual,
§47B-6-2. Partner's power to dissociate; wrongful dissociation.

(a) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to subdivision (1), section one, article six of this chapter.

(b) A partner's dissociation is wrongful only if:

(1) It is in breach of an express provision of the partnership agreement; or

(2) In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

   (i) The partner withdraws by express will, unless the withdrawal follows within ninety days after another partner's dissociation by death or otherwise under subdivisions (6) through (10), section one, article six of this chapter or wrongful dissociation under this subsection;

   (ii) The partner is expelled by judicial determination under subdivision (5), section one, article six of this chapter;

   (iii) The partner is dissociated by becoming a debtor in bankruptcy; or

   (iv) In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

(c) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

§47B-6-3. Effect of partner's dissociation.

(a) If a partner's dissociation results in a dissolution and winding up of the partnership business, article eight of
this chapter applies; otherwise, article seven of this chapter applies.

(b) Upon a partner's dissociation:

(1) The partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in section three, article eight of this chapter;

(2) The partner's duty of loyalty under subdivision (3), section four, article four of this chapter terminates; and

(3) The partner's duty of loyalty under subdivisions (1) and (2), section four (b), article four of this chapter, and duty of care under subsection (c), section four, article four of this chapter continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to section three, article eight of 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.

(a) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under section one, article eight of this chapter, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (b) of this section.

(b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under subsection (b), section seven,
article eight of this chapter if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership being wound up as of that date. Interest must be paid from the date of disso-
ciation to the date of payment.

(c) Damages for wrongful dissociation under subsection (b), section two, article six of this chapter, and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of pay-
ment.

(d) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under section two, article seven of this chapter.

(e) If no agreement for the purchase of a dissociated partner's interest is reached within one hundred twenty days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (c) of this section.

(f) If a deferred payment is authorized under subsection (h) of this section, the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (c) of this section, stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(g) The payment or tender required by subsection (e) or (f) of this section must be accompanied by the follow-
ing:
(1) A statement of partnership assets and liabilities as of the date of dissociation;

(2) The latest available partnership balance sheet and income statement, if any;

(3) An explanation of how the estimated amount of the payment was calculated; and

(4) Written notice that the payment is in full satisfaction of the obligation to purchase unless, within one hundred twenty days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (c) of this section, or other terms of the obligation to purchase.

(h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(i) A dissociated partner may maintain an action against the partnership, pursuant to paragraph (ii), subdivision (2), subsection (b), section five, article four of this chapter, to determine the buyout price of that partner's interest, any offsets under subsection (c) of this section, or other terms of the obligation to purchase. The action must be commenced within one hundred twenty days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (c) of this section, and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (h) of this section, the court shall also determine the security for payment and other terms of the
§47B-7-2. Dissociated partner's power to bind and liability to partnership.

(a) For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under article nine of this chapter, is bound by an act of the dissociated partner which would have bound the partnership under section one, article three of this chapter before dissociation only if at the time of entering into the transaction the other party:

(1) Reasonably believed that the dissociated partner was then a partner;

(2) Did not have notice of the partner's dissociation; and

(3) Is not deemed to have had knowledge under subsection (e), section three, article three or notice under subsection (c), section four, article seven of this chapter.

(b) A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (a) of this section.

§47B-7-3. Dissociated partner's liability to other persons.

(a) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except
as otherwise provided in subsection (b) of this section.

(b) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under article nine of this chapter, within two years after the partner's dissociation, only if at the time of entering into the transaction the other party:

(1) Reasonably believed that the dissociated partner was then a partner;

(2) Did not have notice of the partner's dissociation; and

(3) Is not deemed to have had knowledge under subsection (e), section three, article three or notice under subsection (c), section four, article seven, both of this chapter.

(c) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(d) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

§47B-7-4. Statement of dissociation.

(a) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(b) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of subsections (d) and (e), section three, article three of this chapter.

(c) For the purposes of subdivision (3), subsection (a),
section two, and subdivision (3), subsection (b) of section three, article seven of this chapter, a person not a partner is deemed to have notice of the dissociation ninety days after the statement of dissociation is filed.

§47B-7-5. Continued use of partnership name.

Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership 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.

A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

(1) In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under subdivisions (2) through (10), section one, article six of this chapter, of that partner's express will to withdraw as a partner, or on a later date specified by the partner;

(2) In a partnership for a definite term or particular undertaking:

(i) The expiration of ninety days after a partner's dissociation by death or otherwise under subdivisions (6) through (10), section one, article six, or wrongful disso-
tion under subsection (b), section two, article six, both of
this chapter, unless before that time a majority in interest
of the remaining partners, including partners who have
rightfully dissociated pursuant to paragraph (i), subdivi-
sion (2), subsection (b), section two, article six of this
chapter, agree to continue the partnership;

(ii) The express will of all of the partners to wind up
the partnership business; or

(iii) The expiration of the term or the completion of
the undertaking;

(3) An event agreed to in the partnership agreement
resulting in the winding up of the partnership business;

(4) An event that makes it unlawful for all or substan-
tially all of the business of the partnership to be continued,
but a cure of illegality within ninety days after notice to
the partnership of the event is effective retroactively to the
date of the event for purposes of this section;

(5) On application by a partner, a judicial determina-
tion that:

(i) The economic purpose of the partnership is likely
to be unreasonably frustrated;

(ii) Another partner has engaged in conduct relating
to the partnership business which makes it not reasonably
practicable to carry on the business in partnership with
that partner; or

(iii) It is not otherwise reasonably practicable to carry
on the partnership business in conformity with the part-
nership agreement; or

(6) On application by a transferee of a partner's trans-
ferable interest, a judicial determination that it is equitable
to wind up the partnership business:

(i) After the expiration of the term or completion of
the undertaking, if the partnership was for a definite term
or particular undertaking at the time of the transfer or
entry of the charging order that gave rise to the transfer;

or

(ii) At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

§47B-8-2. Partnership continued after dissolution.

(a) Subject to subsection (b) of this section, a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

(b) At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated.

In that event:

(1) The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and

(2) The rights of a third party accruing under subdivision (1), section four, article eight of this chapter or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

§47B-8-3. Right to wind up partnership business.

(a) After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the circuit court or judge thereof in vacation, for good cause shown, may order
§250. Judicial supervision of the winding up.

(b) The legal representative of the last surviving partner may wind up a partnership's business.

(c) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to section seven, article eight of this chapter, settle disputes by mediation or arbitration, and perform other necessary acts.

§47B-8-4. Partner's power to bind partnership after dissolution.

Subject to section five, article eight of this chapter, a partnership is bound by a partner's act after dissolution that:

(1) Is appropriate for winding up the partnership business; or

(2) Would have bound the partnership under section one, article three of this chapter before dissolution, if the other party to the transaction did not have notice of the dissolution.

§47B-8-5. Statement of dissolution.

(a) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

(b) A statement of dissolution cancels a filed statement of partnership authority for the purposes of subsection (d), section three, article three of this chapter and is a limitation on authority for the purposes of subsection (e), section three, article three of this chapter.
(c) For the purposes of section one, article three and section four, article eight, both of this chapter, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution ninety days after it is filed.

(d) After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority which will operate with respect to a person not a partner as provided in subsections (d) and (e), section three, article three of this chapter in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

§47B-8-6. Partner's liability to other partners after dissolution.

(a) Except as otherwise provided in subsection (b) of this section, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under section four, article eight of this chapter.

(b) A partner who, with knowledge of the dissolution, incurs a partnership liability under subdivision (2), section four, article eight of this chapter by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

§47B-8-7. Settlement of accounts and contributions among partners.

(a) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (b) of this section.

(b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership busi-
ness. In settling accounts among the partners, the profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account.

(c) If a partner fails to contribute, all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations.

(d) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement.

(e) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(f) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

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-9-7. Statement of merger.

§47B-9-1. Definitions.
1 In this article:
2 (1) "General partner" means a partner in a partnership and a general partner in a limited partnership.
3 (2) "Limited partner" means a limited partner in a limited partnership.
4 (3) "Limited partnership" means a limited partnership created under section one, et seq., article nine, chapter forty-seven of this code, predecessor law, or comparable law of another jurisdiction.
5 (4) "Partner" includes both a general partner and a limited partner.

§47B-9-2. Conversion of partnership to limited partnership.
1 (a) A partnership may be converted to a limited partnership pursuant to this section.
2 (b) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.
3 (c) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include:
4 (1) A statement that the partnership was converted to a limited partnership from a partnership;
5 (2) Its former name; and
6 (3) A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.
§47B-9-3. Conversion of limited partnership to partnership.

(a) A limited partnership may be converted to a partnership pursuant to this section.

(b) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.

(c) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.

(d) The conversion takes effect when the certificate of limited partnership is canceled.

(e) A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. The partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.

§47B-9-4. Effect of conversion; entity unchanged.
(a) A partnership or limited partnership that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) All property owned by the converting partnership or limited partnership remains vested in the converted entity;

(2) All obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and

(3) An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

§47B-9-5. Merger of partnerships.

(a) Pursuant to a plan of merger approved as provided in subsection (c) of this section, a partnership may be merged with one or more partnerships or limited partnerships.

(b) The plan of merger must set forth:

(1) The name of each partnership or limited partnership that is a party to the merger;

(2) The name of the surviving entity into which the other partnerships or limited partnerships will merge;

(3) Whether the surviving entity is a partnership or a limited partnership and the status of each partner;

(4) The terms and conditions of the merger;

(5) The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property, in whole or part; and

(6) The street address of the surviving entity's chief executive office.
(c) The plan of merger must be approved:

(1) In the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and

(2) In the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.

(d) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(e) The merger takes effect on the later of:

(1) The approval of the plan of merger by all parties to the merger, as provided in subsection (c) of this section;

(2) The filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

(3) Any effective date specified in the plan of merger.


(a) When a merger takes effect:

(1) The separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases;

(2) All property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;

(3) All obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and

(4) An action or proceeding pending against a partnership or limited partnership that is a party to the merger
may be continued as if the merger had not occurred, or
the surviving entity may be substituted as a party to the
action or proceeding.

(b) The secretary of state of this state is the agent for
service of process in an action or proceeding against a
surviving foreign partnership or limited partnership to
enforce an obligation of a domestic partnership or limited
partnership that is a party to a merger. The surviving
entity shall promptly notify the secretary of state of the
mailing address of its chief executive office and of any
change of address. Upon receipt of process, the secretary
of state shall mail a copy of the process to the surviving
foreign partnership or limited partnership.

(c) A partner of the surviving partnership or limited
partnership is liable for:

(1) All obligations of a party to the merger for which
the partner was personally liable before the merger;

(2) All other obligations of the surviving entity in-
curred before the merger by a party to the merger, but
those obligations may be satisfied only out of property of
the entity; and

(3) All obligations of the surviving entity incurred
after the merger takes effect, but those obligations may be
satisfied only out of property of the entity if the partner is
a limited partner.

(d) If the obligations incurred before the merger by a
party to the merger are not satisfied out of the property of
the surviving partnership or limited partnership, the gener-

al partners of that party immediately before the effective
date of the merger shall contribute the amount necessary
to satisfy that party's obligations to the surviving entity, in
the manner provided in section seven, article eight of this
chapter or in the limited partnership act of the jurisdiction
in which the party was formed, as the case may be, as if the
merged party were dissolved.

(e) A partner of a party to a merger who does not
become a partner of the surviving partnership or limited
partnership is dissociated from the entity, of which that
partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under section one, article seven of this chapter or another statute specifically applicable to that partner's interest with respect to a merger. The surviving entity is bound under section two, article seven of this chapter by an act of a general partner dissolved under this subsection, and the partner is liable under section three, article seven of this chapter for transactions entered into by the surviving entity after the merger takes effect.

§47B-9-7. Statement of merger.

(a) After a merger, the surviving partnership or limited partnership may file a statement that one or more partnerships or limited partnerships have merged into the surviving entity.

(b) A statement of merger must contain:

(1) The name of each partnership or limited partnership that is a party to the merger;

(2) The name of the surviving entity into which the other partnerships or limited partnership were merged;

(3) The street address of the surviving entity's chief executive office and of an office in this state, if any; and

(4) Whether the surviving entity is a partnership or a limited partnership.

(c) Except as otherwise provided in subsection (d) of this section, for the purposes of section two, article three of this chapter, property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

(d) For the purposes of section two, article three of this chapter, real property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified
copy of the statement of merger in the office for recording transfers of that real property.

(e) A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to subsection (c), section five, article one of this chapter, stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by subsection (b) of this section, operates with respect to the partnerships or limited partnerships named to the extent provided in subsections (c) and (d) of this section.


This article is not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

ARTICLE 10. MISCELLANEOUS PROVISIONS.

§47B-10-1. Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

§47B-10-2. Short title.

This chapter may be cited as the Uniform Partnership Act.

§47B-10-3. Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity
§47B-10-4. Applicability.

(a) Before the first day of July, one thousand nine hundred ninety-five, this chapter governs only a partnership formed:

(1) After the effective date of this chapter, unless that partnership is continuing the business of a dissolved partnership under section forty-one, article eight-a, chapter forty-seven of this code; and

(2) Before the effective date of this chapter, that elects, as provided by subsection (c) of this section, to be governed by this chapter.

(b) After the first day of July, one thousand nine hundred ninety-five, this chapter governs all partnerships.

(c) Before the first day of July, one thousand nine hundred ninety-five, a partnership voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by this chapter. The provisions of this chapter relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership within one year preceding the partnership's election to be governed by this chapter, only if the third party knows or has received a notification of the partnership's election to be governed by this chapter.

§47B-10-5. Savings clause.

This chapter does not affect an action or proceeding commenced or right accrued before this chapter takes 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-2-2. Funds collected from the federal government; other sources; use of funds.


1 In consultation with the governor and other appropriate state agencies, the division of veterans' affairs shall establish and maintain a home for qualified veterans. The home in Barboursville shall be designated as the sole veterans home of its type in the state. As used in this article the term "qualified veteran" means a veteran as determined by the division of veterans' affairs, who meets the requirements under federal regulations and laws.

9 Any individual enlisting for the first time on or after the eighth day of September, one thousand nine hundred
eighty, who fails to complete at least twenty-four months
of his or her enlistment is not eligible for any right, privi-
lege or benefit for which eligibility is based on active duty
in the armed forces. This provision does not apply when a
person: (a) Is discharged because of hardship; (b) is re-
tired or separated because of disability; or (c) is later de-
termined to have a service connected disability incurred
during a completed period of enlistment.

In the event that a residential vacancy exists at any
veterans home or facility created and established pursuant
to this article, a veteran who has been a resident of the state
of West Virginia for one year or more prior to filing for
admission shall be given preference in filling such resi-
dential vacancy over nonresident veterans.

§9A-2-2. Funds collected from the federal government; other
sources; use of funds.

The division of veterans' affairs is hereby authorized
and directed to receive moneys from the federal govern-
ment, any agency thereof, from state appropriations, from
resident contributions or from any other appropriate
source, for the purpose of maintaining the state veterans'
home at Barboursville, which purpose shall include, but
not limited to, expenditures for improvement and renov-
ation of physical facilities, personal care costs and medical,
nursing and dental services.

The money so collected shall be placed in special
accounts according to the source of funds and limitation
on the use of the funds. These accounts shall be adminis-
tered by the director of the West Virginia division of veter-
ans' affairs. These funds shall be deposited in the state
treasury and paid out only on such vouchers as may be
authorized and approved by the director of the West Vir-
ginia division of veterans' affairs, in the same manner and
under the same restrictions as are now provided by law for
the disbursement of funds by that division. These funds
shall only be used as directed or restricted by the source
of the funds.
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
domiciliary; (3) define admittance to comply with state
and federal requirements including current West Virginia
resident or enlisted in service from West Virginia, war time
service or service during a declared national emergency,
Veterans Administration eligibility requirements for per
diem, honorably discharged, suffering from a disability
due to age, disease or defect that prevents them from
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.

The water development authority is continued. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and duties are essential governmental functions and for a public purpose.

The authority is controlled, managed and operated by the seven-member board known as the water development board. The director of the division of environmental protection, and the commissioner of the bureau of public health and the state officer or employee who in the judgment of the governor is most responsible for economic or community development are members ex officio of the board. The governor shall designate annually the member who is the state officer or employee most responsible for economic or community development. The other four members of the board are appointed by the governor, by and with the advice and consent of the Senate, for terms of two, three, four and six years, respectively. The successor of each such appointed member shall be appointed for a term of six years in the same manner the original appointments were made, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term. Each board member serves until the appointment and qualification of his or her successor. No more than two of the appointed board members shall

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.
at any one time belong to the same political party. Appointed board members may be reappointed to serve additional terms.

All members of the board shall be citizens of the state. Each appointed member of the board, before entering upon his or her duties, shall comply with the requirements of article one, chapter six of this code and give bond in the sum of twenty-five thousand dollars in the manner provided in article two, chapter six of this code. The governor may remove any board member for cause as provided in article six, chapter six of this code.

Annually the board shall elect one of its appointed members as chair and another as vice chair, and shall appoint a secretary-treasurer, who need not be a member of the board. Four members of the board are a quorum and the affirmative vote of four members is necessary for any action taken by vote of the board. No vacancy in the membership of the board impairs the rights of a quorum by such vote to exercise all the rights and perform all the duties of the board and the authority. The person appointed as secretary-treasurer, including a board member if he or she is so appointed, shall give bond in the sum of fifty thousand dollars in the manner provided in article two, chapter six of this code.

The director of the division of environmental protection, the commissioner of the bureau of public health and the state officer or employee most responsible for economic or community development shall not receive any compensation for serving as board members. Each of the four appointed members of the board shall receive an annual salary of five thousand dollars, payable in monthly installments. Each of the seven board members shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his or her duties as a member of such board. All such expenses incurred by the board are payable solely from funds of the authority or from funds appropriated for such purpose by the Legislature and no liability or obligation shall be incurred by the authority beyond the extent to which moneys are available from funds of the authority or from such appropriations.

There shall also be a director of the authority
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.

To accomplish the public policies and purposes and to meet the responsibility of the state as set forth in this article, the water development authority may initiate, acquire, construct, maintain, repair and operate water development projects or cause the same to be operated pursuant to a lease, sublease or agreement with any person or governmental agency; may make loans and grants to governmental agencies for the acquisition or construction of water development projects by governmental agencies, which loans may include amounts to refinance debt issued for existing water development projects of the governmental agency when the refinancing is in conjunction with the financing for a new water development project regardless of the source of the financing for the new project: Provided, That the amount of the refinancing may not exceed fifty percent of the aggregate amount of the refinancing of an existing project and the financing of a new project; and may issue water development revenue bonds of this state, payable solely from revenues, to pay the cost of projects, or finance projects, in whole or in part, by loans to governmental agencies. A water development project shall not be undertaken unless it has been determined by the authority to be consistent with any applicable comprehensive plan of water management approved by the director of the division of environmental protection or in the process of preparation by the director and to be consistent with the standards set by the state environmental quality board, for the waters of the state affected thereby. Any resolution of the authority providing for acquiring or constructing projects or for making a loan or grant for projects shall include a finding by the authority that the determinations have been made. A loan agreement shall be entered into between the authority and each governmental agency to which a loan is made for the acquisition or construction of a water development project, which loan agreement shall include, without limitation, the
following provisions:

(1) The cost of the project, the amount of the loan, the terms of repayment of the loan and the security therefor, which may include, in addition to the pledge of all revenues from the project after a reasonable allowance for operation and maintenance expenses, a deed of trust or other appropriate security instrument creating a lien on the project;

(2) The specific purposes for which the proceeds of the loan shall be expended including the refinancing of existing water development project debt as provided above, the procedures as to the disbursement of loan proceeds and the duties and obligations imposed upon the governmental agency in regard to the construction or acquisition of the project;

(3) The agreement of the governmental agency to impose, collect, and, if required to repay the obligations of the governmental agency under the loan agreement, increase service charges from persons using the project, which service charges shall be pledged for the repayment of the loan together with all interest, fees and charges thereon and all other financial obligations of the governmental agency under the loan agreement; and

(4) The agreement of the governmental agency to comply with all applicable laws, rules and regulations issued by the authority or other state, federal and local bodies in regard to the construction, operation, maintenance and use of the project.

§22C-1-27. Authorized limit on borrowing.

The aggregate principal amount of bonds and notes issued by the authority shall not exceed three hundred million dollars outstanding at any one time: Provided, That in computing the total amount of bonds and notes which may at any one time be outstanding, the principal amount of any outstanding bonds or notes refunded or to be refunded either by application of the proceeds of the sale of any refunding bonds or notes of the authority or by exchange for any refunding bonds or notes, shall be 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 administra-
tion 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 bene-
fits 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; ge-
neric 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 im-
pairment; medical panel; standards of review; limits thereon;
threshold for requests for permanent total disability awards;
standard of review and limits thereon of decisions by occup-
utional pneumoconiosis board; patient-physician privilege;
exceptions; cessation of certain permanent disability benefits
upon return to work; change in method of payments of cer-
tain 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 re-
quests; consolidation of disability requests; what awards qual-
ify 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; relation-
ship thereof to compensation programs performance coun-
cil; 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.

No person may engage in surface-mining operations unless such person has first obtained a permit from the director in accordance with the following:

(1) All permits issued pursuant to the requirements of this article shall be issued for a term not to exceed five years. Provided, That if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation, and if the application is full and complete for such specified longer term, the director
may extend a permit for such longer term: *Provided, however,* That subject to the prior approval of the director, with such approval being subject to the provisions of subsection (c), section eighteen of this article, a successor in interest to a permittee who applies for a new permit, or transfer of a permit, within thirty days of succeeding to such interest, and who is able to obtain the bond coverage of the original permittee, may continue surface-mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until such successor's permit application or application for transfer is granted or denied.

(2) Proof of insurance is required on an annual basis.

(3) A permit terminates if the permittee has not commenced the surface-mining operations covered by such permit within three years of the date the permit was issued: *Provided,* That the director may grant reasonable extensions of time upon a timely showing that such extensions are necessary by reason of litigation precluding such commencement, or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee: *Provided, however,* That with respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface-mining operations at such time as the construction of the synthetic fuel or generating facility is initiated.

(4) Each application for a new surface-mining permit filed pursuant to this article shall be accompanied by a fee of one thousand dollars. All permit fees and renewal fees provided for in this section or elsewhere in this article shall be collected by the director and deposited with the treasurer of the state of West Virginia to the credit of the operating permit fees fund and shall be used, upon requisition of the director, for the administration of this article.

(5) Prior to the issuance of any permit, the director shall ascertain from the commissioner of the division of labor whether the applicant is in compliance with section fourteen, article five, chapter twenty-one of this code.
Upon issuance of the permit, the director shall forward a copy to the commissioner of the division of labor, who shall assure continued compliance under such permit.

(6)(A) Prior to the issuance of any permit the director shall ascertain from the commissioner of the bureau of employment programs whether the applicant is in compliance with the provisions of section five, article two, chapter twenty-three of this code with regard to any required subscription to the workers' compensation fund, the payment of premiums to the fund, the timely filing of payroll reports and the maintenance of an adequate premium deposit. If the applicant is delinquent or defaulted, or has been terminated, then the permit shall not be issued until the applicant returns to compliance or is restored by the workers' compensation division under a reinstatement agreement: Provided, That in all such inquiries the commissioner of the bureau of employment programs shall make response to the division of environmental protection within fifteen calendar days, otherwise failure to respond timely shall be considered to indicate the applicant is in compliance and such failure will not be used to preclude issuance of the permit.

(B) It is a requirement of this article that each operator maintain continued compliance with the provisions of section five, article two, chapter twenty-three of this code and provide proof of compliance to the director on an annual basis.

CHAPTER 23. WORKERS' COMPENSATION.

Article
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; compensation programs performance council; official seal; continuation of authority of commissioner; legal services; rules.
§23-1-4. Office hours; records; confidentiality; exceptions; executive director.


§23-1-13. 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.

(a) The commissioner of the bureau of employment programs appointed under the provisions of section one, article two, chapter twenty-one-a of this code, has the sole responsibility for the administration of this chapter except for such matters as are entrusted to the compensation programs performance council created pursuant to section one, article three, chapter twenty-one-a of this code. In the administration of this chapter, the commissioner shall exercise all the powers and duties described in this chapter and in article two, chapter twenty-one-a of this code.

(b) The commissioner is authorized to promulgate rules and regulations to implement the provisions of this chapter.

(c) The commissioner shall have an official seal for the authentication of orders and proceedings, upon which seal shall be engraved the words "West Virginia Commissioner of Employment Programs" and such other design as the commissioner may prescribe. The courts in this state shall take judicial notice of the seal of the commissioner and in all cases copies of orders, proceedings or records in the office of the West Virginia commissioner of employment programs shall be equal to the original in evidence.

(d) Pursuant to the provisions of chapter four, article ten of this code, the commissioner of the bureau of employment programs shall continue to administer this chap-
ter until the first day of July, one thousand nine hundred ninety-six, to allow the joint committee on government operations to monitor compliance with recommendations set forth in the full performance audit of the office of the workers' compensation commissioner.

(e) The attorney general shall perform all legal services required by the commissioner under the provisions of this chapter: Provided, That in any case in which an application for review is prosecuted from any final decision of the workers' compensation appeal board to the supreme court of appeals, as provided by section four, article five of this chapter, or in any court proceeding before the workers' compensation appeal board, or in any proceedings before the office of judges, or in any case in which a petition for an extraordinary writ is filed in the supreme court of appeals or in any circuit court, in which such representation shall appear to the commissioner to be desirable, the commissioner may designate a regular employee of this office, qualified to practice before such court to represent the commissioner upon such appeal or proceeding, and in no case shall the person so appearing for the commissioner before the court receive remuneration therefor other than such person's regular salary.

§23-1-4. Office hours; records; confidentiality; exceptions; executive director.

(a) The offices of the workers' compensation division shall be open for the transaction of business between the hours of eight-thirty o'clock a.m., and five o'clock p.m., of each and every day, excepting Saturdays, Sundays and legal holidays, and be open upon such additional days and at such additional times as the division may elect. As the chief executive officer of the bureau of employment programs, the commissioner shall designate an executive director to serve as the chief operating officer for the daily operations of the workers' compensation division: Provided, That in any instance in this chapter which refers to the commissioner's secretary, such reference shall be taken to mean the executive director.

(b) Except as expressly provided for in this subsection, information obtained regarding employers and claimants
pursuant to this chapter for the purposes of its administra-
tion shall not be subject to the provisions of chapter
twenty-nine-b of this code unless such provisions are here-
after specifically made applicable in whole or in part.
Such information as may be reasonably necessary may be
released in formal orders or opinions of any tribunal or
court which is presented with an issue arising under this
chapter as well as in the presentations of the parties before
any such tribunal or court. Similarly, claimants or other
interested parties to an issue arising under this chapter
may, upon request, obtain information from the division's
records to the extent necessary for the proper presentation
or defense of a claim or other matter. Information may
be released pursuant to the provisions of chapter
twenty-nine-b of this code only if all identifying informa-
tion has first been eliminated from the records. Nothing
in this subsection shall prevent the release of information
to another agency of the state or of the federal govern-
ment for the legitimate purposes of those agencies: Pro-
vided, That any such agency shall guarantee the confiden-
tiality of the information so provided to the fullest extent
possible in keeping with its own statutory and regulatory
mandates. Nothing in this section shall prevent the divi-
sion from complying with any subpoena duces tecum:
Provided, however, That the issuing tribunal or court shall
take such actions as may be proper to maintain the confi-
dentiality of the information.

The division may release, pursuant to a proper request
under the provisions of chapter twenty-nine-b of this code,
the following information:

(1) The base premium tax rate for a specific employ-
er;

(2) Whether or not a specific employer has obtained
coverage under the provisions of this chapter;

(3) Whether or not a specific employer is in good
standing or is delinquent or in default according to the
division's records and the time periods thereof; and

(4) If a specific employer is delinquent or in default,
what the payments due the division are and what the com-

(a) In an investigation into any matter arising under articles one through five of this chapter, the division may cause depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in the circuit court, but such depositions shall be upon reasonable notice to claimant and employer or other affected persons or their respective attorneys. The division shall designate the person to represent it for the taking of any such deposition.

(b) The division shall also have discretion to accept and consider depositions taken within or without the state by either the claimant or employer or other affected person, provided due and reasonable notice of the taking of such depositions was given to the other parties or their attorneys, if any: Provided, That the division, upon due notice to the parties, shall have authority to refuse or permit the taking of such depositions or to reject such depositions after the taking thereof, if they were taken at such place or under such circumstances as imposed an undue burden or hardship upon the other parties, and the division's discretion to accept, refuse to approve, or reject such depositions shall be binding in the absence of abuse of such discretion.

§23-1-13. Rules of procedure and evidence; persons authorized to appear in proceedings; withholding of psychiatric and psychological reports and providing summaries thereof.

(a) The workers' compensation division shall adopt reasonable and proper rules of procedure, regulate and provide for the kind and character of notices, and the service thereof, in cases of accident and injury to employees, the nature and extent of the proofs and evidence, the method of taking and furnishing the same to establish the rights to benefits or compensation from the fund hereinafter provided for, or directly from employers as hereinafter provided, as the case may require, and the method of mak-
ing investigations, physical examinations and inspections, and prescribe the time within which adjudications and awards shall be made.

(b) At hearings and other proceedings before the division or before the duly authorized representative of the division, an employer who is a natural person may appear, and a claimant may appear, only as follows:

(1) By an attorney duly licensed and admitted to the practice of law in this state;

(2) By a nonresident attorney duly licensed and admitted to practice before a court of record of general jurisdiction in another state or country or in the District of Columbia who has complied with the provisions of rule 8.0—admission pro hac vice, West Virginia supreme court rules for admission to the practice of law, as amended;

(3) By a representative from a labor organization who has been recognized by the division as being qualified to represent a claimant or who is an individual otherwise found to be qualified by the division to act as a representative. Such representative shall participate in the presentation of facts, figures and factual conclusions as distinguished from the presentation of legal conclusions in respect to such facts and figures; or

(4) Pro se.

(c) At hearings and other proceedings before the division or before the duly authorized representative of the division, an employer who is not a natural person may appear only as follows:

(1) By an attorney duly licensed and admitted to the practice of law in this state;

(2) By a nonresident attorney duly licensed and admitted to practice before a court of record of general jurisdiction in another state or country or in the District of Columbia who has complied with the provisions of rule 8.0—admission pro hac vice, West Virginia supreme court rules for admission to the practice of law, as amended;

(3) By a member of the board of directors of a corpo-
ration or by an officer of the corporation, for purposes of representing the interest of the corporation in the presentation of facts, figures and factual conclusions as distinguished from the presentation of legal conclusions in respect to such facts and figures; or

(4) By a representative from an employer service company who has been recognized by the division as being qualified to represent an employer or who is an individual otherwise found to be qualified by the division to act as a representative. Such representative shall participate in the presentation of facts, figures and factual conclusions as distinguished from the presentation of legal conclusions in respect to such facts and figures.

(d) The division or its representative may require an individual appearing on behalf of a natural person or corporation to produce satisfactory evidence that he or she is properly qualified and authorized to so appear pursuant to this section.

(e) Subsections (b), (c) and (d) of this section shall not be construed as being applicable to proceedings before the office of judges pursuant to the provisions of article five of this chapter.

(f) At the direction of a treating or evaluating psychiatrist or clinical doctoral level psychologist, a psychiatric or psychological report concerning a claimant who is receiving treatment or is being evaluated for psychiatric or psychological problems may be withheld from the claimant. In that event, a summary of the report shall be compiled by the reporting psychiatrist or clinical doctoral level psychologist which summary shall be provided to the claimant upon his or her request. Any representative or attorney of the claimant must agree to provide such a claimant with only the summary before the full report shall be provided to the representative or attorney for his or her use in preparing the claimant's case. Such a report shall only be withheld from the claimant in those instances where the treating or evaluating psychiatrist or clinical doctoral level psychologist certifies that exposure to the contents of the full report is likely to cause serious harm to the claimant or is likely to cause the claimant to pose a
serious threat of harm to a third party.

(g) In any matter arising under articles one through five of this chapter in which the division is required to give notice to a party, if a party is represented by an attorney or other representative, then notice to the attorney or other representative shall be sufficient notice to the party so represented.

§23-1-16. Omission to subscribe; failure to report or perform required duty; false testimony or statements; criminal penalties; venue.

(a) Any person, firm, partnership, company, corporation or association who, as an employer, is required by the provisions of this chapter to subscribe to the workers' compensation fund, and who knowingly and willfully fails to subscribe thereto, or who knowingly and willfully fails to make any payment or file a report as required by the provisions of this chapter within the time periods specified by law, is guilty of a felony, and, upon conviction thereof, shall be fined not less than one thousand dollars and not more than ten thousand dollars. Upon any second or subsequent conviction under this subsection, any person so convicted shall be imprisoned in the penitentiary for a definite term of imprisonment which is not less than one year nor more than three years or fined not less than five thousand dollars nor more than twenty-five thousand dollars: Provided, That in the case of a person other than a natural person, the amount of the fine shall be not less than ten thousand dollars nor more than twenty-five thousand dollars. The venue for prosecution of any violation of this subsection is either the county in which the defendant's principal business operations are located, or in Kanawha County where the fund is located. In charging a person with a second or subsequent offense under the provisions of this subsection, the warrant, indictment or information must set forth the date and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense unless the conviction for the previous offense has become final, and unless a prior offense occurred within the ten year period next preceding the second or subsequent offense.
(b) Any person or firm, or the officer of any corporation, who knowingly and willfully makes a false report or statement under oath, affidavit or certification respecting any information required to be provided under this chapter, shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than ten thousand dollars or confined in the penitentiary for a definite term of imprisonment which is not less than one year nor more than three years, or both.

§23-1-18. Division employees not subject to subpoena for workers' compensation hearings.

No employee of the workers' compensation division shall be compelled to testify as to the basis, findings or reasons for any decision or order rendered by the employee under this chapter in any hearing conducted pursuant 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.


§23-2-4. 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-administra-
§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 agencies or departments created by it, including county boards of education, political subdivisions of the state, any volunteer fire department or company and other emergency service organizations as defined by article five, chapter fifteen of this code, and all persons, firms, associations and corporations regularly employing another person or persons for the purpose of carrying on any form of industry, service or business in this state, are employers within the meaning of this chapter and are hereby required to subscribe to and pay premium taxes into the workers' compensation fund for the protection of their employees and shall be subject to all requirements of this chapter and all rules and regulations prescribed by the workers' compensation division with reference to rate, classification and premium payment: Provided, That such rates will be adjusted by the division to reflect the demand on the compensation fund by the covered employer.

2. (b) The following employers are not required to subscribe to the fund, but may elect to do so:

3. (1) Employers of employees in domestic services; or
4. (2) Employers of five or fewer full-time employees in agricultural service; or
5. (3) Employers of employees while said employees are employed without the state except in cases of temporary employment without the state; or
6. (4) Casual employers. An employer is deemed to be a casual employer when the number of his or her employees
does not exceed three and the period of employment is
temporary, intermittent and sporadic in nature and does
not exceed ten calendar days in any calendar quarter; or

(5) Churches; or

(6) Employers engaged in organized professional
sports activities, including employers of trainers and jockeys engaged in thoroughbred horse racing; or

(7) Any volunteer rescue squad or volunteer police auxiliary unit organized under the auspices of a county commission, municipality or other government entity or political subdivision; volunteer organizations created or sponsored by government entities, political subdivisions; or, area or regional emergency medical services boards of directors in furtherance of the purposes of the emergency medical services act of article four-c, chapter sixteen of this code: Provided, That should any of the employers described in this subdivision have paid employees, then to the extent of those paid employees the employer must subscribe to and pay premium taxes into the workers' compensation fund based upon the gross wages of the paid employees; but, with regard to the volunteers, such coverage remains optional.

(c) Notwithstanding any other provision of this chapter to the contrary, whenever there are churches in a circuit which employ one individual clergyman and the payments to such clergyman from such churches constitute his or her full salary, such circuit or group of churches may elect to be considered a single employer for the purpose of premium payment into the workers' compensation fund.

(d) Employers who are not required to subscribe to the workers' compensation fund may voluntarily choose to subscribe to and pay premiums into the fund for the protection of their employees and in such case shall be subject to all requirements of this chapter and all rules and regulations prescribed by the division with reference to rates, classifications and premium payments and shall afford to them the protection of this chapter, including section six of this article, but the failure of such employers to choose to subscribe to and to pay premiums into the
(e) Any foreign corporation employer whose employment in this state is to be for a definite or limited period which could not be considered "regularly employing" within the meaning of this section may choose to pay into the workers' compensation fund the premiums herein provided for, and at the time of making application to the workers' compensation division, such employer shall furnish a statement under oath showing the probable length of time the employment will continue in this state, the character of the work, an estimate of the monthly payroll and any other information which may be required by the division. At the time of making application such employer shall deposit with the division to the credit of the workers' compensation fund the amount required by section five of this article, which amount shall be returned to the employer if the employer's application be rejected by the division. Upon notice to such employer of the acceptance of his or her application by the division, he or she shall be an employer within the meaning of this chapter and subject to all of its provisions.

(f) Any foreign corporation employer choosing to comply with the provisions of this chapter and to receive the benefits hereunder shall, at the time of making application to the division in addition to other requirements of this chapter, furnish the division with a certificate from the secretary of state, where such certificate is necessary, showing that it has complied with all the requirements necessary to enable it legally to do business in this state and no application of such foreign corporation employer shall be accepted by the division until such certificate is filed.

(g) The following employers may elect not to provide coverage to certain of their employees under the provisions of this chapter:

(1) Employers of employees who are officers of and stockholders in a corporation qualifying for special tax treatment under subchapter S of the Internal Revenue
Code of the United States may elect not to provide coverage to such employees; or

(2) If an employer is a partnership, sole proprietorship, association or corporation, such employer may elect not to include as an "employee" within this chapter, any member of such partnership, the owner of the sole proprietorship or any corporate officer or member of the board of directors of the association or corporation. The officers of a corporation or an association shall consist of a president, a vice-president, a secretary and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officer as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws and, if so elected, appointed or chosen, such employer may elect not to include any such officer or assistant officer as an "employee" within the meaning of this chapter: Provided, That except for those persons who are members of the board of directors or who are the corporation's or association's president, vice-president, secretary and treasurer and who may be excluded by reason of their aforementioned positions from the benefits of this chapter even though their duties, responsibilities, activities or actions may have a dual capacity of work which is ordinarily performed by an officer and also of work which is ordinarily performed by a worker, an administrator or an employee who is not an officer, no such other officer or assistant officer who is elected or appointed shall be excluded by election from coverage or be denied the benefits of this chapter merely because he or she is such an officer or assistant officer if, as a matter of fact:

(A) He or she is engaged in a dual capacity of having the duties and responsibilities for work ordinarily performed by an officer and also having duties and work ordinarily performed by a worker, an administrator or an employee who is not an officer;

(B) He or she is engaged ordinarily in performing the duties of a worker, an administrator or an employee who is
not an officer and receives pay therefor in the capacity of
an employee; or

(C) If he or she is engaged in an employment palpa-
bly separate and distinct from his or her official duties as
an officer of the association or corporation.

(h) In the event of election under subsection (g) of
this section, the employer shall serve upon the division
written notice naming the positions not to be covered and
shall not include such "employee's" remuneration for
premium purposes in all future payroll reports, and such
partner, proprietor or corporate or executive officer shall
not be deemed an employee within the meaning of this
chapter after such notice has been served. Notwithstanding
the provisions of subsection (g), section five of this article,
if an employer has not subscribed to the fund even though
it is obligated to do so under the provisions of this article,
then any such partner, proprietor or corporate or execu-
tive officer shall not be covered and shall not receive the
benefits of this chapter.

(i) "Regularly employing" or "regular employment"
shall mean employment by an employer which is not a
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.

(a) For the exclusive purposes of this section, the term
"employer" as defined in section one of this article shall
include any primary contractor who regularly subcon-
tracts with other employers for the performance of any
work arising from or as a result of the primary contractor's
own contract: Provided, That a subcontractor shall not
include one providing goods rather than services. In the
event that such a subcontracting employer defaults on its
obligations to make payments to the commissioner, then
such primary contractor shall be liable for such payments.
Notwithstanding the foregoing, nothing contained in this
section shall extend or except to such primary contractor
or subcontractors the provisions of sections six, six-a or eight of this article. This section is applicable only with regard to subcontractors with whom the primary contractor has a contract for any work or services for a period longer than thirty-days: Provided, however, That this section shall also be applicable to contracts for consecutive periods of work that total more than thirty days. It is not applicable to the primary contractor with regard to sub-subcontractors. However, a subcontractor for the purposes of a contract with the primary contractor can itself become a primary contractor with regard to other employers with whom it subcontracts.

(b) A primary contractor may avoid initial liability under subsection (a) of this section if it obtains from the commissioner, prior to the initial performance of any work by the subcontractor's employees, a certificate that the subcontractor is in good standing with the workers' compensation fund.

(1) Failure to obtain the certificate of good standing prior to the initial performance of any work by the subcontractor shall result in the primary contractor being equally liable with the subcontractor for all delinquent and defaulted premium taxes, premium deposits, interest and other penalties arising during the life of the contract or due to work performed in furtherance of the contract: Provided, That the division shall be entitled to collect only once for the amount of premiums, premium deposits and interest due to the default, but the division may impose other penalties on the primary contractor or on the subcontractor, or both.

(2) In order to continue avoiding liability under this section, the primary contractor shall request that the commissioner of the bureau of employment programs inform the primary contractor of any subsequent default by the subcontractor. In the event that the subcontractor does default, the commissioner shall then notify the primary contractor of the default by placing a notice in the first class United States mail, postage prepaid, and addressed to the primary contractor at the address furnished to the commissioner by the primary contractor. Such mailing
shall be good and sufficient notice to the primary contractor of the subcontractor's default. However, the primary contractor shall not become liable under this section until the first day of the calendar quarter following the calendar quarter in which the notice is given and then such liability shall only be for that following calendar quarter and thereafter and only if the subcontract has not been terminated: Provided, That the commissioner shall be entitled to collect only once for the amount of premiums, premium deposits and interest due to the default, but the commissioner may impose other penalties on the primary contractor or on the subcontractor, or both.

(c) In any situation where a subcontractor defaults with regard to its payment obligations under this chapter or fails to provide a certificate of good standing as provided for in this section, such default or failure shall be good and sufficient cause for a primary contractor to hold the subcontractor responsible and to seek reimbursement or indemnification for any amounts paid on behalf of the subcontractor to avoid or cure a workers' compensation default, plus related costs including reasonable attorneys' fees, and to terminate its subcontract with the subcontractor notwithstanding any provision to the contrary in the contract.

(d) The provisions of this section are applicable only to those contracts entered into or extended on or after the first day of January, one thousand nine hundred ninety-four.

(e) The division may take any action authorized by section five-a of this article in furtherance of its efforts to collect amounts due from the primary contractor under this section.


The division shall prepare and furnish report forms for the use of employers subject to this chapter. Every employer receiving from the division any form or forms with direction for completion and returning to the division shall return the same, within the period fixed by the division, completed so as to answer fully and correctly all
pertinent questions therein propounded, and if unable to do so, shall give good and sufficient reasons for such failure. Every employer subject to the provisions of this chapter, shall make application to the division on the forms prescribed by the division for such purpose; and any employer who shall terminate his or her business or for any other reason is no longer subject to this chapter shall so notify the division on forms to be furnished by the division for that purpose.

§23-2-4. Classification of industries; rate of premiums; authority to adopt various systems; accounts.

(a) The commissioner, in conjunction with the compensation programs performance council, is authorized to establish by rule a system for determining the classification and distribution into classes of employers subject to this chapter, a system for determining rates of premium taxes applicable to employers subject to this chapter, a system of multiple policy options with criteria for subscription thereto, and criteria for an annual employer's statement providing both benefits liability information and rate determination information.

(1) In addition, the rule shall provide for, but not be limited to:

(A) Rate adjustments by industry or individual employer, including merit rate adjustments;

(B) Notification regarding rate adjustments prior to the quarter in which the rate adjustments will be in effect;

(C) Chargeability of claims; and

(D) Such further matters that are necessary and consistent with the goals of this chapter;

(2) The rule shall be consistent with the duty of the commissioner and the compensation programs performance council to fix and maintain the lowest possible rates of premium taxes consistent with the maintenance of a solvent workers' compensation fund and the reduction of any deficit that may exist in such fund and in keeping with their fiduciary obligations to the fund;
(3) The rule shall be consistent with generally accepted accounting principles;

(4) The rule shall be consistent with classification and rate-making methodologies found in the insurance industry; and

(5) The rule shall be consistent with the principles of promoting more effective workplace health and safety programs as contained in article two-b of this chapter.

(b) Notwithstanding any other provision of this chapter to the contrary, the compensation programs performance council may elect to premise its premium tax determination methodology on the aggregate number of hours worked by employees of the employer rather than upon the gross wages of the employer. Such an election may apply to all industrial classifications or to less than all. If this election is made, then in all instances in which this chapter refers to gross wage reports for the purpose of premium tax determination such references shall be taken to mean a report of the number of hours so worked.

(c) The rule authorized by subsection (a) of this section shall be promulgated on or before the first day of July, one thousand nine hundred ninety-six. Until the rule is finally promulgated the prior provisions of this section as found in chapter one hundred seventy-one of the acts of the Legislature, one thousand nine hundred ninety-three, shall remain in effect.

(d) In accordance with generally accepted accounting principles, the workers' compensation division shall keep an accurate accounting of all money or moneys earned, due, and received by the workers' compensation fund, and of the liability incurred and disbursements made against the same; and an accurate account of all money or moneys earned, due and received from each individual subscriber, and of the liability incurred and disbursements made against the same.

§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.
(a) For the purpose of creating a workers' compensation fund, each employer who is required to subscribe to the fund or who elects to subscribe to the fund shall pay premium taxes calculated as a percentage of the employer's gross wages payroll at the rate determined by the workers' compensation division and then in effect. At the time each employer subscribes to the fund, the application required by the division shall be filed and a premium deposit equal to the first quarter's estimated premium tax payment shall be remitted. The minimum quarterly premium to be paid by any employer shall be twenty-five dollars.

(1) Thereafter, premium taxes shall be paid quarterly on or before the last day of the month following the end of the quarter, and shall be the prescribed percentage of the entire gross wages of all employees, from which net payroll is calculated and paid, during the preceding quarter: Provided, That the division may permit employers who shall qualify under the provisions of rules to be promulgated and made effective on or after the first day of July, one thousand nine hundred ninety-six, by the compensation programs performance council to report gross wages and pay premium taxes at other intervals.

(2) At the time each premium is paid, every subscribing employer shall make a gross wages payroll report to the division for the preceding quarter. The report shall be on the form or forms prescribed by the division, and shall contain all information required by the division.

(3) After subscribing to the fund, each employer shall remit with each gross wages payroll report and premium tax payment an amount calculated to be sufficient to maintain a premium deposit equal to the previous quarter's premium payment: Provided, That the division may reduce the amount of the premium deposit required from seasonal employers for those quarters during which employment is significantly reduced. The premium deposit shall be credited to the employer's account on the books of the division and used to pay premiums and any other sums due the fund when an employer becomes delinquent or in default as provided in this article.
(4) All premium taxes and premium deposits required by this article to be paid shall be paid by the employers to the division, which shall maintain a record of all sums so received. Any such sum mailed to the division shall be deemed to be received on the date the envelope transmitting it is postmarked by the United States postal service. All sums received by the division shall be deposited in the state treasury to the credit of the workers' compensation division in the manner now prescribed by law.

(5) The division may encourage employer efforts to create and maintain safe workplaces, to encourage loss prevention programs, and to encourage employer provided wellness programs, through the normal operation of the experience rating formula, seminars and other public presentations, the development of model safety programs and other initiatives as may be determined by the commissioner and the compensation programs performance council.

(b) Failure of an employer to timely pay premium taxes, to timely file a payroll report, or to maintain an adequate premium deposit, shall cause the employer's account to become delinquent. No employer will be declared delinquent or be assessed any penalty therefor if the division determines that such delinquency has been caused by delays in the administration of the fund. The division shall, in writing, within sixty days of the end of each quarter notify all delinquent employers of their failure to timely pay premiums, to timely file a payroll report, or to maintain an adequate premium deposit. Each employer who shall fail to timely file any quarterly payroll report or timely pay the premium tax due with such report, or both, for any quarter commencing on and after the first day of July, one thousand nine hundred ninety-five, shall pay a late reporting or payment penalty of the greater of fifty dollars or ten percent of the premium tax due, but not to exceed five hundred dollars, with such report. Such late penalty shall be paid with the most recent quarter's report and payment and is due when that quarter's report and payment are filed. If such late penalty is not paid when due, the same may be charged to and collected by the division from the employer's premium
deposit account or otherwise as provided for by law. The notification shall demand the filing of the delinquent payroll report and payment of delinquent premium taxes, the penalty for late reporting or payment of premium taxes or premium deposit, the interest penalty and an amount sufficient to maintain the premium deposit, before the end of the third month following the end of the preceding quarter. Interest shall accrue and be charged on the delinquent premium payment and premium deposit pursuant to section thirteen of this article.

(c) Whenever the division notifies an employer of the delinquent status of its account, the notification shall explain the legal consequence of subsequent default by an employer required to subscribe to the fund and the legal consequences of termination of an electing employer's account.

(d) Failure by the employer, who is required to subscribe to the fund and who fails to resolve the delinquency within the prescribed period, shall place the account in default and shall deprive such default employer of the benefits and protection afforded by this chapter, including section six of this article, and the employer shall be liable as provided in section eight of this article. The default employer's liability under said sections shall be retroactive to midnight of the last day of the month following the end of the quarter for which the delinquency occurs. The division shall notify the default employer of the method by which the employer may be reinstated with the fund. The division shall also notify the employees of such employer by written notice as hereinafter provided for in this section.

(e) Failure by any employer, who voluntarily elects to subscribe, to resolve the delinquency within the prescribed period shall place the account in default and shall automatically terminate the election of such employer to pay into the workers' compensation fund and shall deprive such employer and the employees of the default elective employer of the benefits and protection afforded by this chapter, including section six of this article, and such employer shall be liable as provided in section eight of
this article. The default employer's liability under said
section shall be retroactive to midnight of the last day of
the month following the end of the quarter for which the
delinquency occurs. Employees who were the subject of
the default employer's voluntary election to provide them
the benefits afforded by this chapter shall have such pro-
tection terminated at the time of their employer's default.

(f) (1) Except as provided for in subdivision (3) of
this subsection, any employer who is required to subscribe
to the fund and who is in default on the effective date of
this section or who subsequently defaults, and any em-
ployer who has elected to subscribe to the fund and who
defaults and whose account is terminated prior to the ef-
fective date of this section or whose account is subsequent-
ly terminated, shall be restored immediately to the benefits
and protection of this chapter only upon the filing of all
delinquent payroll and other reports required by the divi-
sion and payment into the fund of all unpaid premiums,
an adequate premium deposit, accrued interest and the
penalty for late reporting and payment. Interest shall be
calculated as provided for by section thirteen of this arti-
cle. In addition, for every defaulted or terminated em-
ployer whose default or termination lasts for two consecu-
tive quarters or who has defaulted or been terminated for
two quarters out of the preceding eight consecutive quar-
ters, then when any such employer's application for rein-
statement is filed or upon any such employer's restoration
to the benefits and protection of this chapter, for the next
eight quarters, including the quarter in which such restora-
tion occurs, or when any such employer's application for
reinstatement is filed, the employer shall pay premium
taxes to the division at a penalty rate. The applicable
penalty premium tax shall be determined by first calculat-
ing the employer's premium under the provisions of sec-
tion four of this article, but including any applicable expe-
rience modification, and then multiplying that premium
by one hundred ten percent.

The division shall not have the authority to waive ei-
ther accrued interest or the imposition of the penalty pre-
mium rate. Any employer whose default or termination
does not last for two consecutive quarters or who has not
been in default two quarters out of the preceding eight
consecutive quarters shall not have a penalty premium rate
imposed. The provisions of section seventeen of this arti­
cle apply to any action or decision of the division under
this section. For purposes of section four of this article,
the extra ten percent of premium constituting the penalty
shall not be used in determining any entitlement to experi­
ence modification of the employer’s premium tax rate for
future years.

(2) The division shall have the authority to restore a
defaulted or terminated employer through a reinstatement
agreement. Such reinstatement agreement shall require
the payment in full of all premium taxes, premium depos­
its, the penalty for late reporting and payment, past ac­
crued interest and future interest calculated pursuant to the
provisions of section thirteen of this article. The reinstate­
ment agreement shall not permit any modification or
waiver of the penalty premium rate provided for in subdi­
vision (1) of this subsection. Notwithstanding the filing of
a reinstatement application or the entering into of a rein­
statement agreement, the division is authorized to file a
lien against the employer as provided by section five-a of
this article. In addition, entry into a reinstatement agree­
ment is discretionary with the division. Such discretion
shall be exercised in keeping with the fiduciary obliga­
tions owed to the workers’ compensation fund. Should the
division decline to enter into a reinstatement agreement
and should the employer not comply with the provisions
of subdivision (1) of this subsection, then the division may
proceed with any of the collection efforts provided for by
section five-a of this article or as otherwise provided for
by this code. Applications for reinstatement shall: (A) Be
made upon forms prescribed by the division; (B) include a
report of the gross wages payroll of the employer which
had not been reported to the division during the entire
period of delinquency and default, which gross wages
information shall be certified by the employer or its au­
thorized agent; and (C) include a payment of a portion of
the liability equal to one half of one percent of the gross
payroll during the period of delinquency and default or
equal to another portion of the liability as may be deter-
mined from time to time by rule but not to exceed the amount of the entire liability due and owing for the period of delinquency and default. An employer who applies for reinstatement shall be entitled to the benefits and protection of this chapter on the day a properly completed and acceptable application which is accompanied by the application payment is received by the division: Provided, That if the division reinstates an employer subject to the terms of a reinstatement agreement, the subsequent failure of the employer to make scheduled payments or to pay accrued or future interest in accordance with the reinstatement agreement or to timely file current quarterly reports and to pay current quarterly premiums within the month following the end of the quarter for which the report and payment are due, or to otherwise maintain its account in good standing or, if the reinstatement agreement does not require earlier restoration of the premium deposit, to restore the premium deposit to the required amount by the end of the repayment period shall cause the reinstatement application and the reinstatement agreement to be null, void and of no effect, and the employer shall be denied the benefits and protection of this chapter effective from the date that such employer's account originally became delinquent.

(3) Any employer who fails to maintain its account in good standing with regard to subsequent premium taxes and premium deposits after filing an application for reinstatement and prior to the final resolution of an application for reinstatement by entering into a reinstatement agreement or by payment of the liability in full as provided for in subdivision (1) of this subsection shall cause the reinstatement application to be null, void and of no effect, and the employer shall be denied the benefits and protection of this chapter effective from the date that such employer's account originally became delinquent.

(4) Following any failure of an employer to comply with the provisions of a repayment agreement, the division may then make and continue with any of the collection efforts provided for by this chapter or elsewhere in this code even if the employer files another reinstatement application.
(g) With the exception noted in subsection (h), section one of this article, no employee of an employer required by this chapter to subscribe to the workers' compensation fund shall be denied benefits provided by this chapter because the employer failed to subscribe or because the employer's account is either delinquent or in default.

(h) (1) The provisions of this section shall not deprive any individual of any cause of action which has accrued as a result of an injury or death which occurred during any period of delinquency not resolved in accordance with the provisions of this article, or subsequent failure to comply with the terms of the repayment agreement.

(2) Upon withdrawal from the fund or termination of election of any employer, the employer shall be refunded the balance due the employer of its deposit, after deducting all amounts owed by the employer to the workers' compensation fund and other agencies of this state, and the division shall notify the employees of such employer of said termination in such manner as the division may deem best and sufficient.

(3) Notice to employees in this section provided for shall be given by posting written notice that the employer is defaulted under the compensation law of West Virginia, and in the case of employers required by this chapter to subscribe and pay premiums to the fund, that the defaulted employer is liable to its employees for injury or death, both in workers' compensation benefits and in damages at common law or by statute; and in the case of employers not required by this chapter to subscribe and pay premiums to the fund, but voluntarily electing to do so as herein provided, that neither the employer nor the employees of such employer are protected by said laws as to any injury or death sustained after the date specified in said notice. Such notice shall be in the form prescribed by the division and shall be posted in a conspicuous place at the chief works of the employer, as the same appear in records of the division. If said chief works of the employer cannot be found or identified, then said notices shall be posted at the front door of the courthouse of the county in which said
chief works are located, according to the division's records.

Any person who shall, prior to the reinstatement of said employer, as hereinbefore provided for, or prior to sixty days after the posting of said notice, whichever shall first occur, remove, deface or render illegible said notice, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined one thousand dollars, and said notice shall state this provision upon its face. The division may require any sheriff, deputy sheriff, constable or other official of the state of West Virginia, who may be authorized to serve civil process, to post such notice and to make return thereof of the fact of such posting to the division, and any failure of such officer to post any notice within ten days after he or she shall have received the same from the division, without just cause or excuse, shall constitute a willful failure or refusal to perform a duty required of him or her by law within the meaning of section twenty-eight, article five, chapter sixty-one of this code. Any person actually injured by reason of such failure shall have an action against said official, and upon any official bond he or she may have given, for such damages as such person may actually have incurred, but not to exceed, in the case of any surety upon said bond, the amount of the penalty of said bond. Any official posting said notice as herein required shall be entitled to the same fee as is now or may hereafter be provided for the service of process in suits instituted in courts of record in the state of West Virginia, which fee shall be paid by the division out of any funds at its disposal, but shall be charged by the division against the account of the employer to whose delinquency such notice relates.

§23-2-5a. Collection of premiums from defaulting employers; interest and penalties; civil remedies; creation and enforcement of lien against employer and purchaser; duty of secretary of state to register liens; distraint powers; insolvency proceedings; secretary of state to withhold certificates of dissolution; injunctive relief; bond; attorney fees and costs.
(a) The workers' compensation division in the name of the state may commence a civil action against an employer who, after due notice, defaults in any payment required by this chapter. If judgment is against the employer, such employer shall pay the costs of the action. Civil action under this section shall be given preference on the calendar of the court over all other civil actions. Upon prevailing in any such civil action, the division shall be entitled to recover its attorneys' fees and costs of action from the employer.

(b) In addition to the foregoing provisions of this section, any payment, interest and penalty thereon due and unpaid under this chapter shall be a personal obligation of the employer immediately due and owing to the division and shall, in addition thereto, be a lien enforceable against all the property of the employer: Provided, That no such lien shall be enforceable as against a purchaser (including a lien creditor) of real estate or personal property for a valuable consideration without notice, unless docketed as provided in section one, article ten-c, chapter thirty-eight of this code: Provided, however, That such lien may be enforced as other judgment liens are enforced through the provisions of chapter thirty-eight of this code and the same shall be deemed by the circuit court to be a judgment lien for this purpose.

(c) In addition to all other civil remedies prescribed herein, the division may in the name of the state, after giving appropriate notice as required by due process, distrain upon any personal property, including intangible property, of any employer delinquent for any payment, interest and penalty thereon. If the division has good reason to believe that such property or a substantial portion thereof is about to be removed from the county in which it is situated, upon giving appropriate notice, either before or after the seizure, as is proper in the circumstances, the division may likewise distrain in the name of the state before such delinquency occurs. For such purpose, the division may require the services of a sheriff of any county in the state in levying such distress in the county in which the sheriff is an officer and in which such personal property is situated. A sheriff so collecting any payment,
interest and penalty thereon shall be entitled to such com-

pensation as is provided by law for his or her services in

the levy and enforcement of executions. Upon prevailing

in any distraint action, the division shall be entitled to

recover its attorneys' fees and costs of action from the

employer.

(d) In case a business subject to the payments, interest

and penalties thereon imposed under this chapter shall be

operated in connection with a receivership or insolvency

proceeding in any state court in this state, the court under

whose direction such business is operated shall, by the

entry of a proper order or decree in the cause, make pro-

visions, so far as the assets in administration will permit,

for the regular payment of such payments, interest and

penalties as the same become due.

(e) The secretary of state of this state shall withhold

the issuance of any certificate of dissolution or withdrawal

in the case of any corporation organized under the laws of

this state or organized under the laws of any other state

and admitted to do business in this state, until notified by

the division that all payments, interest and penalties there-

on against any such corporation which is an employer

under this chapter have been paid or that provision satis-

factory to the division has been made for payment.

(f) In any case when an employer required to sub-

scribe to the fund defaults in payments of premium, pre-

mium deposits, penalty or interest thereon, for as many as

two calendar quarters, which quarters need not be consec-

utive, and remains in default after due notice, the division

may bring action in the circuit court of Kanawha County

to enjoin such employer from continuing to carry on the

business in which such liability was incurred: Provided,

That the division may as an alternative to this action re-

quire such delinquent employer to file a bond in the form

prescribed by the commissioner with satisfactory surety in

an amount not less than fifty percent more than the pay-

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.
(a) Notwithstanding any provisions of this chapter to the contrary, the following types of employers may apply for permission to self-insure their workers' compensation risk including their risk of catastrophic injuries. Except as provided for in subsection (e) of this section, no employer may self-insure its second injury risk.

(1) The types of employers are:

(A) Any employer who is of sufficient capability and financial responsibility to ensure the payment to injured employees and the dependents of fatally injured employees of benefits provided for in this chapter at least equal in value to the compensation provided for in this chapter; or

(B) Any employer of such capability and financial responsibility who maintains its own benefit fund or system of compensation to which its employees are not required or permitted to contribute and whose benefits are at least equal in value to those provided for in this chapter.

(2) In order to be approved for self-insurance status, the employer must:

(A) Have an effective health and safety program at its workplaces; and

(B) Provide security or bond in an amount to be determined by the compensation programs performance council which shall balance the employer's financial condition based upon an analysis of its audited financial statements and the full accrued value based upon generally accepted accounting principles of the employer's existing and expected liability; and

(C) Security or bond which may be in such form as the commissioner and the compensation programs performance council created pursuant to section one, article three, chapter twenty-one-a of this code permits.

(3) Any employer whose record upon the books of the division shows a liability, as determined on an accrued basis against the workers' compensation fund incurred on account of injury to or death of any of the employer's employees, in excess of premiums paid by such employer,
shall not be granted the right, individually and directly or
from such benefit funds or system of compensation, to be
self-insured until the employer has paid into the workers'
compensation fund the amount of such excess of liability
over premiums paid, including the employer's proper
proportion of the liability incurred on account of catastro-
phes or second injuries as defined in section one, article
three of this chapter and charged against such fund.

(4) Upon a finding that the employer has met all of
the requirements of this section, the employer may be
permitted self-insurance status. An annual review of each
self-insurer's continuing ability to meet its obligations and
the requirements of this section shall be made by the
workers' compensation division. This review shall include
a redetermination of the amount of security or bond
which shall be provided by the employer. Failure to pro-
vide any new amount or form of security or bond may, in
the division's discretion, cause the employer's
self-insurance status to be terminated. The security or
bond provided by employers prior to the second day of
February, one thousand nine hundred ninety-five, shall
continue in full force and effect until the performance of
the employer's annual review and the entry of any appro-
priate decision on the amount or form of the employer's
security or bond.

(5) Whenever a self-insured employer shall furnish
security or bond, including replacement and amended
bonds and other securities, as security to ensure the em-
ployer's or guarantor's payment of all obligations under
this chapter for which the security or bond was furnished,
such security or bond shall be in the most current form or
forms approved and authorized by the division for use by
the employer or its guarantors, surety companies, banks,
financial institutions or others in its behalf for such pur-
pose.

(b) Each self-insured employer shall, on or before the
last day of the first month of each quarter, file with the
division a certified statement of the total gross wages and
earnings of all of the employer's employees subject to this
chapter for the preceding quarter. Each self-insured em-
employer shall pay into the workers' compensation fund as portions of its self-insured premium tax:

(1) A sum sufficient to pay the employer's proper portion of the expense of the administration of this chapter;

(2) A sum sufficient to pay the employer's proper portion of the expense of claims for those employers who are in default in the payment of premium taxes or other obligations;

(3) A sum sufficient to pay the employer's fair portion of the expenses of the disabled workers' relief fund; and

(4) A sum sufficient to maintain as an advance deposit an amount equal to the previous quarter's payment of each of the foregoing three sums.

(c) The required payments to the employer's injured employees or dependents of fatally injured employees as benefits provided for by this chapter including second injury benefits and catastrophic injury benefits, if applicable, shall constitute the remaining portion of the self-insurer's premium tax.

(1) If an employer defaults in the payment of any portion of its self-insured premium taxes, the division may, in an appropriate case, determine the full accrued value based upon generally accepted accounting principles of the employer's liability including the costs of all awarded claims and of all incurred but not reported claims. The amount so determined may then, in an appropriate case, be assessed against the employer and the division may demand and collect the present value of such defaulted tax liability. Interest shall accrue upon the demanded amount as provided for in section thirteen of this article until the premium tax is fully paid. Payment of all amounts then due to the division and to the employer's employees is a sufficient basis for reinstating the employer to good standing with the fund.

(2) Such premium tax assessments are special revenue taxes under and according to the provisions of state workers' compensation law and are deemed to be tax claims, as
priority claims or administrative expense claims according to those provisions under the law provided in the United States bankruptcy code. In addition, as the same was previously intended by the prior provisions of this section, this amendment and reenactment is for the purpose of clarification of the taxing authority of the workers' compensation division.

(d) Each self-insured employer shall elect whether or not to self-insure its catastrophic injury risk as defined in subsection (c), section one, article three of this chapter.

(1) If the employer does not elect to self-insure its catastrophic risk, then the employer shall pay premium taxes for this coverage in the same manner as is provided for in section four of this article and in rules adopted to implement said section. Until such rules are adopted, the employer's premium taxes shall be determined in accordance with the provisions of chapter one hundred seventy-four, acts of the Legislature, one thousand nine hundred ninety-one. If the employees of such an employer suffer injury or death from a catastrophe, then the payment of the resulting benefits shall be made from the catastrophe reserve of the surplus fund provided for in subsection (b), section one, article three of this chapter. Such an employer's catastrophic liability shall not be included in the liabilities upon which the employer's security or bond is determined in subsection (a) of this section.

(2) If an otherwise self-insured employer elects to self-insure its catastrophic risk, then the security or bond required in subsection (a) of this section shall include the liability for the catastrophic risk.

(e) (1) Any self-insured employer who was, prior to the second day of February, one thousand nine hundred ninety-five, permitted to self-insure its second injury risk as defined in subsection (d), section one, article three of this chapter, may elect to continue to self-insure its second injury risk for so long as it meets the requirements of this chapter. Any employer which was previously permitted to self-insure its second injury risk who then elects to terminate that self-insurance status shall not thereafter be permitted to self-insure its second injury risk.
(2) For those employers previously permitted to self-insure their second injury risks, the amount of the security or bond required in subsection (a) of this section shall include the liability for that risk. All benefits provided for by this chapter which are awarded to the employer's employees which constitute second injury life awards shall then be paid by the employer and not the division.

(3) (A) For those employers which do not self-insure their second injury risk, the premium tax for second injury coverage shall be determined by the rules which implement section four of this article. Such rules may provide for merit rate adjustments of the amount of premium tax to be paid based upon the accrued costs to be determined under generally accepted accounting principles of second injury benefits paid and to be paid to the employer's employees. Until such rules are adopted, the employer's premium taxes shall be determined in accordance with the provisions of chapter one hundred seventy-four, acts of the Legislature, one thousand nine hundred ninety-one.

(B) In case there is a second injury to an employee of any employer making such second injury premium tax payments, the employer shall be liable to pay compensation or expenses arising from or necessitated by the second injury and such compensation and expenses shall be charged against the employer. After the completion of these payments, the employee shall be paid the remainder of the compensation and expenses that would be due for permanent total disability from the second injury reserve of the surplus fund. Such additional compensation and expenses shall not be charged against such employer.

(f) The compensation programs performance council may create, implement, establish and administer a perpetual self-insurance security risk pool of funds, sureties, securities, insurance provided by private insurance carriers or other states' programs, and other property, of both real and personal properties, to secure the payment of obligations of self-insured employers. If such pool is created, the compensation programs performance council shall adopt rules for the organizational plan, participation, contributions and other payments which may be required of
self-insured employers under this section. The council, in order to create and fund such a risk pool, may adopt a rule authorizing the division to assess each self-insured employer in proportion according to each employer's portion of the unsecured obligation and liability or to assess according to some other method provided for by rule which shall properly create and fund such risk pool to serve the needs of employees, employers and the workers' compensation fund by providing adequate security. The council, in funding such security risk pool, may authorize the division to use any assessments, premium tax assessments and revenues and appropriations as may be made available to the division.

(g) Any self-insured employer which has had a period of inactivity due to the nonemployment of employees which results in its reporting of no wages on quarterly reports to the division for a period of four or more consecutive quarters shall have its status at the division inactivated and shall be required to apply for reactivation to status as a self-insured employer prior to its reemployment of employees. Despite such inactivation, the self-insured employer shall continue to make payments on all awards for which it is responsible. Upon application for reactivation of its status as an operating self-insured employer, the employer must document that it meets the eligibility requirements needed to maintain self-insured status under this section and any rules adopted to implement it. If the employer is unable to requalify and obtain approval for reactivation, the employer shall, effective with the date of employment of any employee, become a subscriber to the workers' compensation fund, but shall continue to be a self-insurer as to the prior period of active status and to furnish security or bond and meet its prior self-insurance obligations.

(h) In any case under the provisions of this section that shall require the payment of compensation or benefits by an employer in periodical payments and the nature of the case makes it possible to compute the present value of all future payments, then the division may, in its discretion, at any time compute and permit to be paid into the workers' compensation fund an amount equal to the present
value of all unpaid future payments on the award or
awards for which liability exists in trust. Thereafter, such
employer shall be discharged from any further portion of
premium tax liability upon such award or awards and
payment of the award or awards shall be assumed by the
division.

(i) Any employer subject to this chapter, who shall
elect to carry the employer's own risk by being
self-insured and who has complied with the requirements
of this section and of any applicable rules, shall not be
liable to respond in damages at common law or by statute
for the injury or death of any employee, however occur-
ing, after such election's approval and during the period
that the employer is allowed to carry the employer's own
risk.

§23-2-14. Sale or transfer of business; attachment of lien for
premium, etc., payments due; criminal penalties
for failure to pay; creation and avoidance or
elimination of lien; enforcement of lien; successor
liability; enforcement of lien.

(a) If any employer shall sell or otherwise transfer
substantially all of the employer's assets, so as to give up
substantially all of the employer's capacity and ability to
continue in the business in which the employer has previ-
ously engaged, then:

(1) Such employer's premium taxes, premium depos-
its, interest and other payments owed to the division shall
be due and owing to the division upon the execution of
the agreement of sale or other transfer;

(2) Any repayment agreement entered into by the
employer with the division pursuant to section five of this
article shall terminate upon the execution of the aforesaid
agreement of sale or other transfer and all amounts owed
to the division but not yet paid shall become due; and

(3) Upon execution of an agreement of sale or other
transfer, as aforesaid, the division shall continue to have a
lien, as provided for in section five-a of this article, against
all of the remaining property of the employer as well as
all of the sold or transferred assets, which lien shall constitute a personal obligation of the employer.

(b) Notwithstanding any provisions of section five-a of this article to the contrary, in the event that a new employer acquires by sale or other transfer or assumes all or substantially all of a predecessor employer's assets, then:

(1) Any liens for payments owed to the division for premium taxes, premium deposits, interest, penalty premium rate or other payments owed to the division by the predecessor employer shall be extended to the successor employer;

(2) Any liens held by the division against the predecessor employer's property shall be extended to all of the assets of the successor employer;

(3) Liens acquired in the manner described in subdivisions (1) and (2) of this subsection shall be enforceable by the division to the same extent as provided for the enforcement of liens against the predecessor employer in section five-a of this article; and

(4) Unless all amounts owed by the predecessor employer are paid prior to or at the sale or other transfer, prior defaults by a predecessor employer shall accrue to the new employer for purposes of determining whether the new employer is subject to the penalty premium rate provisions of subdivision (1), subsection (f), section five of this article.

(c) Notwithstanding the provisions of section five-a of this article to the contrary, if any employer as described in subsection (a) of this section shall sell or otherwise transfer a portion of the employer's assets so as to affect the employer's capacity to do business, then:

(1) Such employer's premium taxes, premium deposits, interest, penalty premium rate and other payments owed to the division shall be due and owing to the division upon the execution of the agreement of sale or other transfer;

(2) Any repayment agreement entered into by the
employer with the division pursuant to section five of the
article shall terminate upon the execution of the aforesaid
agreement of sale or other transfer and all amounts owed
to the division but not yet paid shall become due; and

(3) Upon execution of an agreement of sale or other
transfer, as aforesaid, the division shall continue to have a
lien, as provided for in section five-a of this article, against
all of the remaining property of the employer as well as all
the sold or transferred assets, which lien shall constitute a
personal obligation of the employer.

(d) If an employer subject to subsection (a), (b) or (c)
of this section pays to the division, prior to the execution
of an agreement of sale or other transfer, a sum sufficient
to retire all of the indebtedness that the employer would
owe at the time of the execution, then the division shall
issue a certificate to the employer stating that the employ-
er's account is in good standing with the division and that
the assets may be sold or otherwise transferred without the
attachment of the division's lien. An agreement of sale or
other transfer may provide for the creation of an escrow
account into which the employers shall pay the full
amount owed to the division. The subsequent timely pay-
ment of that full amount to the division shall operate to
place both employers in good standing with the division to
the extent of the predecessor employer's liabilities retroac-
tive to the date of sale or other transfer. In the event that
the employer would not owe any sum to the division on
the aforesaid date of execution, then a certificate shall also
be issued to the employer upon the employer's request
stating that the employer's account is in good standing
with the division and that the assets may be sold or other-
wise transferred without the attachment of the division's
lien.

(e) As used in this article, the term "assets" means all
property of whatever type in which the employer has an
interest including, but not limited to, good will, business
assets, customers, clients, contracts, access to leases such as
the right to sublease, assignment of contracts for the sale
of products, operations, stock of goods or inventory, ac-
counts receivable, equipment or transfer of substantially
all of its employees.
(f) The transfer of any assets of the employer shall be presumed to be a transfer of all or substantially all of the assets if the transfer affects the employer's capacity to do business. The presumption can be overcome upon petition presented and an administrative hearing in accordance with section fifteen of this article and in consideration of the factors thereunder.

(g) The foregoing provisions are expressly intended to impose upon such successor employers the duty of obtaining from the division or predecessor employer, prior to the date of such acquisition, a valid "certificate of good standing to transfer a business or business assets" to verify that the predecessor employer's account with the division is in good standing.

§23-2-15. Liabilities of successor employer; waiver of payment by division; assignment of predecessor employer's premium rate to successor.

(a) At any time prior to or following the acquisition described in subsection (a), (b) or (c), section fourteen of this article, the buyer or other recipient may file a certified petition with the division requesting that the division waive the payment by the buyer or other recipient of premiums, premium deposits, interest and imposition of the modified rate of premiums attributable to the predecessor employer or other penalty, or any combination thereof. The division shall review the petition by considering the seven factors set forth below:

(1) The exact nature of the default;

(2) The amount owed to the division;

(3) The solvency of the fund;

(4) The financial condition of the buyer or other recipient;

(5) The equities exhibited towards the fund by the buyer or other recipient during the acquisition process;

(6) The potential economic impact upon the state and the specific geographic area in which the buyer or other
recipient is to be or is located, if the acquisition were not
to occur; and

(7) Whether the assets are purchased in an arms-length
transaction.

Unless requested by a party or by the division, no
hearing need be held on the petition. However, any deci-
sion made by the division on the petition shall be in writ-
ing and shall include appropriate findings of fact and
conclusions of law. Such decision shall be effective ten
days following notice to the public of the decision unless
an objection is filed in the manner herein provided. Such
notice shall be given by the division's filing with the secre-
tary of state, for publication in the state register, of a no-
tice of the decision. At the time of filing the notice of its
decision, the division shall also file with the secretary of
state a true copy of the decision. The publication shall
include a statement advising that any person objecting to
the decision must file, within ten days after publication of
the notice, a verified response with the division setting
forth the objection and the basis therefor. If any such
objection is filed, the division shall hold an administrative
hearing, conducted pursuant to article five, chapter
twenty-nine-a of this code, within fifteen days of receiving
the response unless the buyer or other recipient consents
to a later hearing. Nothing in this subsection shall be
construed to be applicable to the seller or other transferor
or to affect in any way a proceeding under sections five
and five-a of this article.

(b) In the factual situations set forth in subsection (a),
(b) or (c), section fourteen of this article, if the predeces-
sor's modified rate of premium tax, as calculated in accor-
dance with section four of this article, is greater than the
manual rate of premium tax, as calculated in accordance
with said section, for other employers in the same class or
group, then, if the new employer does not already have a
modified rate of premium, it shall also assume the prede-
cessor employer's modified rates for the payment of pre-
miums as determined under sections four and five of this
article until sufficient time has elapsed for the new em-
ployer's experience record to be combined with the expe-
rience record of the predecessor employer so as to calcu-
late the new employer's own modified rate of premium

tax. As provided for by subdivision (4), subsection (b),
section fourteen of this article, the new employer may
avoid this assumption of the predecessor's rate of premium
tax if all liabilities of the predecessor are paid prior to or
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 employ-
ers.

(a) The commissioner shall establish a workers' com-

(b) A portion of all premiums that shall be paid into

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pensation fund from the premiums and other funds paid
thereto by employers, as herein provided, for the benefit
of employees of employers who have paid the premiums
applicable to such employers and have otherwise complied
fully with the provisions of section five, article two of this
chapter, and for the benefit, to the extent elsewhere in this
chapter set out, of employees of employers who have

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elected, under section nine, article two of this chapter, to
make payments into the surplus fund hereinafter provided
for, and for the benefit of the dependents of all such em-
ployees, and for the payment of the administration ex-
penses of this chapter.

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shall be in an amount sufficient to maintain a solvent sur-
plus fund. All interest earned on investments by the work-
ers' compensation fund, which is attributable to the surplus
fund, shall be credited to the surplus fund.

(c) A catastrophe is hereby defined as an accident in
which three or more employees are killed or receive inju-
ries, which, in the case of each individual, consist of: Loss
of both eyes or the sight thereof; or loss of both hands or
the use thereof; or loss of both feet or the use thereof; or
loss of one hand and one foot or the use thereof. The
aggregate of all medical and hospital bills and other costs,
and all benefits payable on account of a catastrophe is
hereby defined as "catastrophe payment". In case of a
catastrophe to the employees of an employer who is an
ordinary premium-paying subscriber to the fund, or to the
employees of an employer who, having elected to carry
the employer's own risk under section nine, article two of
this chapter, has heretofore elected, or may hereafter elect,
to pay into the catastrophe reserve of the surplus fund
under the provisions of that section, then the catastrophe
payment arising from such catastrophe shall not be
charged against, or paid by, such employer but shall be
paid from the catastrophe reserve of the surplus fund.

(d) (1) If an employee who has a definitely ascertain-
able physical impairment, caused by a previous occupa-
tional injury, occupational pneumoconiosis or occupa-
tional disease, irrespective of its compensability, becomes
permanently and totally disabled through the combined
effect of such previous injury and a second injury re-
ceived in the course of and as a result of his or her em-
ployment, the employer shall be chargeable only for the
compensation payable for such second injury: Provided,
That in addition to such compensation, and after the com-
pletion of the payments therefor, the employee shall be
paid the remainder of the compensation that would be due
for permanent total disability out of a special reserve of
the surplus fund known as the second injury reserve, creat-
ed in the manner hereinbefore set forth. The procedure
by which the claimant's request for a permanent total dis-
ability award under this section is ruled upon shall require
that the issue of the claimant's degree of permanent dis-
ability first be determined. Thereafter, by means of a
separate order, a decision shall be made as to whether the
award shall be a second injury award under this subsection
or a permanent total disability award to be charged to the
employer's account or to be paid directly by the employer
if the employer has elected to be self-insured under the
provisions of section nine, article two of this chapter.

(2) If an employee of an employer, where the employ-
er has elected to carry his or her own risk under section
nine, article two of this chapter, and is permitted not to
make payments into the second injury reserve of surplus
fund under the provisions of said section, has a definitely
ascertainable physical impairment caused by a previous
occupational injury, occupational pneumoconiosis or
occupational disease, irrespective of its compensability,
and becomes permanently and totally disabled from the
combined effect of such previous injury and a second
injury received in the course of and as a result of his or
her employment, the employee shall be granted an award
of total permanent disability and his or her employer shall,
upon order of the division, compensate the said employee
in the same manner as if the total permanent disability of
the employee had resulted from a single injury while in
the employ of such employer.

(e) Employers electing, as herein provided, to com-
 pense individually and directly their injured employees
and their fatally injured employees' dependents shall do so
in the manner prescribed by the division, and shall make
all reports and execute all blanks, forms and papers as
directed by the division, and as provided in this chapter.

§23-3-4. Disbursements not considered as abandoned proper-
ty; interest to be retained.

(a) All disbursements from the workers' compensation
fund and of the other funds created pursuant to this chap-
ter which might otherwise be presumed to be abandoned
and subject to the custody of the state as unclaimed prop-
erty under the provisions of article eight, chapter thirty-six
of this code shall be deposited by the state treasurer to the
credit of the workers' compensation fund or to such other
affected fund.
§23-3-5. **Authorization to require the electronic invoices and transfers.**

(a) The workers' compensation division is authorized to establish a program to require the acceptance of disbursements by electronic transfer from the workers' compensation fund to employers, vendors and all others lawfully entitled to receive such disbursements: *Provided,* that claimants may not be required to accept such transfers but may elect to do so.

(b) The division is further authorized to establish a program to require payments of deposits, premiums and other funds into the workers' compensation fund by electronic transfer of funds.

(c) The division is further authorized to establish a program that invoices and other charges against the workers' compensation fund may be submitted to the division by electronic means.

(d) Any program authorized by this section must be implemented through the issuance of a rule pursuant to subdivisions (b) and (c), section seven, article three, chapter twenty-one-a of this code.

**ARTICLE 4. DISABILITY AND DEATH BENEFITS.**

§23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of 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.


§23-4-15b. 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.


Every employee who sustains an injury subject to this chapter, or his or her representative, shall immediately on the occurrence of such injury or as soon thereafter as practicable give or cause to be given to the employer or any of the employer's agents a written notice of the occurrence of such injury, with like notice or a copy thereof to the workers' compensation division stating in ordinary language the name and address of the employer, the name
and address of the employee, the time, place, nature and cause of the injury, and whether temporary total disability has resulted therefrom. Such notice shall be given personally to the employer or any of the employer's agents, or may be sent by certified mail addressed to the employer at the employer's last known residence or place of business. Such notice may be given to the workers' compensation division by mail.

§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.

(a) In any claim for benefits under this chapter, the workers' compensation division shall determine whether the claimant has sustained a compensable injury within the meaning of section one of this article and the division shall enter an order giving all parties immediate notice of such decision.

(1) The division may enter an order conditionally approving the claimant's application if the division finds that obtaining additional medical evidence or evaluations or other evidence related to the issue of compensability would aid the division in making a correct final decision. Benefits shall be paid during the period of conditional approval; however, if the final decision is one that rejects the claim, then any such payments shall be considered an overpayment. The division may only recover the amount of such an overpayment as provided for in subsection (i) of this section.

(2) In making a determination regarding the compensability of a newly filed claim or upon a filing for the reopening of a prior claim pursuant to the provisions of section sixteen of this article based upon an allegation of recurrence, reinjury, aggravation or progression of the previous compensable injury or in the case of a filing of a request for any other benefits under the provisions of this chapter, the division shall consider the date of the filing of the claim for benefits for a determination of the following:

(A) Whether the claimant had scheduled shutdown
beginning within one week of the date of the filing; or

(B) Whether the claimant received notice within sixty
days of the filing that his or her employment position was
to be eliminated, including, but not limited to, the claim-
ant's worksite, a layoff or the elimination of the claimant's
employment position; or

(C) Whether the claimant is receiving unemployment
compensation benefits at the time of the filing; or

(D) Whether the claimant has received unemployment
compensation benefits within sixty days of the filing.

In the event of an affirmative finding upon any of
these four factors, then such finding shall be given proba-
tive weight in the overall determination of the compensa-
bility of the claim or of the merits of the reopening re-
quest.

(3) Any party shall have the right to object to the
order of the division and obtain an evidentiary hearing as
provided in section one, article five of this chapter.

(b) Where it appears from the employer's report, or
from proper medical evidence, that a compensable injury
will result in a disability which will last longer than three
days as provided in section five of this article, the division
may immediately enter an order commencing the pay-
ment of temporary total disability benefits to the claimant
in the amounts provided for in sections six and fourteen
of this article, and the payment of the expenses provided
for in subsection (a), section three of this article, relating
to said injury, without waiting for the expiration of the
thirty-day period during which objections may be filed to
such findings as provided in section one, article five of this
chapter. The division shall enter an order commencing
the payment of temporary total disability or medical ben-
fits within fifteen days of receipt of either the employee's
or employer's report of injury, whichever is received sooner,
and also upon receipt of either a proper physician's
report or any other information necessary for a determi-
nation. The division shall give to the parties immediate
notice of any order granting temporary total disability or
medical benefits.
(c) The division may enter orders granting temporary total disability benefits upon receipt of medical evidence justifying the payment of such benefits. In no claim shall the division enter an order granting prospective temporary total disability benefits for a period of more than ninety days: Provided, That when the division determines that the claimant remains disabled beyond the period specified in the prior order granting temporary total disability benefits, the division shall enter an order continuing the payment of temporary total disability benefits for an additional period not to exceed ninety days, and shall give immediate notice to all parties of such decision.

(d) Upon receipt of the first report of injury in claim, the division shall request from the employer or employers any wage information necessary for determining the rate of benefits to which the employee is entitled. If an employer does not furnish the division with this information within fifteen days from the date the division received the first report of injury in the case, the employee shall be paid temporary total disability benefits for lost time at the rate the division obtains from reports made pursuant to section eleven, article ten, chapter twenty-one-a of this code. If no such wages have been reported, then the division shall make such payments at the rate the division finds would be justified by the usual rate of pay for the occupation of the injured employee. The division shall adjust the rate of benefits both retroactively and prospectively upon receipt of proper wage information. The division shall have access to all wage information in the possession of any state agency.

(e) Subject to the limitations set forth in section sixteen of this article, upon a finding of the division that a claimant who has sustained a previous compensable injury which has been closed by any order of the division, or by the claimant's return to work, suffers further temporary total disability or requires further medical or hospital treatment resulting from the compensable injury, the division shall immediately enter an order commencing the payment of temporary total disability benefits to the claimant in the amount provided for in sections six and fourteen of this article, and the expenses provided for in
subsection (a), section three of this article, relating to said disability, without waiting for the expiration of the thirty-day period during which objections may be filed to such findings as provided in section one, article five of this chapter. The division shall give immediate notice to the parties of its order.

(f) Where the employer is a subscriber to the workers' compensation fund under the provisions of article three of this chapter, and upon the findings aforesaid, the division shall mail all workers' compensation checks paying temporary total disability benefits directly to the claimant and not to the employer for delivery to the claimant.

(g) Where the employer has elected to carry its own risk under section nine, article two of this chapter, and upon the findings aforesaid, the division shall immediately issue a pay order directing the employer to pay such amounts as are due the claimant for temporary total disability benefits. A copy of the order shall be sent to the claimant. The self-insured employer shall commence such payments by mailing or delivering the payments directly to the employee within ten days of the date of the receipt of the pay order by the employer. If the self-insured employer believes that its employee is entitled to benefits, the employer may start payments before receiving a pay order from the division.

(h) In the event that an employer files a timely objection to any order of the division with respect to compensation, or any order denying an application for modification with respect to temporary total disability benefits, or with respect to those expenses outlined in subsection (a), section three of this article, the division shall continue to pay to the claimant such benefits and expenses during the period of such disability. Where it is subsequently found by the division that the claimant was not entitled to receive such temporary total disability benefits or expenses, or any part thereof, so paid, the division shall, when the employer is a subscriber to the fund, credit said employer's account with the amount of the overpayment; and, when the employer has elected to carry its own risk, the division shall refund to such employer the amount of the overpay-
ment. The amounts so credited to a subscriber or repaid to a self-insurer shall be charged by the division to the surplus fund created in section one, article three of this chapter.

(i) When the employer has protested the compensability or applied for modification of a temporary total disability benefit award or expenses and the final decision in such case determines that the claimant was not entitled to such benefits or expenses, the amount of such benefits or expenses shall be considered overpaid. The division may only recover the amount of such benefits or expenses by withholding, in whole or in part, as determined by the division, future permanent partial disability benefits payable to the individual in the same or other claims and credit such amount against the overpayment until it is repaid in full.

(j) In the event that the division finds that based upon the employer's report of injury, the claim is not compensable, the division shall provide a copy of such employer's report to the claimant in addition to the order denying the claim.

§23-4-1d. Method and time of payments for permanent disability.

(a) If the division makes an award for permanent partial or permanent total disability, the division or self-insured employer shall start payment of benefits by mailing or delivering the amount due directly to the employee within fifteen days from the date of the award: Provided, That the division may withhold payment of the portion of the award that is the subject of the following subsection until seventy-seven days have expired without an objection being filed.

(b) On and after the first day of July, one thousand nine hundred ninety-five, whenever the division, the office of judges or the workers' compensation appeal board enters an order granting the claimant a permanent total disability award and an objection or appeal is then filed by the employer or the division, the division shall begin the payment of monthly permanent total disability benefits.
However, any payment for a back period of benefits from
the onset date of total permanent disability to the date of
the award shall be limited to a period of twelve months of
benefits. If, after all litigation is completed and the time
for the filing of any further objections or appeals to the
award has expired, the award of permanent total disability
benefits is upheld, then the claimant shall receive the re-
mainder of benefits due to him or her based upon the
onset date of total permanent disability that was finally
determined.

(c) If the claimant is then owed any additional pay-
ment of back permanent total disability benefits, then the
division shall not only pay the claimant the sum owed but
shall also add thereto interest at the simple rate of six per-
cent per annum from the date of the initial award granting
the total permanent disability to the date of the final order
upholding the award. In the event that an intermediate
order directed an earlier onset date of permanent total
disability than was found in the initial award, the interest
earning period for that additional period shall begin upon
the date of the intermediate award. Any interest payable
shall be charged to the account of the employer or shall
be paid by the employer if it has elected to carry its own
risk.

(d) If a timely protest to the award is filed, as provided
in section one or nine, article five of this chapter, the divi-
sion or self-insured employer shall continue to pay to the
claimant such benefits during the period of such disability
unless it is subsequently found that the claimant was not
entitled to receive the benefits, or any part thereof, so paid,
in which event the division shall, where the employer is a
subscriber to the fund, credit said employer's account with
the amount of the overpayment; and, where the employer
has elected to carry the employer's own risk, the division
shall refund to such employer the amount of the overpay-
ment. The amounts so credited to a subscriber or repaid
to a self-insurer shall be charged by the division to the
surplus fund created by section one, article three of this
chapter. If the final decision in any case determines that a
claimant was not lawfully entitled to benefits paid to him
or her pursuant to a prior decision, such amount of bene-
fitted so paid shall be deemed overpaid. The division may only recover such amount by withholding, in whole or in part, as determined by the division, future permanent partial disability benefits payable to the individual in the same or other claims and credit such amount against the overpayment 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.

(a) The workers' compensation division shall establish and alter from time to time as the division may determine to be appropriate a schedule of the maximum reasonable amounts to be paid to health care providers, providers of rehabilitation services, providers of durable medical and other goods and providers of other supplies and medically related items or other persons, firms or corporations for the rendering of treatment or services to injured employees under this chapter. The division also, on the first day of each regular session and also from time to time, as the division may consider appropriate, shall submit the schedule, with any changes thereto, to the Legislature. The promulgation of the schedule is not subject to the legislative rule-making review procedures established in sections nine through sixteen, article three, chapter twenty-nine-a of this code.

The division shall disburse and pay from the fund for such personal injuries to such employees as may be entitled hereunder as follows:

(1) Such sums for health care services, rehabilitation services, durable medical and other goods and other sup-
plies and medically related items as may be reasonably required. The division shall determine that which is reasonably required within the meaning of this section in accordance with the guidelines developed by the health care advisory panel pursuant to section three-b of this article: Provided, That nothing herein shall prevent the implementation of guidelines applicable to a particular type of treatment or service or to a particular type of injury before guidelines have been developed for other types of treatment or services or injuries: Provided, however, That any guidelines for utilization review which are developed in addition to the guidelines provided for in said section may be utilized by the division until superseded by guidelines developed by the health care advisory panel pursuant to said section. Each health care provider who seeks to provide services or treatment which are not within any such guideline shall submit to the division specific justification for the need for such additional services in the particular case and the division shall have the justification reviewed by a health care professional before authorizing any such additional services. The division is authorized to enter into preferred provider and managed care agreements.

(2) Payment for health care services, rehabilitation services, durable medical and other goods and other supplies and medically related items authorized under this subsection may be made to the injured employee or to the person, firm or corporation who or which has rendered such treatment or furnished health care services, rehabilitation services, durable medical or other goods or other supplies and items, or who has advanced payment for same, as the division may deem proper, but no such payments or disbursements shall be made or awarded by the division unless duly verified statements on forms prescribed by the division shall be filed with the division within two years after the rendering of such treatment or the delivery of such goods, supplies or items: Provided, That no payment hereunder shall be made unless such verified statement shows no charge for or with respect to such treatment or for or with respect to any of the items specified above has been or will be made against the in-
jured employee or any other person, firm or corporation, and when an employee covered under the provisions of this chapter is injured in the course of and as a result of his or her employment and is accepted for health care services, rehabilitation services, or the provision of durable medical or other goods or other supplies or medically related items, the person, firm or corporation rendering such treatment is hereby prohibited from making any charge or charges therefor or with respect thereto against the injured employee or any other person, firm or corporation which would result in a total charge for the treatment rendered in excess of the maximum amount set forth therefor in the division's schedule established as aforesaid.

(3) Any pharmacist filling a prescription for medication for a workers' compensation claimant shall dispense a generic brand of the prescribed medication if a generic brand exits. If a generic brand does not exist, then the pharmacist may dispense the name brand. In the event that a physician wishes to prescribe the use of the name brand of a given prescription medication, then he or she must indicate in his or her own handwriting on the prescription order form that the brand name medication is to be issued. In the event that a claimant wishes to receive the name brand medication in lieu of the generic brand and if the physician has not indicated that the brand name is required, then the claimant may receive the name brand medication but, in that event, the claimant will be personally liable for the difference in costs between the generic brand medication and the brand name medication.

(4) In the event that a claimant elects to receive health care services from a health care provider from outside of the state of West Virginia and if that health care provider refuses to abide by and accept as full payment the reimbursement made by the workers' compensation division pursuant to the schedule of maximum reasonable amounts of fees authorized by subsection (a) of this section, then, with the exceptions noted below, the claimant will be personally liable for the difference between the scheduled fee and the amount demanded by the out-of-state health care provider.
(A) In the event of an emergency where there is an urgent need for immediate medical attention in order to prevent the death of a claimant or to prevent serious and permanent harm to the claimant, if the claimant receives the emergency care from an out-of-state health care provider who refuses to accept as full payment the scheduled amount, then that claimant will not be personally liable for the difference between the amount scheduled and the amount demanded by the health care provider. Upon the claimant's attaining a stable medical condition and being able to be transferred to either a West Virginia health care provider or an out-of-state health care provider who has agreed to accept the scheduled amount of fees as payment in full, if such claimant refuses to seek the specified alternative health care providers, then he or she will be personally liable for the difference in costs between the scheduled amount and the amount demanded by the health care provider for services provided after attaining stability and being able to be transferred.

(B) In the event that there is no health care provider reasonably near to the claimant's home who is qualified to provide the claimant's needed medical services and who is either located in the state of West Virginia or who has agreed to accept as payment in full the scheduled amounts of fees, then the division upon application by the claimant may authorize the claimant to receive medical services from another health care provider and such claimant shall not be personally liable for the difference in costs between the scheduled amount and the amount demanded by the health care provider.

(b) No employer shall enter into any contracts with any hospital, its physicians, officers, agents or employees to render medical, dental or hospital service or to give medical or surgical attention therein to any employee for injury compensable within the purview of this chapter, and no employer shall permit or require any employee to contribute, directly or indirectly, to any fund for the payment of such medical, surgical, dental or hospital service within such hospital for such compensable injury. Any employer violating this section shall be liable in damages to the employer's employees as provided in section eight,
article two of this chapter, and any employer or hospital or
agent or employee thereof violating the provisions of this
section shall be guilty of a misdemeanor, and, upon con-

viction thereof, shall be punished by a fine not less than
one hundred dollars nor more than one thousand dollars
or by imprisonment not exceeding one year, or both:

Provided, That the foregoing provisions of this subsection
shall not be deemed to prohibit an employer from partici-

pating in a preferred provider organization or program or
a health maintenance organization or managed care orga-
nization or other medical cost containment relationship
with the providers of medical, hospital or other health
care: Provided, however, That nothing in this section shall
be deemed to restrict the right of a claimant to select his or
her initial health care provider for treatment of a compen-
sable injury or disease. Should such a claimant thereafter
wish to change his or her health care provider and if his or
her employer has established and maintains a managed
health care program consisting of a preferred provider
organization or program, a health maintenance organiza-
tion, then the claimant shall select a new health care pro-
vider through such managed care program. Moreover, if
the division enters into an agreement which has been ap-

proved by the compensation programs performance coun-
icil with a preferred provider organization or program, a
health maintenance organization or other health care de-
delivery organization or organizations, then if a claimant
seeks to change his or her initial choice of health care
provider and if the claimant's employer does not provide
access to such an organization as part of the employer's
general health insurance benefit, then the claimant shall be
provided with a new health care provider from the divi-
sion's preferred provider organization or program, health
maintenance organization or other health care delivery
organization or organizations available to him or her.

(c) When an injury has been reported to the division
by the employer without protest, the division may pay, or
order an employer who or which made the election and
who or which received the permission mentioned in sec-
tion nine, article two of this chapter to pay, within the
maximum amount provided by schedule established by
the division as aforesaid, bills for health care services with-
out requiring the injured employee to file an application
for benefits.

(d) The division shall provide for the replacement of
artificial limbs, crutches, hearing aids, eyeglasses and all
other mechanical appliances provided in accordance with
this section which later wear out, or which later need to be
refitted because of the progression of the injury which
caus the sam to be originally furnished, or which are
broken in the course of and as a result of the employee's
employment. The fund or self-insured employer shall
pay for these devices, when needed, notwithstanding any
time limits provided by law.

(e) No payment shall be made to a health care provid-
er who is suspended or terminated under the terms of
section three-c of this article except as provided in subsec-
tion (c) of said section.

(f) The division is authorized to engage in and con-
tract for medical cost containment programs, medical case
management programs and utilization review programs.
Payments for these programs shall be made from the su-
persedeas reserve of the surplus fund. Any order issued
pursuant to any such program shall be interlocutory in
nature until an objecting party has exhausted all review
processes provided for by the division.

(g) Notwithstanding the foregoing, the division may
establish fee schedules, make payments and take other
actions required or allowed pursuant to article
twenty-nine-d, chapter sixteen of this code.

§23-4-4. Funeral expenses; wrongfully seeking payment;
criminal penalties.

(a) In case the personal injury causes death, reasonable
funeral expense, in an amount to be fixed from time to
time by the division, shall be paid from the fund, payment
to be made to the persons who have furnished the services
and supplies, or to the persons who have advanced pay-
ment for same, as the division may deem proper, in addi-
tion to such award as may be made to the employee's dependents.

(b) A funeral director, or any person who furnished the services and supplies associated with the funeral expenses, or a person who has advanced payment for same, is prohibited from making any charge or charges against the employee's dependents for funeral expenses which would result in a total charge for funeral expenses in excess of the amount fixed by the division unless:

(1) The person seeking funeral expenses notifies, in writing and prior to the rendering of any service, the employee's dependent as to the exact cost of the service and the exact amount the employee's dependent would be responsible for paying in excess of the amount fixed by the division; and

(2) The person seeking funeral expenses secures, in writing and prior to the rendering of any service, consent from the employee's dependent that he or she will be responsible to make payment for the amount in excess of the amount fixed by the division.

(c) Any person who knowingly and willfully seeks or receives payment of funeral expenses in excess of the amount fixed by the division without satisfying both of the requirements of subsection (b) of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined three thousand dollars or confined in jail for a definite term of confinement of twelve months, or both.

§23-4-6. Classification of and criteria for disability benefits.

Where compensation is due an employee under the provisions of this chapter for personal injury, the compensation shall be as provided in the following schedule:

(a) The expressions "average weekly wage earnings, wherever earned, of the injured employee, at the date of injury" and "average weekly wage in West Virginia", as used in this chapter, shall have the meaning and shall be computed as set forth in section fourteen of this article except for the purpose of computing temporary total disability benefits for part-time employees pursuant to the provisions of section six-d of this article.
(b) If the injury causes temporary total disability, the employee shall receive during the continuance thereof a maximum weekly benefit to be computed on the basis of seventy percent of the average weekly wage earnings, wherever earned, of the injured employee, at the date of injury, not to exceed one hundred percent of the average weekly wage in West Virginia: Provided, That in the case of a claimant whose injury occurred prior to the second day of February, one thousand nine hundred ninety-five, the maximum benefit rate shall be the rate applied under the prior enactment of this subsection which was in effect at the time the injury occurred, and the rate shall not be affected by the amendment and reenactment of this section during the regular session of the Legislature in the year one thousand nine hundred ninety-five.

The minimum weekly benefits paid hereunder shall not be less than thirty-three and one-third percent of the average weekly wage in West Virginia, except as provided in section six-d and section nine of this article. In no event, however, shall such minimum weekly benefits exceed the level of benefits determined by use of the then applicable federal minimum hourly wage: Provided, That any claimant receiving permanent total disability benefits, permanent partial disability benefits or dependents' benefits prior to the first day of July, one thousand nine hundred ninety-four, shall not have his or her benefits reduced based upon the requirement herein that the minimum weekly benefit shall not exceed the applicable federal minimum hourly wage.

(c) Subdivision (b) of this section shall be limited as follows: Aggregate award for a single injury causing temporary disability shall be for a period not exceeding two hundred eight weeks.

(d) For all awards of permanent total disability benefits that are made on or after the second day of February, one thousand nine hundred ninety-five, including those claims in which a request for an award was pending before the division or which were in litigation but not yet submitted for a decision, then benefits shall be payable until the claimant attains the age necessary to receive federal old
age retirement benefits under the provisions of the Social
Security Act, 42 U.S.C. 401 and 402, in effect on the
effective date of this section. Such a claimant shall be
paid benefits so as not to exceed a maximum benefit of
sixty-six and two-thirds percent of the claimant's average
weekly wage earnings, wherever earned, at the time of the
date of injury not to exceed one hundred percent of the
average weekly wage in West Virginia. The minimum
weekly benefits paid hereunder shall be as is provided for
in subdivision (b) of this section. In all claims in which an
award for permanent total disability benefits was made
prior to the second day of February, one thousand nine
hundred ninety-five, such awards shall continue to be paid
at the rate in effect prior to the said date, subject to annual
adjustments for changes in the average weekly wage in
West Virginia: Provided, That the provisions of sections
one through eight, article four-a of this chapter shall be
applied thereafter to all such prior awards that were previ-
ously subject to its provisions. A single or aggregate per-
manent disability of eighty-five percent or more shall
title the employee to a rebuttable presumption of a
permanent total disability for the purpose of paragraph
(2), subdivision (n) of this section: Provided, however,
That the claimant must also be at least fifty percent medi-
cally impaired upon a whole body basis. The presump-
tion may be rebutted if the evidence establishes that the
claimant is not permanently and totally disabled pursuant
to subdivision (n) of this section. Under no circumstances
shall the division grant an additional permanent disability
award to a claimant receiving a permanent total disability
award: Provided further, That if any claimant thereafter
sustains another compensable injury and has permanent
partial disability resulting therefrom, the total permanent
disability award benefit rate shall be computed at the high-
est benefit rate justified by any of the compensable inju-
ries, and the cost of any increase in the permanent total
disability benefit rate shall be paid from the second injury
reserve created by section one, article three of this chapter.

(e) (1) For all awards made on or after the second day
of February, one thousand nine hundred ninety-five, if the
injury causes permanent disability less than permanent
total disability, the percentage of disability to total disabil-
ity shall be determined and the award computed on the
basis of four weeks' compensation for each percent of
disability determined, at the maximum or minimum bene-
fit rates provided for in subdivision (d) of this section:

Provided, That in the case of a claimant whose injury
occurred prior to the second day of February, one thou-
sand nine hundred ninety-five, the maximum benefit rate
shall be the rate applied under the prior enactment of this
section which was in effect at the time the injury occurred,
and the rate shall not be affected by the amendment and
reenactment of this section during the regular session of
the Legislature in the year one thousand nine hundred
ninety-five.

(2) If a claimant is released by his or her treating phy-
sician to return to work at the job he or she held before
the occupational injury occurred and if the claimant's
preinjury employer does not offer the preinjury job or a
comparable job to the employee when such a position is
available to be offered, then the award for the percentage
of partial disability shall be computed on the basis of six
weeks of compensation for each percent of disability.

(3) The minimum weekly benefit under this subdivi-
sion shall be as provided in subdivision (b) of this section
for temporary total disability.

(f) If the injury results in the total loss by severance of
any of the members named in this subdivision, the per-
centage of disability shall be determined by the percent-
age of disability, specified in the following table:

The loss of a great toe shall be considered a ten per-
cent disability.

The loss of a great toe (one phalanx) shall be consid-
ered a five percent disability.

The loss of other toes shall be considered a four per-
cent disability.

The loss of other toes (one phalanx) shall be consid-
ered a two percent disability.
The loss of all toes shall be considered a twenty-five percent disability.

The loss of forepart of foot shall be considered a thirty percent disability.

The loss of a foot shall be considered a thirty-five percent disability.

The loss of a leg shall be considered a forty-five percent disability.

The loss of thigh shall be considered a fifty percent disability.

The loss of thigh at hip joint shall be considered a sixty percent disability.

The loss of a little or fourth finger (one phalanx) shall be considered a three percent disability.

The loss of a little or fourth finger shall be considered a five percent disability.

The loss of ring or third finger (one phalanx) shall be considered a three percent disability.

The loss of ring or third finger shall be considered a five percent disability.

The loss of middle or second finger (one phalanx) shall be considered a three percent disability.

The loss of middle or second finger shall be considered a seven percent disability.

The loss of index or first finger (one phalanx) shall be considered a six percent disability.

The loss of index or first finger shall be considered a ten percent disability.

The loss of thumb (one phalanx) shall be considered a twelve percent disability.

The loss of thumb shall be considered a twenty percent disability.
The loss of thumb and index finger shall be considered a thirty-two percent disability.

The loss of index and middle finger shall be considered a twenty percent disability.

The loss of middle and ring finger shall be considered a fifteen percent disability.

The loss of ring and little finger shall be considered a ten percent disability.

The loss of thumb, index and middle finger shall be considered a forty percent disability.

The loss of index, middle and ring finger shall be considered a thirty percent disability.

The loss of middle, ring and little finger shall be considered a twenty percent disability.

The loss of four fingers shall be considered a thirty-two percent disability.

The loss of hand shall be considered a fifty percent disability.

The loss of forearm shall be considered a fifty-five percent disability.

The loss of arm shall be considered a sixty percent disability.

The total and irrecoverable loss of the sight of one eye shall be considered a thirty-three percent disability. For the partial loss of vision in one, or both eyes, the percentages of disability shall be determined by the division, using as a basis the total loss of one eye.

The total and irrecoverable loss of the hearing of one ear shall be considered a twenty-two and one-half percent disability. The total and irrecoverable loss of hearing of both ears shall be considered a fifty-five percent disability.

For the partial loss of hearing in one, or both ears, the percentage of disability shall be determined by the division, using as a basis the total loss of hearing in both ears.
Should a claimant sustain a compensable injury which results in the total loss by severance of any of the bodily members named in this subdivision, die from sickness or noncompensable injury before the division makes the proper award for such injury, the division shall make such award to claimant's dependents as defined in this chapter, if any; such payment to be made in the same installments that would have been paid to claimant if living: Provided, That no payment shall be made to any surviving spouse of such claimant after his or her remarriage, and that this liability shall not accrue to the estate of such claimant and shall not be subject to any debts of, or charges against, such estate.

(g) Should a claimant to whom has been made a permanent partial award die from sickness or noncompensable injury, the unpaid balance of such award shall be paid to claimant's dependents as defined in this chapter, if any; such payment to be made in the same installments that would have been paid to claimant if living: Provided, That no payment shall be made to any surviving spouse of such claimant after his or her remarriage, and that this liability shall not accrue to the estate of such claimant and shall not be subject to any debts of, or charges against, such estate.

(h) For the purposes of this chapter, a finding of the occupational pneumoconiosis board shall have the force and effect of an award.

(i) For the purposes of this chapter, with the exception of those injuries provided for in subdivision (f) of this section and in section six-b of this article, the degree of permanent disability other than permanent total disability shall be determined exclusively by the degree of whole body medical impairment that a claimant has suffered. For those injuries provided for in subdivision (f) of this section and section six-b of this article, the degree of disability shall be determined exclusively by the provisions of said subdivision and said section. The occupational pneumoconiosis board created pursuant to section eight-a of this article shall premise its decisions on the degree of pulmonary function impairment that claimants suffer solely upon whole body medical impairment. The work-
workers' compensation division shall adopt standards for the
evaluation of claimants and the determination of a claimant's degree of whole body medical impairment. Once the
degree of medical impairment has been determined, that
degree of impairment shall be the degree of permanent
partial disability that shall be awarded to the claimant. This
subdivision shall be applicable to all injuries incurred and
diseases with a date of last exposure on or after the second
day of February, one thousand nine hundred ninety-five,
to all applications for an award of permanent partial dis-
ability made on and after such date, and to all applications
for an award of permanent partial disability that were
pending before the division or pending in litigation but
not yet submitted for decision on and after such date. The
prior provisions of this subdivision shall remain in effect
for all other claims.

(j) From a list of names of seven persons submitted to
the commissioner by the health care advisory panel, the
commissioner shall appoint an interdisciplinary examining
board consisting of five members to evaluate claimants,
including by examination if the board so elects. The
board shall be composed of three qualified physicians
with specialties and expertise qualifying them to evaluate
medical impairment and two vocational rehabilitation
specialists who are qualified to evaluate the ability of a
claimant to perform gainful employment with or without
retraining. One member of the board shall be designated
annually as chairperson by the commissioner. The term
of office of each member of the board shall be six years
and until his or her successor has been appointed and has
qualified: Provided, That two of the persons initially ap-
pointed shall serve a term of six years, two of the remain-
ing persons shall serve a term of four years and the re-
main ing member shall serve a term of two years. Any
member of the board may be appointed to any number of
terms. Any two physician members and one vocational
rehabilitation specialist member shall constitute a quorum
for the transaction of business. The commissioner, from
time to time, shall fix the per diem salary, computed on
the basis of actual time devoted to the discharge of their
duties, to be paid to each member of the board, and the
members shall also be entitled to reasonable and necessary
traveling and other expenses incurred while actually en­
gaged in the performance of their duties.

(1) Prior to the referral of any issue to the interdisci­
plinary examining board, the division shall conduct such
examinations of the claimant as it finds necessary and
obtain all pertinent records concerning the claimant's
medical history and reports of examinations and forward
them to the board at the time of the referral. The division
shall provide adequate notice to the employer of the filing
of the request for a permanent total disability award and
the employer shall be granted an appropriate period in
which to respond to the request. The claimant and the
employer may furnish all pertinent information to the
board and shall furnish to the board any information
requested by the board. The claimant and the employer
may each submit no more than one report and opinion
regarding each issue present in a given claim. The em­
ployer shall be entitled to have the claimant examined by
medical specialists and vocational rehabilitation specialists:
Provided, That the employer is entitled to only one such
examination on each issue present in a given claim. Any
additional examinations must be approved by the division
and shall be granted only upon a showing of good cause.
The reports from all employer-conducted examinations
must be filed with the board and served upon the claimant.
The board may request that those persons who have furn­
sished reports and opinions regarding a claimant provide
it with such additional information as the board may deem
necessary. Both the claimant and the employer, as well as
the division, may submit reports from experts challenging
or supporting the other reports in the record regardless of
whether or not such an expert examined the claimant or
relied solely upon the evidence of record.

(2) If the board or a quorum thereof elects to examine
a claimant, the individual members shall conduct such
examinations as are pertinent to each of their specialties.
If a claim presents an issue beyond the expertise of the
board, the board may obtain advice or evaluations by
other specialists. In addition, if the compensation pro­
grams performance council determines that the number of
applications pending before the board has exceeded the level at which the board can review and make recommendations within a reasonable time, then the council may authorize the commissioner to appoint such additional members to the board as may be necessary to reduce the backlog of applications. Such additional members shall be recommended by the health care advisory panel and the commissioner may make such appointments as he or she chooses from the recommendations. The additional board members shall not serve a set term but shall serve until the council determines that the number of pending applications has been reduced to an acceptable level.

(3) Referrals to the board shall be limited to matters related to the determination of permanent total disability under the provisions of subdivision (n) of this section and to questions related to medical cost containment, decisions utilization review decisions and managed care decisions arising under section three of this article.

(4) In the event the board members elect to examine a claimant, the board shall prepare a report stating the tests, examinations, procedures and other observations that were made, the manner in which each was conducted, and the results of each. The report shall state the findings made by the board and the reasons therefor. Copies of the reports of all such examinations shall be served upon the parties and the division and each shall be given an opportunity to respond in writing to the findings and conclusions stated in the reports.

(5) The board shall state its initial recommendations to the division in writing with an explanation for each such recommendation setting forth the reasons for each. The recommendations shall be served upon the parties and the division and each shall be afforded a thirty-day opportunity to respond in writing to the board regarding the board's recommendations. The board shall then review any such responses and issue its final recommendations. The final recommendations shall then be effectuated by the entry of an appropriate order by the division.

(6) Except as noted below, objections pursuant to section one, article five of this chapter to any such order
shall be limited in scope to matters within the record developed before the workers' compensation division and the board and shall further be limited to the issue of whether the board properly applied the standards for determining medical impairment, if applicable, and the issue of whether the board's findings are clearly wrong in view of the reliable, probative and substantial evidence on the whole record. Should either party contend that the claimant's condition has changed significantly since the review conducted by the board, the party may file a motion with the administrative law judge, together with a report supporting that assertion. Upon the filing of such motion, the administrative law judge shall cause a copy of the report to be sent to the examining board asking the board to review the report and provide such comments as the board chooses within sixty days of the board's receipt of the report. The board may then either supply such comments or, at the board's discretion, request that the claim be remanded to the board for further review by the board. If remanded, the claimant is not required to submit to further examination by the employer's medical specialists or vocational rehabilitation specialists. Following any such remand, the board shall file its recommendations with the administrative law judge for his or her review. If the board elects to respond with comments, such comments shall be filed with the administrative law judge for his or her review. Following the receipt of either the board's recommendations or comment, the administrative law judge shall then issue a written decision ruling upon the asserted change in the claimant's condition. No additional evidence may be introduced during the review of the objection before the office of judges or elsewhere on appeal: Provided, That each party and the division may submit one written opinion on each issue pertinent to a given claim based upon a review of the evidence of record either challenging or defending the board's findings and conclusions. Thereafter, based upon the evidence then of record, the administrative law judge shall issue a written decision containing his or her findings of fact and conclusions of law regarding each issue involved in the objection.

(k) Compensation payable under any subdivision of
this section shall not exceed the maximum nor be less than the weekly benefits specified in subdivision (b) of this section.

(l) Except as otherwise specifically provided in this chapter, temporary total disability benefits payable under subdivision (b) of this section shall not be deductible from permanent partial disability awards payable under subdivision (e) or (f) of this section. Compensation, either temporary total or permanent partial, under this section shall be payable only to the injured employee and the right thereto shall not vest in his or her estate, except that any unpaid compensation which would have been paid or payable to the employee up to the time of his or her death, if he or she had lived, shall be paid to the dependents of such injured employee if there be such dependents at the time of death.

(m) The following permanent disabilities shall be conclusively presumed to be total in character:

Loss of both eyes or the sight thereof.
Loss of both hands or the use thereof.
Loss of both feet or the use thereof.
Loss of one hand and one foot or the use thereof.

(n) (1) Other than for those injuries specified in subdivision (m) of this section, in order to be eligible to apply for an award of permanent total disability benefits for all injuries incurred and all diseases, including occupational pneumoconiosis, with a date of last exposure on and after the second day of February, one thousand nine hundred ninety-five, and for all requests for such an award pending before the division on and after the second day of February, one thousand nine hundred ninety-five, a claimant must have been awarded the sum of fifty percent in prior permanent partial disability awards or have suffered an occupational injury or disease which results in a finding that the claimant has suffered a medical impairment of fifty percent. Upon filing such an application, the claim will be reevaluated by the examining board pursuant to subdivision (j) of this section to determine if he or she has
suffered a whole body medical impairment of fifty percent or more resulting from either a single occupational injury or occupational disease or a combination of occupational injuries and occupational diseases. A claimant whose prior permanent partial disability awards total eighty-five percent or more shall also be examined by the board and must be found to have suffered a whole body medical impairment of fifty percent in order for his or her request to be eligible for further review. The examining board shall review the claim as provided for in subdivision (j) of this section. If the claimant has not suffered whole body medical impairment of at least fifty percent, then the request shall be denied. Upon a finding that the claimant does have a fifty percent whole body medical impairment, then the review of the application shall continue as provided for in the following paragraph of this subdivision. Those claimants whose prior permanent partial disability awards total eighty-five percent or more and who have been found to have a whole body medical impairment of at least fifty percent shall then be entitled to the rebuttable presumption created pursuant to subdivision (d) for the remaining issues in the request. For the purposes of determining whether the claimant should be awarded permanent total disability benefits under the second injury provisions of subsection (d), section one, article three of this chapter, only a combination of occupational injuries and occupational diseases, including occupational pneumoconiosis, shall be considered.

(2) A disability which renders the injured employee unable to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he or she has previously engaged with some regularity and over a substantial period of time shall be considered in determining the issue of total disability. In addition, the vocational standards adopted pursuant to subsection (m), section seven, article three, chapter twenty-one-a of this code shall be considered once they are effective.

(3) In the event that a claimant, who has been found to have at least a fifty percent whole body medical impairment, is denied an award of permanent total disability
benefits pursuant to this subdivision and then accepts and continues to work at a lesser paying job than he or she previously held, then such a claimant shall be eligible, notwithstanding the provisions of section nine of this article, to receive temporary partial rehabilitation benefits for a period of four years. Such benefits shall be paid at the level necessary to ensure the claimant's receipt of the following percentages of the average weekly wage earnings of the claimant at the time of injury calculated as provided in this section and sections six-d and fourteen of this article:

(A) Eighty percent for the first year;
(B) Seventy percent for the second year;
(C) Sixty percent for the third year; and
(D) Fifty percent for the fourth year:

Provided, That in no event shall such benefits exceed one hundred percent of the average weekly wage in West Virginia. In no event shall such benefits be subject to the minimum benefit amounts required by the provisions of 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.

If an employee is found to be permanently disabled due to occupational pneumoconiosis, as defined in section one of this article, the percentage of permanent disability shall be determined by the degree of medical impairment that is found by the occupational pneumoconiosis board. The division shall enter an order setting forth the findings of the occupational pneumoconiosis board with regard to whether the claimant has occupational pneumoconiosis and the degree of medical impairment, if any, resulting therefrom. That order shall be the final decision of the division for purposes of section one, article five of this chapter. If such a decision is objected to, the office of judges shall affirm the decision of the occupational pneumoconiosis board made following hearing unless the deci-
sion is clearly wrong in view of the reliable, probative and substantial evidence on the whole record. Compensation shall be paid therefor in the same manner and at the same rate as is provided for permanent disability under the provisions of subdivisions (d), (e), (g), (h), (i), (j), (k), (m) and (n), section six of this article: Provided, That if it shall be determined by the division in accordance with the facts in the case and with the advice and recommendation of the occupational pneumoconiosis board that an employee has occupational pneumoconiosis, but without measurable pulmonary impairment therefrom, such employee shall be awarded and paid twenty weeks of benefits at the same benefit rate as hereinabove provided.

If the employee dies from occupational pneumoconiosis, the benefits shall be as provided for in section ten of this article; as to such benefits sections eleven to fourteen, inclusive, of this article shall apply.

In cases of permanent disability or death due to occupational pneumoconiosis, as defined in section one of this article, accompanied by active tuberculosis of the lungs, compensation shall be payable as for disability or death due to occupational pneumoconiosis alone.

The provisions of section sixteen, article four and sections two, three, four and five, article five of this chapter providing for the further adjustment of claims shall be applicable to the claim of any claimant who receives a permanent partial disability award for occupational pneumoconiosis.

§23-4-6c. Benefits payable to certain sheltered workshop employees; limitations.

Notwithstanding the provisions of section six, six-a or six-b of this article or any other provision of this chapter, the minimum weekly benefit payments under subsection (b), section six of this article shall not apply to employees who work at nonprofit "workshops" as defined in section one, article one, chapter five-a of this code. When compensation is due any such employee, the weekly benefits payable hereunder to such employee may not exceed seventy percent of that employee's actual weekly wages.
and in no event may the average weekly wage in West Virginia be the basis upon which to compute the benefits of temporary total disability to employees working for less than the minimum wage.

§23-4-7. Release of medical information to employer; legislative findings; effect of application for benefits; duty of employer.

(a) The Legislature hereby finds and declares that two of the primary objectives of the workers' compensation system established by this chapter are to provide benefits to an injured claimant promptly and to effectuate his or her return to work at the earliest possible time; that the prompt dissemination of medical information to the division and employer as to diagnosis, treatment and recovery is essential if these two objectives are to be achieved; that claimants are increasingly burdened with the task of contacting their treating physicians to request the furnishing of detailed medical information to the division and their employers; that the division is increasingly burdened with the administrative responsibility of providing copies of medical reports to the employer involved, whereas in other states the employer can obtain the necessary medical information direct from the treating physician; that much litigation is occasioned in this state because of a lack of medical information having been received by the employer as to the continuing disability of a claimant; and that detailed narrative reports from the treating physician are often necessary in order for the division, the claimant's representatives and the employer to evaluate a claim and determine whether additional or different treatment is indicated.

(b) In view of the foregoing findings, a claimant irrevocably agrees by the filing of his or her application for benefits that any physician may release to and orally discuss with the claimant's employer, or its representative, or with a representative of the division from time to time the claimant's medical history and any medical reports pertaining to the occupational injury or disease and to any prior injury or disease of the portion of the claimant's body to which a medical impairment is alleged containing
detailed information as to the claimant's condition, treatment, prognosis and anticipated period of disability and dates as to when the claimant will reach or has reached his maximum degree of improvement or will be or was released to return to work. For the exclusive purposes of this chapter, the patient-physician privilege of confidentiality is waived with regard to the physician's providing this medical information to the division, the employer or to the employer's representative. Whenever a copy of any such medical report is obtained by the employer or its representative and the physician has not also forwarded a copy of the same to the division, the employer shall forward a copy of such medical report to the division within ten days from the date such employer received the same from such 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.

(a) The Legislature hereby finds and declares that injured claimants should receive the type of treatment needed as promptly as possible; that overpayments of temporary total disability benefits with the resultant hardship created by the requirement of repayment should be minimized; and that to achieve these two objectives, it is essential that the division establish and operate a systematic program for the monitoring of injury claims where the disability continues longer than might ordinarily be expected.

(b) In view of the foregoing findings, the division, in consultation with the health care advisory panel, shall establish guidelines as to the anticipated period of disability for the various types of injuries. Each injury claim in which temporary total disability continues beyond the anticipated period of disability so established for the injury involved shall be reviewed by the division. If satisfied, after reviewing the medical evidence, that the claimant would not benefit by an independent medical evaluation,
the division shall mark the claim file accordingly and shall
diary such claim file as to the next date for required re-
view which shall not exceed sixty days. If the division
concludes that the claimant might benefit by an indepen-
dent medical evaluation, the division shall proceed as spec-
ified in subsections (d) and (e) of this section.

(c) When the authorized treating physician concludes
that the claimant has either reached his or her maximum
degree of improvement or is ready for disability evalua-
tion, or when the claimant has returned to work, such au-
thorized treating physician may recommend a permanent
partial disability award for residual impairment relating to
and resulting from the compensable injury, and the fol-
lowing provisions shall govern and control:

(1) If the authorized treating physician recommends a
permanent partial disability award of fifteen percent or
less, the division shall enter an award of permanent partial
disability benefits based upon such recommendation and
all other available information, and the claimant's entitle-
ment to temporary total disability benefits shall cease
upon the entry of such award unless previously terminated
under the provisions of subsection (e) of this section.

(2) If, however, the authorized treating physician rec-
ommends a permanent partial disability award in excess of
fifteen percent, or recommends a permanent total disabili-
ity award, the claimant's entitlement to temporary total
disability benefits shall cease upon the receipt by the divi-
sion of such report and the division shall refer the claim-
ant to a physician or physicians of the division's selection
for independent evaluation prior to the entry of a perma-
nent disability award: Provided, That unless the claimant
has returned to work, the claimant shall thereupon receive
benefits which shall then be at the permanent partial dis-
ability rate as provided in subdivision (e), section six of
this article until the entry of a permanent disability award
or until the claimant returns to work, and which amount of
such benefits paid prior to the receipt of such report shall
be considered and deemed to be payment of the perm-
nent disability award then granted, if any. In the event
that benefits actually paid exceed the amount granted by
the permanent partial disability award, claimant shall be entitled to no further benefits by such award but shall not be liable by offset or otherwise for the excess paid.

(d) When the division concludes that an independent medical evaluation is indicated, or that a claimant may be ready for disability evaluation in accordance with other provisions of this chapter, the division shall refer the claimant to a physician or physicians of the division's selection for examination and evaluation. If the physician or physicians so selected recommend continued, additional or different treatment, the recommendation shall be relayed to the claimant and the claimant's then treating physician and the recommended treatment may be authorized by the division.

(e) Notwithstanding any provision in subsection (c) of this section, the division shall enter a notice suspending the payment of temporary total disability benefits but providing a reasonable period of time during which the claimant may submit evidence justifying the continued payment of temporary total disability benefits when:

(1) The physician or physicians selected by the division conclude that the claimant has reached his or her maximum degree of improvement; or

(2) When the authorized treating physician shall advise the division that the claimant has reached his or her maximum degree of improvement or that he or she is ready for disability evaluation and when the authorized treating physician has not made any recommendation with respect to a permanent disability award as provided in subsection (c) of this section; or

(3) When other evidence submitted to the division justifies a finding that the claimant has reached his or her maximum degree of improvement: Provided, That in all cases a finding by the division that the claimant has reached his or her maximum degree of improvement shall terminate the claimant's entitlement to temporary total disability benefits regardless of whether the claimant has been released to return to work: Provided, however, That under no circumstances shall a claimant be entitled to
receive temporary total disability benefits either beyond
the date the claimant is released to return to work or be-
yond the date he or she actually returns to work.

In the event that the medical or other evidence indi-
cates that claimant has a permanent disability, unless he or
she has returned to work, the claimant shall thereupon
receive benefits which shall then be at the permanent par-
tial disability rate as provided in subdivision (e), section
six of this article until entry of a permanent disability
award, pursuant to an evaluation by a physician or physi-
cians selected by the division, or until the claimant returns
to work and which amount of benefits shall be considered
and deemed to be payment of the permanent disability
award then granted, if any. In the event that benefits actu-
ally paid exceed the amount granted under the permanent
disability award, claimant shall be entitled to no further
benefits by such order but shall not be liable by offset or
otherwise for the excess paid.

(f) Notwithstanding the anticipated period of disability
established pursuant to the provisions of subsection (b) of
this section, whenever in any claim temporary total disabil-
ity shall continue longer than one hundred twenty days
from the date of injury (or from the date of the last pre-
ceding examination and evaluation pursuant to the provi-
sions of this subsection or pursuant to the directions of the
division under other provisions of this chapter), the divi-
sion shall refer the claimant to a physician or physicians
of the division’s selection for examination and evaluation
in accordance with the provisions of subsection (d) of this
section and the provisions of subsection (e) of this section
shall be fully applicable: Provided, That the requirement
of mandatory examinations and evaluations pursuant to
the provisions of this subsection shall not apply to any
claimant who sustained a brain stem or spinal cord injury
with resultant paralysis or an injury which resulted in an
amputation necessitating a prosthetic appliance.

(g) The provisions of this section are in addition to
and in no way in derogation of the power and authority
vested in the division by other provisions of this chapter or
vested in the employer to have a claimant examined by a
physician or physicians of the employer's selection and at
the employer's expense, or vested in the claimant or em-
ployer to file a protest, under other provisions of this
chapter.

(h) All evaluations and examinations performed by
physicians shall be performed in accordance with the
protocols and procedures established by the health care
advisory panel pursuant to section three-b of this article:
Provided, That the physician may exceed these protocols
when additional evaluation is medically necessary.

§23-4-10. Classification of death benefits; "dependent" defined.

In case a personal injury, other than occupational
pneumoconiosis or other occupational disease, suffered by
an employee in the course of and resulting from his or her
employment, causes death, and disability is continuous
from date of such injury until date of death, or if death
results from occupational pneumoconiosis or from any
other occupational disease, the benefits shall be in the
amounts and to the persons as follows:

(a) If there be no dependents, the disbursements shall
be limited to the expense provided for in sections three
and four of this article.

(b) If there be dependents as defined in subdivision
d(d) of this section, such dependents shall be paid for as
long as their dependency shall continue in the same
amount as was paid or would have been paid the deceased
employee for total disability had he or she lived. The
order of preference of payment and length of dependence
shall be as follows:

(1) A dependent widow or widower until death or
remarriage of such widow or widower, and any child or
children dependent upon the decedent until each such
child shall reach eighteen years of age or where such child
after reaching eighteen years of age continues as a
full-time student in an accredited high school, college,
university, business or trade school, until such child reach-
es the age of twenty-five years or if an invalid child to
continue as long as such child remains an invalid. All
such persons shall be jointly entitled to the amount of
benefits payable as a result of employee's death.

(2) A wholly dependent father or mother until death.

(3) Any other wholly dependent person for a period
of six years after the death of the deceased employee.

(c) If the deceased employee leaves no wholly depen-
dent person, but there are partially dependent persons at
the time of death, the payment shall be fifty dollars a
month, to continue for such portion of the period of six
years after the death, as the division may determine, but no
such partially dependent person shall receive compensa-
tion payments as a result of the death of more than one
employee.

Compensation under subdivisions (b) and (c) hereof
shall, except as may be specifically provided to the con-
trary therein, cease upon the death of the dependent, and
the right thereto shall not vest in his or her estate.

(d) "Dependent", as used in this chapter, shall mean a
widow, widower, child under eighteen years of age, or
under twenty-five years of age when a full-time student as
provided herein, invalid child or posthumous child, who, at
the time of the injury causing death, is dependent in whole
or part for his or her support upon the earnings of the
employee, stepchild under eighteen years of age, or under
twenty-five years of age when a full-time student as pro-
vided herein, child under eighteen years of age legally
adopted prior to the injury causing death, or under
twenty-five years of age when a full-time student as pro-
vided herein, child under eighteen years of age legally
adopted prior to the injury causing death, or under
twenty-five years of age when a full-time student as pro-
vided herein, child under eighteen years of age legally
adopted prior to the injury causing death, or under
twenty-five years of age when a full-time student as pro-
vided herein, invalid brother or sister wholly
dependent for his or her support upon the earnings of the
employee at the time of the injury causing death.

(e) (1) If a person receiving permanent total disability
benefits which were awarded prior to the second day of
February, one thousand nine hundred ninety-five, dies
from a cause other than a disabling injury leaving any
dependents as defined in subdivision (d) of this section, an award shall be made to such dependents in an amount equal to one hundred four times the weekly benefit the worker was receiving at the time of his or her death. The award shall be paid to the dependents in the same interval at which the decedent had been receiving benefits prior to his or her death.

(2) On and after the second day of February, one thousand nine hundred ninety-five, when an award of permanent total disability benefits is made, a claimant shall make a one-time election of whether to receive the full amount of payments for the award or to receive a reduced payment in order to provide an annuity payment to his or her dependents. The sum of twenty thousand dollars shall be the initial amount of the annuity. Thereafter, the compensation programs performance council shall review the annuity amount at least every three years. The council shall also from time to time determine the amount of the reduction in benefits that will be used to contribute towards the full amount necessary to purchase the annuity. The council may, from time to time as it deems appropriate, fix an amount which the fund will contribute toward the purchase of annuities. The commissioner and the council are authorized to either fund such annuities through the investments of the workers' compensation fund or through the use of a private provider of annuities. The selection of such a private provider of annuities shall be through competitive bids. If at the time of the claimant's death he or she has no dependents, then the proceeds of the annuity shall remain with the fund. Should such a claimant's entitlement to receive the permanent total disability award terminate due to his or her attaining the necessary retirement age provided for by subdivision (d), section six of this article or for any other reason other than the death of the claimant, then the annuity shall be cancelled and the proceeds thereof shall remain with the fund.


(a) To entitle any employee or dependent of a deceased employee to compensation under this chapter,
other than for occupational pneumoconiosis or other occupational disease, the application therefor must be made on the form or forms prescribed by the division and filed with the division within six months from and after the injury or death, as the case may be, and unless so filed within such six-month period, the right to compensation under this chapter shall be forever barred, such time limitation being hereby declared to be a condition of the right and hence jurisdictional, and all proofs of dependency in fatal cases must likewise be filed with the division within six months from and after the death. In case the employee is mentally or physically incapable of filing such application, it may be filed by his or her attorney or by a member of his or her family.

(b) To entitle any employee to compensation for occupational pneumoconiosis under the provisions hereof, the application therefor must be made on the form or forms prescribed by the division and filed with the division within three years from and after the last day of the last continuous period of sixty days or more during which the employee was exposed to the hazards of occupational pneumoconiosis or within three years from and after the employee's occupational pneumoconiosis was made known to him or her by a physician or which he or she should reasonably have known, whichever shall last occur, and unless so filed within such three-year period, the right to compensation under this chapter shall be forever barred, such time limitation being hereby declared to be a condition of the right and hence jurisdictional, or, in the case of death, the application shall be filed as aforesaid by the dependent of such employee within one year from and after such employee's death, and such time limitation is a condition of the right and hence jurisdictional.

(c) To entitle any employee to compensation for occupational disease other than occupational pneumoconiosis under the provisions hereof, the application therefor must be made on the form or forms prescribed by the division and filed with the division within three years from and after the day on which the employee was last exposed to the particular occupational hazard involved or within 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 jurisdicti-
54 
§23-4-15b. Determination of nonmedical questions by divi-
ision; 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
judge concludes after the protest hearings that the claim should be dismissed, a final order of dismissal shall be entered, which final order shall be subject to appeal in accordance with the provisions of sections ten and twelve, article five of this chapter. If the administrative law judge concludes after such protest hearings that the claim should be referred to the occupational pneumoconiosis board for its review, the order entered shall be interlocutory only and may be appealed only in conjunction with an appeal from a final order with respect to the findings of the occupational pneumoconiosis board.

§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.

(a) The power and jurisdiction of the division over each case shall be continuing and the division may, in accordance with the following provisions and after due notice to the employer, make such modifications or changes with respect to former findings or orders as may be justified. Upon and after the second day of February, one thousand nine hundred ninety-five, the period in which a claimant may request a modification, change or reopening of a prior award that was entered either prior to or after such date shall be determined by the following paragraphs of this subsection. Any such request that is made beyond such period shall be refused.

(1) Except as provided in section twenty-two of this article, in any claim which was closed without the entry of an order regarding the degree, if any, of permanent disability that a claimant has suffered, or in any case in which no award has been made, any such request must be made within five years of the closure. During that time period, only two such requests may be filed.

(2) Except as stated below, in any claim in which an award of permanent disability was made, any such request must be made within five years of the date of the initial award. During that time period, only two such requests may be filed. With regard to those occupational diseases,
including occupational pneumoconiosis, which are medi-
cally recognized as progressive in nature, if any such re-
quest is granted by the division, then a new five-year peri-
od shall begin upon the date of the subsequent award.

With the advice of the health care advisory panel, the com-
missioner and the compensation programs performance
council shall by rule designate those progressive diseases
which are customarily the subject of claims.

(3) No further award may be made in fatal cases ex-
cept within two years after the death of the employee.

(4) With the exception of the items set forth in subsec-
tion (d), section three of this article, in any claim wherein
medical or any type of rehabilitation service has not been
rendered or durable medical goods or other supplies have
not been received for a period of five years, then no re-
quest for additional medical or any type of rehabilitation
benefits shall be granted nor shall any such medical or
any type of rehabilitation benefits or any type of goods or
supplies be paid for by the division if such were provided
without a prior request. For the exclusive purposes of this
paragraph, medical services and rehabilitation services
shall not include any encounter in which significant treat-
ment was not performed.

(b) In any claim in which an injured employee shall
make application for a further period of temporary total
disability, if such application be in writing and filed within
the applicable time limit stated above, then the division
shall pass upon the request within thirty days of the receipt
of the request. If the decision is to grant the request, then
the order shall provide for the receipt of temporary total
disability benefits. In any case in which an injured em-
ployee shall make application for a further award of per-
manent partial disability benefits or for an award of per-
manent total disability benefits, if such application be in
writing and filed within the applicable time limit as stated
above, the division shall pass upon the request within thirty
days of its receipt and, if the division determines that the
claimant may be entitled to an award, the division will then
refer the claimant for such further examinations as may be
necessary.
(c) If such application is based on a report of any medical examination made of the claimant and submitted by the claimant to the division in support of his or her application, and the claim is opened for further consideration and additional award is later made, the claimant shall be reimbursed for the expenses of such examination. Such reimbursement shall be made by the division to the claimant, in addition to all other benefits awarded, upon due proof of the amount thereof being furnished the division by the claimant, but shall in no case exceed the sum fixed pursuant to the division's schedule of maximum reasonable fees established under the provisions of section three of this article.

(d) The division shall have continuing power and jurisdiction over claims in which permanent total disability awards have been made after the eighth day of April, one thousand nine hundred ninety-three.

(1) The division shall continuously monitor permanent total disability awards and may from time to time, after due notice to the claimant, reopen a claim for reevaluation of the continuing nature of the disability and possible modification of the award: Provided, That such reopenings shall not be done sooner than every two years: Provided, however, That any individual claimant shall only be reevaluated a total of two times after which he or she may not be again reevaluated under the provisions of this subsection. The division may reopen a claim for reevaluation when, in the division's sole discretion, it concludes that there exists good cause to believe that the claimant no longer meets the eligibility requirements under subdivision (n), section six of this article. The eligibility requirements, including any vocational standards, shall be applied as those requirements are stated at the time of a claim's reopening: Provided further, That if a permanent total disability award was made on or after the eighth day of April, one thousand nine hundred ninety-three, and on or before the second day of February, one thousand nine hundred ninety-five, the eligibility requirements for the claimant upon a reopening shall be the eligibility requirements which applied to his or her claim at the time the award was made. This section shall not be applicable to
any claim in which the final decision on the eligibility of
the claimant to a permanent total disability award was
made more than ten years prior to the date of proposed
reevaluation.

(2) Upon reopening a claim under this subsection, the
division may take evidence, have the claimant evaluated,
make findings of fact and conclusions of law and shall
vacate, modify or affirm the original permanent total dis-
ability award as the record requires. The claimant's for-
mer employer shall not be a party to the reevaluation, but
shall be notified of the reevaluation and may submit such
information to the division as the employer may elect. In
the event the claimant retains his or her award following
the reevaluation, then the claimant's reasonable attorneys'
fees incurred in defending the award shall be paid by the
workers' compensation division from the supersedeas
reserve of the surplus fund. In addition, the workers' com-
pensation division shall reimburse a prevailing claimant
for his or her costs in obtaining one evaluation on each
issue during the course of the reevaluation with such reim-
bursement being made from the supersedeas reserve of the
surplus fund. The compensation programs performance
council shall adopt criteria for the determination of rea-
sonable attorneys' fees.

(3) This subsection shall not be applied to awards
made under the provisions of subdivision (m), section six
of this article. The claimant may seek review of the divi-
sion's final order as otherwise provided for in article five
of this chapter for review of orders granting or denying
permanent disability awards.

(e) A claimant may have only one active request for a
permanent disability award pending in a claim at any one
time. Any new such request that is made while another is
pending shall be consolidated into the former request.

§23-4-18. Mode of paying benefits generally; exemptions of
compensation from legal process.

Except as provided by this section, compensation shall
be paid only to such employees or their dependents, and
shall be exempt from all claims of creditors and from any
attachment, execution or assignment other than compensa-
tion to counsel for legal services, under the provisions of,
and subject to the limitations contained in section sixteen,
article five of this chapter, and other than for the enforce-
ment of orders for child or spousal support entered pursu-
ant to the provisions of chapters forty-eight and
forty-eight-a of this code. Payments may be made in such
periodic installments as determined by the division in each
case, but in no event less frequently than semimonthly for
any temporary award and monthly for any permanent
award. Payments for permanent disability shall be paid on
or before the third day of the month in which they are
due. In all cases where compensation is awarded or in-
creased, the amount thereof shall be calculated and paid
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; proce-
dures; requests for awards; jurisdiction.

(a) Notwithstanding any provision of this chapter to
the contrary, except as stated below, no claimant shall be
awarded permanent total disability benefits arising under
subdivision (d) or (n), section six or of section eight-c of
this article who terminates active employment and is re-
ceiving full old-age retirement benefits under the Social
Security Act, 42 U.S.C. 401 and 402. Any such claimant
shall be evaluated only for the purposes of receiving a
permanent partial disability award premised solely upon
the claimant's impairments. This subsection shall not be
applicable in any claim in which the claimant has complet-
ed the submission of his or her evidence on the issue of
permanent total disability prior to the later of the follow-
ing: Termination of active employment or the initial re-
cipient of full old-age retirement benefits under the Social
Security Act. Once the claimant has terminated active
employment and has begun to receive full old-age social
security retirement benefits, the claimant shall not be per-
mitted to produce additional evidence of permanent total
disability before the division or the office of judges nor
shall such a claim be remanded for the production of such
evidence.
(b) For the purposes of subdivisions (d) and (n), section six of this article, the award of permanent partial disability benefits under the provisions of section six-b of this article or under that portion of section six-a of this article which awards twenty weeks of benefits to a claimant who has occupational pneumoconiosis but without measurable pulmonary impairment therefrom shall not be counted towards the eighty-five percent needed to gain the rebuttable presumption of permanent total disability or towards the fifty percent threshold of paragraph (1), subdivision (n), section six of this article when such claimant has terminated active employment and is receiving federal nondisability pension or retirement benefits, including old-age benefits under the Social Security Act. This subsection shall not affect any other awards of permanent partial disability benefits and their use in achieving the rebuttable eighty-five percent presumption or the fifty percent threshold.

(c) The workers' compensation division shall have the sole and exclusive jurisdiction to initially hear and decide any claim or request pertaining in whole or in part to subdivision (d) or (n), section six of this article. Any claim or request for permanent total disability benefits arising under said subdivisions shall first be presented to the division as part of the initial claim filing or by way of an application for modification or adjustment pursuant to section sixteen of this article. The office of judges may consider such a claim only after the division has entered an appropriate order.

§23-4-25. Permanent total disability benefits; reduction of disability benefits for wages earned by claimant.

(a) After the eighth day of April, one thousand nine hundred ninety-three, a reduction in the amount of benefits as specified in subsection (b) of this section shall be made whenever benefits are being paid for a permanent total disability award regardless of when such benefits were awarded. This section is not applicable to the receipt of medical benefits or the payment therefor, the receipt of permanent partial disability benefits, the receipt of benefits by partially or wholly dependent persons, or to the receipt
of benefits pursuant to the provisions of subsection (e), section ten of this article. Prior to the application of this section to any claimant, the division shall give the claimant notice of the effect of this section upon a claimant’s award if and when such claimant later earns wages.

(b) Whenever applicable benefits are paid to a claimant with respect to the same time period in which the claimant has earned wages as a result of his or her employment, the following reduction in applicable benefits shall be made. The claimant’s applicable monthly benefits and monthly net wages received from the current employment shall be added together. If such total exceeds by more than one hundred twenty percent of the amount of the claimant’s monthly net wages earned during his or her last employment prior to the award of permanent total disability benefits, then such excess shall be reduced by one dollar for each two dollars that the claimant’s monthly benefits and monthly net wages exceed the one hundred twenty percent level: Provided, That in no event shall applicable benefits be reduced below the minimum weekly benefits as provided for in subdivisions (b) and (d), section 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.

The purpose of this article is to permit the establishment of a system to provide insurance coverage for employers subject to this chapter who may be subjected to liability under section two, article four of this chapter, for any excess of damages over the amount received or receivable under this chapter.

§23-4C-2. Employers’ excess liability fund established.

(a) To provide insurance coverage for employers subject to this chapter who may be subjected to liability for any excess of damages over the amount received or receivable under this chapter, the division may continue the fund known as the employers' excess liability fund,
which fund shall be separate from the workers' compensation fund. The employers' excess liability fund shall consist of premiums paid thereto by employers who may voluntarily elect to subscribe to the fund for coverage of potential liability to any person who may be entitled to any excess of damages over the amount received or receivable under this chapter.

(b) The commissioner and the compensation programs performance council are authorized to provide for, by the promulgation of a rule pursuant to subdivisions (b) and (c), section seven, article three, chapter twenty-one-a of this code, the continuance, abolition or sale of the employers' excess liability fund established by section one of this article. In the event that fund is to be sold, the sale shall be conducted through the solicitation of competitive bids. Any funds that may remain after the sale or abolition of the employers' excess liability fund shall be paid into and become a part of the workers' compensation fund to be used for the purposes of that fund. In the event that the employers' excess liability fund program is abolished and the remaining liabilities of that program exceed the amount retained in the employers' excess liability fund, such excess liability including the costs of administration 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.
§23-5-8. 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.
§23-5-12. Appeal to board; procedure; remand and supplemental hearing.
§23-5-13. Continuances and supplemental hearings; claims not to be denied on technicalities.


§23-5-15. 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.

(a) The workers' compensation division shall have full power and authority to hear and determine all questions within its jurisdiction. In matters arising under articles three and four of this chapter, the division shall promptly review and investigate all claims. The parties to a claim shall file such information in support of their respective positions as they deem proper. In addition, the division is authorized to develop such additional information as it deems to be necessary in the interests of fairness to the parties and in keeping with the fiduciary obligations owed to the fund. With regard to any issue which is ready for a decision, the division shall explain the basis of its decisions.

(b) Except with regard to interlocutory matters, upon making any decision, upon the making or refusing to make any award, or upon the making of any modification or change with respect to former findings or orders, as provided by section sixteen, article four of this chapter, the division shall give notice, in writing, to the employer, employee, claimant, as the case may be, of its action, which notice shall state the time allowed for filing an objection to such finding, and such action of the division shall be final unless the employer, employee, claimant or dependant shall, within thirty days after the receipt of such notice, object in writing, to such finding, and unless an objection is filed within such thirty-day period, such finding or action shall be forever final, such time limitation being hereby declared to be a condition of the right to litigate such finding or action and hence jurisdictional. Any such objection shall be filed with the office of judges with a copy served upon the division and other parties in accordance with the procedures set forth in sections eight and nine of this article.
(c) Where a finding or determination of the division is protested only by the employer, and the employer does not prevail in its protest and, in the event the claimant is required to attend a hearing by subpoena or agreement of counsel or at the express direction of the division or office of judges, then such claimant in addition to reasonable traveling and other expenses shall be reimbursed for loss of wages incurred by the claimant in attending such hearing.

(d) Once an objection has been filed with the office of judges, the parties to the objection shall be offered an opportunity for mediation of the disputed issue by the division. If all of the parties to the objection agree to mediation, the division shall designate a deputy who was not involved in the original decision to act as mediator: Provided, That on issues related solely to the medical necessity of proposed medical treatment or diagnostic services, the division shall offer the parties to the objection a selection of names of medical providers in the appropriate specialty. The parties shall then either agree upon a medical provider who shall act as mediator or, in the absence of an agreement, the division shall select a medical provider who shall act as mediator. In cases where issues of medical necessity are intertwined with nonmedical treatment or nondiagnostic issues, both a medical provider and a designated deputy shall act as comediators and shall consider their respective issues. Neither shall be empowered to overturn the decision of the other.

Upon entering into mediation, the parties shall inform the office of judges of that action and the office of judges shall stay further action on the objection.

The mediator shall solicit the positions of the parties and shall review such additional information as the parties or the division shall furnish. The mediator shall then issue a decision in writing with the necessary findings of fact and conclusions of law to support that decision. If any party disagrees with the decision, that party may note its objection to the office of judges, the division and the other parties, and the office of judges shall lift the stay on the original protest. The decision and any information intro-
duced during the attempted mediation shall be subject to consideration by the office of judges in making its decision on the objection. Upon acceptance by the parties of the result of the mediation, the office of judges shall dismiss the objection with prejudice.

The mediator shall conduct the mediation in an informal manner and without regard to the formal rules of evidence and procedure. Once the parties agree to mediation, then the agreement cannot be withdrawn.

(e) The panel of medical providers who shall serve as mediators shall be selected and approved by the compensation programs performance council. A medical provider serving as a mediator shall have the same protections from liability as does the division's employees with regard to their decisions including coverage by the board of risk management which shall be provided by the workers' compensation division.

(f) The division is expressly authorized to amend, correct, or set aside any order on any issue entered by it which is on its face defective or clearly erroneous or the result of mistake, clerical error or fraud. Jurisdiction to take this action shall continue until the expiration of one hundred eighty days from the date of entry of an order unless the order is sooner affected by appellate action: Provided, That corrective actions in the case of fraud may be taken at any time.

(g) All objections to orders of the division shall be styled in the name of the workers' compensation division. All appeals prosecuted from the office of judges or from the appeal board shall either be in the name of the workers' compensation division or shall be against the workers' compensation division. In all such matters, the workers' compensation division shall be the party in interest.

§23-5-2. Application by employee for further adjustment of claim — Objection to modification; hearing.

In any case where an injured employee makes application in writing for a further adjustment of his or her claim under the provisions of section sixteen, article four of this...
chapter, and such application discloses cause for a further
adjustment thereof, the division shall, after due notice to
the employer, make such modifications, or changes with
respect to former findings or orders in such claim as may
be justified, and any party dissatisfied with any such modi-
fication or change so made by the division shall, upon
proper and timely objection, be entitled to a hearing, as
provided in section nine of this article.

§23-5-3. Refusal to reopen claim; notice; objection.

If, however, in any case in which application for fur-
ther adjustment of a claim is filed under the preceding
section, it shall appear to the division that such application
fails to disclose a progression or aggravation in the claim-
ant's condition, or some other fact or facts which were not
theretofore considered by the division in its former find-
ings, and which would entitle such claimant to greater
benefits than the claimant has already received, the divi-
sion shall, within a reasonable time, notify the claimant
and the employer that such application fails to establish a
prima facie cause for reopening the claim. Such notice
shall be in writing stating the reasons for denial and the
time allowed for objection to such decision of the division.
The claimant may, within thirty days after receipt of such
notice, object in writing to such finding and unless the
objection is filed within such thirty-day period, no such
objection shall be allowed, such time limitation being
hereby declared to be a condition of the right to such
objection and hence jurisdictional. Upon receipt of an
objection, the office of judges shall afford the claimant an
evidentiary hearing as provided in section nine of this
article.

§23-5-4. Application by employer for modification of award
— Objection to modification; hearing.

In any case wherein an employer makes application in
writing for a modification of any award previously made
to an employee of said employer, and such application
discloses cause for a further adjustment thereof, the divi-
sion shall, after due notice to the employee, make such
modifications or changes with respect to former findings
or orders in such form as may be justified, and any party
dissatisfied with any such modification or change so made by the division, shall upon proper and timely objection, be entitled to a hearing as provided in section nine of this article.

§23-5-5. Refusal of modification; notice; objection.

If in any such case it shall appear to the division that the application filed pursuant to section four of this article fails to disclose some fact or facts which were not theretofore considered by the division in its former findings, and which would entitle such employer to any modification of said previous award, the division shall, within sixty days from the receipt of such application, notify the claimant and employer that such application fails to establish a just cause for modification of said award. Such notice shall be in writing stating the reasons for denial and the time allowed for objection to such decision of the division. The employer may, within thirty days after receipt of said notice, object in writing to such decision, and unless the objection is filed within such thirty-day period, no such objection shall be allowed, such time limitation being hereby declared to be a condition of the right to such objection and hence jurisdictional. Upon receipt of such objection, the office of judges shall afford the employer an evidentiary hearing as provided in section nine of this article.

§23-5-6. Time periods for objections and appeals; extensions.

Notwithstanding the fact that the time periods set forth for objections, protests and appeals to or from the workers' compensation appeal board, are jurisdictional, such periods may be extended or excused upon application of either party within a period of time equal to the applicable period by requesting an extension of such time period showing good cause or excusable neglect, accompanied by the objection or appeal petition. In exercising such discretion the administrative law judge, appeal board or court, as the case may be, shall consider whether the applicant was represented by counsel and whether timely and proper notice was actually received by the applicant or the applicant's representative.

With the exception of medical benefits, the claimant and the employer, with the consent and approval of the workers' compensation division, may negotiate a final settlement of any and all issues in a claim wherever the claim may then be in the review or appellate processes. The parties seeking to settle and compromise an objection to a division decision shall file the written and executed agreement with the division. The division shall review the proposed agreement to determine if it is fair and reasonable to the parties and shall ensure that each of the parties are fully aware of the effects of the agreement including what each party is giving up in exchange for the agreement. If the division concludes that the agreement is not fair or is not reasonable or that one of the parties is not fully informed, then the division shall reject the agreement. If the employer is not active in the claim, then the division may negotiate a final settlement of any and all issues in a claim except for medical benefits with the claimant: Provided, That the agreement must then be submitted to the office of judges whereupon an administrative law judge shall undertake the review and make the assurances provided for above as in the case of an employer and claimant agreement. Upon the approval of either type of agreement, the agreement shall be filed with the division's records, and the filing constitutes a dismissal of any objection or appeal on the issues agreed to. The division will give notice of the settlement and dismissal, if necessary, to the office of judges, the appeal board, or the supreme court of appeals. Once any such agreement is accepted by the parties and the division, any issue that is the subject of the agreement shall not be reopened by either party or by the division. Any such agreement may provide for a lump sum payment which shall not exceed a percentage of the entire settlement to be determined from time to time by the compensation programs performance council in keeping with the necessity to protect the claimant, the employer, and the solvency of the workers' compensation fund. The remainder of any such settlement shall be paid out over time as would have been the case had an award been made. If a settlement provides for
future rehabilitation costs and a degree of permanent partial disability, then the agreed upon degree of permanent partial disability shall be stated in the agreement. That degree of permanent partial disability shall then be entered upon the records of the division as the award in the claim. In the event that an employer agrees to settle an issue which settlement is to be paid directly by the employer, then the amount so paid or to be paid shall be a portion of the employer's premium tax as that term is used in article two of this chapter. If such employer later fails to make the agreed upon payment, the division shall assume the obligation to make the payments and shall be entitled to recover the amounts paid or to be paid from the employer as provided for in sections five and five-a, article two of this chapter.

§23-5-8. Continuation of office of administrative law judges; powers of chief administrative law judge and said office.

(a) The workers' compensation office of administrative law judges previously created pursuant to chapter twelve, acts of the Legislature, one thousand nine hundred ninety, second extraordinary session, is hereby continued and designated to be an integral part of the workers' compensation system of this state. The office of judges shall be under the supervision of a chief administrative law judge who shall be appointed by the governor, with the advice and consent of the Senate. The previously appointed incumbent of that position who was serving on the second day of February, one thousand nine hundred ninety-five, shall continue to serve in that capacity unless subsequently removed as provided for in subsection (b) of this section.

(b) The chief administrative law judge shall be a person who has been admitted to the practice of law in this state and shall also have had at least four years of experience as an attorney. The chief administrative law judge's salary shall be set by the compensation programs performance council created in section one, article three, chapter twenty-one-a of this code. Said salary shall be within the salary range for comparable chief administrative law judges as determined by the state personnel board created by
section six, article six, chapter twenty-nine of this code. The chief administrative law judge may only be removed by a vote of two thirds of the members of the compensation programs performance council and shall not be removed except for official misconduct, incompetence, neglect of duty, gross immorality or malfeasance and then only after he or she has been presented in writing with the reasons for his or her removal and is given opportunity to respond and to present evidence. No other provision of this code purporting to limit the term of office of any appointed official or employee or affecting the removal of any appointed official or employee shall be applicable to the chief administrative law judge.

(c) By and with the consent of the commissioner, the chief administrative law judge shall employ administrative law judges and other personnel as are necessary for the proper conduct of a system of administrative review of orders issued by the workers' compensation division which orders have been objected to by a party, and all such employees shall be in the classified service of the state. Qualifications, compensation and personnel practice relating to the employees of the office of judges, other than the chief administrative law judge, shall be governed by the provisions of the statutes, rules and regulations of the classified service pursuant to article six, chapter twenty-nine of this code. All such additional administrative law judges shall be persons who have been admitted to the practice of law in this state and shall also have had at least two years of experience as an attorney. The chief administrative law judge shall supervise the other administrative law judges and other personnel which collectively shall be referred to in this chapter as the office of judges.

(d) The administrative expense of the office of judges shall be included within the annual budget of the workers' compensation division.

(e) Subject to the approval of the compensation programs performance council pursuant to subdivisions (b) and (c), section seven, article three, chapter twenty-one-a of this code, the office of judges shall from time to time promulgate rules of practice and procedure for the hear-
ing and determination of all objections to findings or
orders of the workers' compensation division pursuant to
section one of this article. The office of judges shall not
have the power to initiate or to promulgate legislative rules
as that phrase is defined in article three, chapter
twenty-nine-a of this code.

(f) The chief administrative law judge shall continue to
have the power to hear and determine all disputed claims
in accordance with the provisions of this article, establish a
procedure for the hearing of disputed claims, take oaths,
examine witnesses, issue subpoenas, establish the amount
of witness fees, keep such records and make such reports
as are necessary for disputed claims, and exercise such
additional powers, including the delegation of such powers
to administrative law judges or hearing examiners as may
be necessary for the proper conduct of a system of admin-
istrative review of disputed claims. The chief administra-
tive law judge shall make such reports as may be requested
of him or her by the compensation programs performance
council.

(g) Pursuant to the provisions of chapter four, article
ten of this code, the office of judges shall continue to exist
until the first day of July, one thousand nine hundred
ninety-six, to allow for the completion of a preliminary
performance review by the joint committee on govern-
ment operations.

§23-5-9. Hearings on objections to division decisions by office
of administrative law judges.

Objections to a workers' compensation division deci-
sion made pursuant to the provisions of section one of this
article shall be filed with the office of judges. Upon re-
ceipt of an objection, the office of judges shall, within
fifteen days from receipt thereof, set a time and place for
the hearing of evidence and shall notify the division of the
filing of the objection. Hearings may be conducted at the
county seat of the county wherein the injury occurred, or
at any other place which may be agreed upon by the inter-
ested parties, and in the event the interested parties cannot
agree, and it appears in the opinion of the chief adminis-
trative law judge or the chief administrative law judge's
authorized representative that the ends of justice require
the taking of evidence elsewhere, then at such place as the
chief administrative law judge or such authorized repre-
sentative may direct, having due regard for the conve-
nience of witnesses. The employer, the claimant and the
division shall be notified of such hearing at least ten days
in advance, and the hearing shall be held within thirty days
after the filing of the objection unless such hearing be
postponed by agreement of the parties or by the chief
administrative law judge or such authorized representative
for good cause. The division shall be a party to any pro-
ceeding under this article.

The office of judges shall keep full and complete
records of all proceedings concerning a disputed claim.
All testimony upon a disputed claim shall be recorded but
need not be transcribed unless the claim is appealed or in
such other circumstances as, in the opinion of the chief
administrative law judge, may require such transcription.
Upon receipt of notice of the filing of an objection, the
division shall forthwith forward to the chief administrative
law judge all records or copies of such records, which
relate to the matter objected to. All such records or copies
thereof and any evidence taken at hearings conducted by
the office of judges shall constitute the record upon which
the matter shall be decided. The office of judges shall not
be bound by the usual common law or statutory rules of
evidence. At any time within thirty days after hearing, if
the chief administrative law judge or the chief administra-
tive law judge's authorized representative is of the opinion
that the facts have not been adequately developed at such
hearing, he or she may order supplemental hearings or
obtain such additional evidence as he or she deems war-
ranted upon due notice to the parties.

All hearings shall be conducted as determined by the
chief administrative law judge pursuant to the rules of
practice and procedure promulgated pursuant to section
eight of this article. Upon consideration of the entire
record, the chief administrative law judge or an adminis-
trative law judge within the office of judges shall, within
thirty days after final hearing, render a decision affirming,
reversing or modifying the division's action. Said decision
§23-5-10. Appeal from administrative law judge decision to appeal board.

The employer, claimant or workers' compensation division may appeal to the appeal board created in section eleven of this article for a review of a decision by an administrative law judge. No appeal or review shall lie unless application therefor be made within thirty days of receipt of notice of the administrative law judge's final action or in any event within sixty days of the date of such final action, regardless of notice and, unless the application for appeal or review is filed within the time specified, no such appeal or review shall be allowed, such time limitation being hereby declared to be a condition of the right of such appeal or review and hence jurisdictional.


There shall be a board to be known as the "Workers' Compensation Appeal Board", which shall be referred to in this article as the "board", to be composed of three members. The board shall perform the duties and responsibilities assigned to it by this code consistent with the administrative policies developed by the governor and the commissioner with the assistance of the compensation programs performance council.

Two members of such board shall be of opposite politics to the third, and all three shall be citizens of this state who have resided therein for a period of at least five years. All members of the board shall be appointed by the governor and shall receive an annual salary in accordance with the provisions of section two-a, article seven, chapter six of this code. The salaries shall be payable in monthly installments, and the members shall also be entitled to all reasonable and necessary traveling and other expenses actually incurred while engaged in the performance of their duties. The governor shall designate one of the members of the board as chairman thereof, and the board shall meet at the capitol or at such other places throughout
the state as it may consider proper at regular sessions designated as "Appeal Board Hearing Days" commencing on the first Tuesday of every month or the next regular business day, for a period of at least three days, for the purpose of conducting hearings on appeals, and continuing as long as may be necessary for the proper and expeditious transaction of the hearings, decisions and other business before it. All clerical services required by the board shall be paid for by the commissioner from any funds at his or her disposal. The board shall, from time to time, compile and promulgate such rules of practice and procedure as to it shall appear proper for the prompt and efficient discharge of its business and such rules shall be submitted first to the compensation programs performance council for its approval pursuant to subdivisions (b) and (c), section seven, article three, chapter twenty-one-a of this code and, if so approved, then to the supreme court of appeals for approval, and if approved by such court shall have the same force and effect as the approved rules of procedure of circuit courts. By and with the consent of the commissioner, the board shall employ such clerical staff as may be necessary for the efficient conduct of its business. Salaries of the board, and its employees, and all of its necessary operating expenses shall be paid from the workers' compensation fund. The board shall submit its annual budget to the commissioner for inclusion as a separate item in the budget estimates prepared by him or her annually and within the limits of such budget, all expenses of the board shall be by the requisition of the commissioner. Salaries of the employees of the board shall be governed by the provisions of article six, chapter twenty-nine of this code.

The board shall report monthly to the compensation programs performance council on the status of all claims on appeal.

§23-5-12. Appeal to board; procedure; remand and supplemental hearing.

(a) Any employer, employee, claimant or dependent,
who shall feel aggrieved at any final action of the administrative law judge taken after a hearing held in accordance with the provisions of section nine of this article, shall have the right to appeal to the board created in section eleven of this article for a review of such action. The workers' compensation division shall likewise have the right to appeal to the appeal board any final action taken by the administrative law judge. The aggrieved party shall file a written notice of appeal with the office of judges directed to such board, within thirty days after receipt of notice of the action complained of, or in any event, regardless of notice, within sixty days after the date of the action complained of, and unless the notice of appeal is filed within the time specified, no such appeal shall be allowed, such time limitation being hereby declared to be a condition of the right to such appeal and hence jurisdictional; and the office of judges shall notify the other parties immediately upon the filing of a notice of appeal. The office of judges shall forthwith make up a transcript of the proceedings before the office of judges and certify and transmit the same to the board. Such certificate shall incorporate a brief recital of the proceedings therein had and recite each order entered and the date thereof.

(b) The board shall review the action of the administrative law judge complained of at its next meeting after the filing of notice of appeal, provided such notice of appeal shall have been filed thirty days before such meeting of the board, unless such review be postponed by agreement of parties or by the board for good cause. The board shall set a time and place for the hearing of arguments on each claim and shall notify the interested parties thereof, and briefs may be filed by the interested parties in accordance with the rules of procedure prescribed by the board. The board may affirm the order or decision of the administrative law judge or remand the case for further proceedings. It shall reverse, vacate or modify the order or decision of the administrative law judge if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative law judge's findings are:
(1) In violation of statutory provisions; or

(2) In excess of the statutory authority or jurisdiction of the administrative law judge; or

(3) Made upon unlawful procedures; or

(4) Affected by other error of law; or

(5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or

(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(c) After a review of the case, the board shall sustain the finding of the administrative law judge, in which case it need not make findings of fact or conclusions of law, or enter such order or make such award as the administrative law judge should have made, stating in writing its reasons therefor, and shall thereupon certify the same to the workers' compensation division and chief administrative law judge, who shall proceed in accordance therewith.

(d) Instead of affirming, reversing or modifying the decision of the administrative law judge as aforesaid, the board may, upon motion of any party or upon its own motion, for good cause shown, to be set forth in the order of the board, remand the case to the chief administrative law judge for the taking of such new, additional or further evidence as in the opinion of the board may be necessary for a full and complete development of the facts of the case. In the event the board shall remand the case to the chief administrative law judge for the taking of further evidence therein, the administrative law judge shall proceed to take such new, additional or further evidence in accordance with any instruction given by the board, and shall take the same within thirty days after receipt of the order remanding the case, giving to the interested parties at least ten days' written notice of such supplemental hearing, unless the taking of evidence shall be postponed by agreement of parties, or by the administrative law judge for good cause. After the completion of such supplemen-
telephone hearing, the administrative law judge shall, within sixty days, render his or her decision affirming, reversing or modifying the former action of the administrative law judge, which decision shall be appealable to, and proceeded with by the appeal board in like manner as in the first instance. In addition, upon a finding of good cause, the board may remand the case to the workers' compensation division for further development. Any decision made by the division following such a remand shall be subject to objection to the office of judges and not to the board. The board may remand any case as often as it opinion is necessary for a full development and just decision of the case. All appeals from the action of the administrative law judge shall be decided by the board at the same session at which they are heard, unless good cause for delay thereof be shown and entered of record. In all proceedings before the board, any party may be represented by counsel.

§23-5-13. Continuances and supplemental hearings; claims not to be denied on technicalities.

It is the policy of this chapter that the rights of claimants for workers' compensation be determined as speedily and expeditiously as possible to the end that those incapacitated by injuries and the dependents of deceased workers may receive benefits as quickly as possible in view of the severe economic hardships which immediately befall the families of injured or deceased workers. Therefore, the criteria for continuances and supplemental hearings "for good cause shown" are to be strictly construed by the chief administrative law judge and his or her authorized representatives to prevent delay when granting or denying continuances and supplemental hearings. It is also the policy of this chapter to prohibit the denial of just claims of injured or deceased workers or their dependents on technicalities.


In any appeal wherein a board member is a party, or is interested in the results thereof otherwise than as a general
subscriber to the compensation fund, or he or she is connected with a contributor therein, or is a beneficiary therein, or is connected with a beneficiary therein, he or she shall be disqualified from participating in the hearing and determination of such appeal.

§23-5-15. Appeals from final decisions of board to supreme court of appeals; procedure; costs.

From any final decision of the board, including any order of remand, an application for review may be prosecuted by either party or by the workers' compensation division to the supreme court of appeals within thirty days from the date thereof by the filing of a petition therefor to such court against the board and the adverse party or parties as respondents, and unless the petition for review is filed within such thirty-day period, no such appeal or review shall be allowed, such time limitation being hereby declared to be a condition of the right to such appeal or review and hence jurisdictional; and the clerk of such court shall notify each of the respondents and the workers' compensation division of the filing of such petition. The board shall, within ten days after receipt of such notice, file with the clerk of the court the record of the proceedings had before it, including all the evidence. The court or any judge thereof in vacation may thereupon determine whether or not a review shall be granted. And if granted to a nonresident of this state, he or she shall be required to execute and file with the clerk before such order or review shall become effective, a bond, with security to be approved by the clerk, conditioned to perform any judgment which may be awarded against him or her thereon. The board may certify to the court and request its decision of any question of law arising upon the record, and withhold its further proceeding in the case, pending the decision of court on the certified question, or until notice that the court has declined to docket the same. If a review be granted or the certified question be docketed for hearing, the clerk shall notify the board and the parties litigant or their attorneys and the workers' compensation division, of that fact by mail. If a review be granted or the certified
question docketed, the case shall be heard by the court in
the same manner as in other cases, except that neither the
record nor briefs need be printed. Every such review
granted or certified question docketed prior to thirty days
before the beginning of the term, shall be placed upon the
docket for such term. The attorney general shall, without
extra compensation, represent the board in such cases.
The court shall determine the matter so brought before it
and certify its decision to the board and to the division.
The cost of such proceedings on petition, including a
reasonable attorney's fee, not exceeding thirty dollars to
the claimant's attorney, shall be fixed by the court and
taxed against the employer if the latter be unsuccessful,
and if the claimant, or the division (in case the latter be the
applicant for review) be unsuccessful, such costs, not in-
cluding attorney's fees, shall be taxed against the division,
payable out of the workers' compensation fund, or shall be
taxed against the claimant, in the discretion of the court.
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
award granted shall be charged or received by an attorney
for a claimant or dependent. In no case shall the fee re-
cieved by the attorney of such claimant or dependent be
in excess of twenty percent of the benefits to be paid dur-
ing a period of two hundred eight weeks. The interest on
disability or dependent benefits as provided for in this
chapter shall not be considered as part of the award in
determining any such attorney's fee. However, any con-
tract entered into in excess of twenty percent of the bene-
fits to be paid during a period of two hundred eight weeks,
as herein provided, shall be unlawful and unenforceable as
contrary to the public policy of this state and any fee
charged or received by an attorney in violation thereof
shall be deemed an unlawful practice and render the attor-
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 conditional zoning areas with rules that provide that an area shall be used only for a designated purpose in a specific location or building, subject to the condition of reverting to the prior zoning classification if the approved 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.

There is hereby created the Corridor G regional development authority.

§2. Definitions.

For purposes of this article the following terms shall have the following meanings:

(1) "Authority" shall mean the Corridor G regional development authority;

(2) "Member counties" shall mean the counties of Boone, Lincoln, Logan and Mingo;

(3) "Local entity" shall mean any county, municipality, board of education, political subdivision or other governmental agency or body;

(4) "Corridor G" shall mean that part of United States route 119 which passes through the West Virginia counties of Boone, Lincoln, Logan and Mingo.

§3. Purposes.

The purposes for which the authority is created are to promote, develop and advance the business prosperity and economic welfare of the member counties, including, but not limited to, the area adjacent to Corridor G, their citizens and their industrial complex; to encourage and assist through loans, investments or other business transactions
in the locating of new business and industry within the member counties and to rehabilitate and assist existing businesses and industries therein; to stimulate and promote the expansion of all kinds of business and industrial activity which will tend to advance business and industrial development and maintain the economic stability of the member counties, provide maximum opportunities for employment, encourage thrift and improve the standard of living of the citizens of the member counties; to cooperate and act in conjunction with other organizations, federal, state or local, in the promotion and advancement of industrial, commercial, agricultural and recreational developments within the member counties; and to furnish money and credit, land and industrial sites, technical assistance and such other aid as may be deemed requisite to approved and deserving applicants for the promotion, development and conduct of all kinds of business activity within the member counties.

§4. Management and control of county authority vested in board; appointment and terms of members; vacancies; removal of members.

(a) The management and control of the authority, its property, operations, business and affairs shall be lodged in a board of sixteen voting members and five nonvoting ex officio members to be appointed as follows: Each of the county commissions of the counties of Boone, Lincoln, Logan and Mingo shall appoint four voting members to the authority, one of whom shall be a member of the county commission; the member of the county commission shall serve at the will and pleasure of the county commission; the initial terms of the other voting members appointed by a county commission are as follows: One member shall be appointed for a term of one year; one member shall be appointed for a term of two years; and one member shall be appointed for a term of three years; all successive appointments shall be for a term of three years. A member may be reappointed for such additional term or terms as the appointing agency may deem proper.
If a member resigns, is removed or for any other reason his or her membership terminates during his or her term of office, a successor shall be appointed by the appointing county to fill out the remainder of the term. Members in office at the expiration of their respective terms shall continue to serve until their successors have been appointed and have qualified.

(b) The directors of the county development authorities of each of the member counties and the president of southern West Virginia community college, or his or her designee, shall be ex officio nonvoting members.

(c) Should a vacancy occur, the person appointed to fill the vacancy shall serve only for the unexpired portion thereof.

(d) Any voting member appointed to the authority by a county commission may be removed by the appointing county commission for such causes and reasons as a member of such county commission may be removed from office.

(e) All initial members shall be appointed on or before the first day of July, one thousand nine hundred ninety-five.

§5. Qualifications of members.

All members of the board of the authority shall be citizens of the county in which the authority is intended to operate and bona fide residents of the county by which they are appointed.

§6. Authority to be a public corporation.

The authority and the members thereof shall constitute and be a public corporation under the name provided for in section one of this article, and as such shall have perpetual succession, may contract and be contracted with, sue and be sued, plead and be pleaded and have and use a common seal.

The authority is hereby given power and authority as follows: (1) To make and adopt all necessary bylaws, rules for its organization and operations not inconsistent with laws; (2) to elect its own officers, to appoint committees and to employ and fix compensation for personnel necessary for its operation; (3) to enter into contracts with any person, agency, governmental department, firm or corporation, including both public and private corporations, and generally to do any and all things necessary or convenient for the purpose of promoting, developing and advancing the business prosperity and economic welfare of the member counties, their citizens and industrial complex, including, without limiting any of the foregoing, the construction of any building or structure for lease to the federal government or any of its agencies or departments, and in connection therewith to prepare and submit bids and negotiate with the federal government or such agencies or departments in accordance with plans and specifications and in the manner and on the terms and conditions and subject to any requirements, regulations, rules and laws of the United States of America for the construction of said buildings or structures and the leasing thereof to the federal government or such agencies or departments; (4) to amend or supplement any contracts or leases or to enter into new, additional or further contracts or leases upon such terms and conditions, for such consideration and for such term of duration, with or without option of renewal, as may be agreed upon by the authority and such person, agency, governmental department, firm or corporation; (5) unless otherwise provided for in, and subject to the provisions of, such contracts, or leases, to operate, repair, manage and maintain such buildings and structures and provide adequate insurance of all types, and in connection with the primary use thereof and incidental thereto to provide such services or other authorizations to any person or persons, upon such terms and conditions, for such consideration and for such term of duration as may be agreed upon by the authority and such person, agency,
governmental department, firm or corporation; (6) to
delegate any authority given to it by law to any of its offi­
cers, committees, agents or employees; (7) to apply for,
receive and use grants-in-aid, donations and contributions
from any source or sources, and to accept and use be­
quests, devises, gifts and donations from any person, firm
or corporation; (8) to acquire lands and other real proper­
ty by gift, purchase or construction or in any other lawful
manner, and hold title thereto in its own name; (9) to pur­
chase or otherwise acquire, own, hold, sell and dispose of
personal property and real estate, and to own, hold, sell,
lease or otherwise dispose of all or part of such personal
property and any real property which it may own; (10)
pursuant to a determination by the board that there exists
a continuing need for programs to alleviate and prevent
unemployment within any or all of the member counties
in which the authority is intended to operate or aid in the
rehabilitation of areas in said county or counties which are
underdeveloped, decaying or otherwise economically
depressed, and that moneys or funds of the authority are
necessary therefore, to borrow money and execute and
deliver the authority's negotiable notes, mortgage bonds,
other bonds, debentures and other evidences of indebted­
ness therefore, on such terms as the authority shall deter­
mine, and give such security therefore as shall be requisite,
including giving a mortgage or deed of trust on its real or
personal property and facilities in connection with the
issuance of mortgage bonds; (11) to raise funds by the
issuance and sale of revenue bonds in the manner provid­
ed by the applicable provisions of article sixteen, chapter
eight of the code, it being hereby expressly provided that
a development authority created under this bill is a "gov­
erning body" within the definition of that term as used in
article sixteen, chapter eight of this code; and (12) to ex­
pend its funds in the execution of the powers and authori­
ty herein given, which expenditures, by the means author­
ized herein, are hereby determined and declared as a
matter of legislative finding to be for a public purpose and
use, in the public interest, and for the general welfare of
the people of West Virginia, to alleviate and prevent eco-
nomic deterioration and to relieve the existing critical
condition of unemployment existing within the state.

§8. Compensation of members; expenses; excusal of member
from voting where conflict of interest involved.

(a) No member of the authority shall receive any comp-
ensation, whether in formal salary, per diem allowance or
otherwise, in connection with his or her services as such
member. Each member shall, however, be entitled to reim-
bursement by the authority for any necessary expendi-
tures in connection with the performance of his or her
general duties as such member, but only insofar as the
authority shall authorize.

(b) Each member present during any meeting of the
authority when any question is put shall vote unless he or
she is immediately and particularly interested therein.
Before such a question is put, any member having direct
personal or pecuniary interest therein shall announce this
fact and request to be excused from voting. The presiding
officer of the meeting or a majority of the members pres-
ent may then excuse the member from voting upon the
question. The disqualifying interest must be such as af-
facts the members directly, and not as one of a class.

§9. Findings respecting necessity for exercise of right of emi-
inent domain; authorization to exercise right of eminent
domain.

(a) It is hereby found and determined by the Legisla-
ture that in fulfilling its prescribed purposes and exercis-
ing its powers, including the purpose of promoting, devel-
op ing and advancing the business prosperity and econom-
ic welfare of the member counties for which created by
acquiring lands and other real property to be furnished by
lease, sale or other disposition as industrial sites, the au-
 thority is performing essential public purposes; that the
performance of such essential public purposes are fre-
quently impeded, unduly delayed, or wholly frustrated by
the refusal of the owner or owners of property to convey
title thereto, by imperfections in the title to essential land
and other real properties, by lost heirs or widely scattered
owners of undivided interests in essential lands and other
real properties and by owners of relatively small but essen-
tial parcels of a proposed land development site who re-
fuse to sell their land or other real property to the county;
and, that the exercise by the authority of the right of emi-
inent domain within the limitations herein provided is
therefore necessary and appropriate to achieve the said
public purposes of the authority.

(b) The authority is hereby authorized and empow-
ered to exercise the right of eminent domain if an order of
the county commission in which the property to be ac-
quired by eminent domain authorizes exercise of the right
of eminent domain as to any proposed acquisition: Pro-
vided, That prior to the issuance of the order by the coun-
ty commission, it shall hold a public hearing on the public
necessity of the exercise of eminent domain and shall
cause a Class II legal advertisement to be published in
accordance with the provisions of section two, article three,
chapter fifty-nine of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, prior to the
hearing: Provided, however, That a separate hearing must
be held and a separate order promulgated for each parcel
over which the authority wishes to exercise the power of
eminent domain.

§10. Incurring indebtedness; rights of creditors.

The authority may incur any proper indebtedness and
issue any obligations and give any security therefor which
it may deem necessary or advisable in connection with
carrying out its purposes as hereinbefore mentioned. No
statutory limitation with respect to the nature, or amount,
interest rate or duration of indebtedness which may be
incurred by municipalities or other public bodies shall
apply to indebtedness of the authority. No indebtedness
of any nature of the authority shall constitute an indebted-
ness of the governing body of the member counties, or a
charge against any property of said county commissions
or other appointing agencies. The rights of creditors of
§11. Agreements in connection with obtaining funds.

The authority may, in connection with obtaining funds for its purposes, enter into any agreement with any person, firm or corporation, including the federal government; or any agency or subdivision thereof, containing such provisions, covenants, terms and conditions as the authority may deem advisable.

§12. Property, bonds and obligations of authority exempt from taxation.

The authority shall be exempt from the payment of any taxes or fees to the state or any subdivision thereof or to any officer or employee of the state or other subdivision thereof. The property of the authority shall be exempt from all local and municipal taxes. Bonds, notes, debentures and other evidence of indebtedness of the authority are declared to be issued for a public purpose and to be public instrumentalities and shall be exempt from taxes.

§13. Participation and appropriations authorized; transfers and conveyances of property.

The member counties, or any one or more of them, jointly and severally, are hereby authorized and empowered to contribute by appropriation from their respective general funds not otherwise appropriated to the cost of the operation and projects of the authority.

The member counties and any local entity are hereby authorized and empowered to transfer and convey to the authority property of any kind acquired by said county or local entity for or adaptable to use in industrial, economic and recreational development, such transfers or conveyances to be without consideration or for such price and upon such terms and conditions as the said county or local entity deems proper.
§14. Contributions by member counties, local entity and others; funds and accounts; reports; audit and examination of books, records and accounts.

Contributions may be made to the authority from time to time by the member counties or local entities, and by any persons, firms or corporations which shall desire to do so. All such funds and all other funds received by the authority shall be deposited in such bank or banks as the authority may direct and shall be withdrawn therefrom in such manner as the authority may direct. The authority shall keep strict account of all its receipts and expenditures and within sixty days after the end of each fiscal year, the authority shall make an annual report containing an itemized statement of its receipts and disbursements for the preceding year, and such annual report shall be delivered to the county commission of each member county and shall be published as a Class I legal advertisement in compliance with the provisions of section two, article three, chapter fifty-nine of the code of West Virginia, and the publication area for such publication shall be the member counties. The books, records and accounts of the authority shall be subject to audit and examination by the office of the state tax commissioner of West Virginia and by any other proper public official or body in the manner provided by law.

§15. Sale or lease of property; reversion of assets upon dissolution.

In the event the board of the authority shall so determine, the authority may lease or sell all of its property and equipment on such terms and conditions as the authority may fix and determine. Upon the dissolution of the authority, all of its assets and property shall revert to and become the property of the member counties, unless otherwise agreed to in writing by the board.

§16. Liberal construction.

It is the purpose of this bill to provide for promotion, development and advancement of the business prosperity
and economic welfare of the member counties, their citizens and their industrial complex, and this bill shall be liberally construed as giving to the authority full and complete power reasonably required to give effect to the purposes hereof.

§17. Provisions severable.

The several sections and provisions of this bill are severable, and if any section or provisions hereof shall be held unconstitutional, all the remaining sections and 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.

The Legislature hereby recognizes that Carnegie Hall Inc., a corporation, has operated Carnegie Hall since February 1, 1983, as a public cultural center for the advancement of the arts while making significant improvements to the historical structure known as Carnegie Hall providing faithful stewardship over this valuable historical and educational community asset. The Legislature further recognizes that ownership of Carnegie
Hal and the adjacent real estate by Carnegie Hall Inc. will enable Carnegie Hall Inc. to attract more private sector financial support to enable an expansion of its physical structure as well as its arts and educational programming therefore benefiting children and adults who visit Carnegie Hall and utilize the facility and programs.

Accordingly, the Legislature hereby finds and declares that transfers of any property, real or personal, made by county commissions to any person, organization or corporation for the furtherance of such activities promotes the cultural and educational welfare of the public and, therefore, is a public purpose.

The county commission of Greenbrier County is hereby authorized and empowered to transfer and convey unto Carnegie Hall Inc., a corporation, all that certain parcel of land situated within Lewisburg, Lewisburg municipal tax district, in central magisterial district of Greenbrier County, West Virginia, more particularly bounded and described as:

DESCRIPTION OF PARCEL
FOR CARNEGIE HALL INC.

A certain tract or parcel of land situated in Lewisburg Corporation, Greenbrier County, West Virginia, and located on the west side of Church Street, and more particularly described as follows:

Beginning at PK nail set on the western right-of-way of Church Street and on the northern edge of a private drive on the property of State of West Virginia, Department of Mental Health; thence leaving right-of-way of Church Street and through the property of State of West Virginia N 48 02 54 W 121.14 to a PK nail set in said private drive; thence N 18 15 28 W 23.60 to a PK nail set in said private drive; thence N 09 55 12 E 29.30 to a rebar set on the edge of said private drive; thence N 27 16 23 E 133.86 to a rebar set; thence S 67 13 58 E passing a rebar set at 206.10, in all 208.11 to a point on face of a
rock wall, on the western right-of-way of Church Street, said point is located S 41 39 30 W 397.87 from a West Virginia Department of Highways Concrete Monument at the intersection of Washington Street and Church Street; thence with right-of-way of Church Street S 43.17 19 W 234.50 to the beginning and containing 0.80 acre more or less as surveyed by Brackenrich and Associates, Incorporated in June, 1991.

Any proper conveyance made by the county commission of Greenbrier county transferring ownership of the above-described parcel to Carnegie Hall Inc. shall contain a provision that ownership of such property shall revert to the county commission should the land cease to 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.
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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
RESOLUTIONS

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 Denmar correctional center; and

WHEREAS, The regional jail and correctional facility authority has received bids for the renovation of certain portions of the Denmar correctional center; and

WHEREAS, The further progress toward completion of the renovation of the Denmar 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 Denmar 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 Denmar 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)
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 Craigo)
(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.

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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."
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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 anddesignating 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:
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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

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Regular Session, 1995

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**Regular Session, 1995**

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1843
### ACTIONS AND SUITS:
- Bankruptcy
  - Effect
  - Proceeding
    - Stay or order
      - Statutes of limitation
      - Tolling
    - Cases
      - Discontinuance
      - Prosecution
      - Failure

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### AERONAUTICS COMMISSION:
- Aeronautics
  - Laws governing
  - Enforcement

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#### Aircraft Alcohol, controlled substances or drugs
- Operation
- Criminal penalties
- Second or subsequent offense
- Test
  - Blood test
  - Administration
  - Fee
  - Breath analysis
    - Preliminary
    - Chemical test
    - Implied consent
    - Administration
    - Type
    - Designation
    - Right to demand
    - Urine
    - Fee

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- Airports
  - Federal aid
  - Creation
  - Definitions
  - Director
    - Appointment
    - Assistants
      - Employment
      - Types
      - Compensation
      - Powers and duties
      - Qualifications
  - Meetings
    - Determination
  - Membership
  - Office
  - Orders
    - Hearings
    - Notice
  - Organization
    - Powers and duties
  - Reports

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### AGRICULTURE:
- Commissioner
  - Integrated Pest Management Control Program
    - Implementation

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*See PROFESSIONS AND OCCUPATIONS.*

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*Leave donation program*
  - Annual leave
  - Donation
  - Medical emergency

*Salaries*
  - Certain deductions
    - Monthly or semimonthly
  - Employee authorization

**PUBLIC EMPLOYEES INSURANCE:**

*Public Employees Insurance Act*
  - County boards of education
  - Elected members
  - Eligibility

**PUBLIC SAFETY:**

*Law-enforcement agencies*
  - Federal, state, municipal, county
  - Multijurisdictional basis
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  - Mission
  - Name change
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    - Powers
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